

Tax Newsletter

Real Estate Investments in Albania

Tax and regulatory aspects

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Restrictions on the acquisition of property

Currently foreign investors can freely acquire real estate property in Albania by setting up a local subsidiary to be used as the acquisition vehicle. Indeed, a local subsidiary is considered as a domestic entity, regardless of the origin of its shareholders, and as such can become owner of real estate property in Albania.

By contrast, a foreign company can only acquire regulated plots of land and only upon completion of the approved construction equaling at least three times the value of the land.

Finally, foreign individuals can only acquire residential units, but not land.

Lease of real estate property

Leases of real estate property in Albania are regulated by the Albanian Civil Code. The lease agreement is defined as a contract between the lessor and the lessee for providing the latter with the use of the desired estate in exchange for consideration.

There is no minimum period requirement for rental or lease agreement (s) but the maximum period is 30 years. Lease agreements that stipulate tenure of longer than 30 years or do not make a reference to the lease period are deemed to be valid for at most 30 years. The lease of agricultural land should be concluded under a notary deed if the rent period exceeds 9 years.

The burden of safeguarding the interests of the lessee in cases of claims on the property by third parties lies with the lessor.

The lessee may, upon approval from the lessor, subcontract the real estate property to a third party.

Rents can be negotiated freely, subject to the arm's length standard for tax purposes.



Registration of real estate in Albania

Based on Law no. 7843 "On Registration of Real Estate" land and buildings should be registered with the related register. These registers are open to the public. The register of real estate contains all the data of the real estate such as: identity of the owner, encumbrances and in rem rights established, date of registration and the relevant notarial deed or other title as well as plans that show the location of property.

Any contract or other instrument enabling the aforementioned transactions should be filed with the competent Office of Real Estate Registration (RERO) within 30 days from its execution.

The initial registration of a real estate property transaction is subject to the temporary registration regime. The appropriate RERO office shall record the act of temporary registration, for forty-five (45) consecutive days. During this period any interested person can file with the office any claim or request for correction of eventual mistakes. If no claim is submitted within the aforementioned period or any claim submitted is settled in agreement between the parties, the said acquisition title will be classified as permanently registered.

In case of legal proceedings with regard to a property, the registrar shall record in the register the related legal action and indicate the court that is ruling on the case.

Issues with ownership titles

Over the past years there have been disputes over the validity of several ownership titles. In order to promote foreign investments, the Albanian government has recently announced that it will guarantee the protection of foreign investments in real estate properties from eventual challenges of other parties claiming ownership. The relevant law has not been passed yet.

Taxation

Overview of relevant taxes

Tax	Rate
Corporate income	10%
Personal income	10%
Capital gains	10%
Dividend withholding	10%*
Interest withholding	10%*
Value added	20%
Buildings' annual real estate	5-200 ALL/m ² depending on the municipality.
Real estate transfer	<p>On transfer of buildings</p> <p>300-2000 ALL/m² for buildings utilized for business purposes, depending on the municipality.</p> <p>On transfer of Land</p> <p>Tax rates range between 0.5%-3% depending on the value of the property transferred.</p>

*A lower rate may apply if the beneficial owner of the income is a resident of a country with which Albania has a Double Taxation Treaty in place.



Acquisition of real estate

The following taxes are relevant to the acquisition of real estate property located in Albania.

Real estate transfer tax (RETT)

The acquisition of land in Albania triggers real estate transfer tax, which is in the range of 0.5% to 3% of the transaction price of the property, unless such price is lower than a reference price for that plot of land, in which case the latter would be taken in consideration. For buildings utilized for business purposes, the tax ranges between 300 ALL/m² and 2000 ALL/m², depending on the municipality. For the Tirana and Durres area the tax is set at 2000 ALL/m². Essentially, upon acquisition of a building or a unit thereof with the related land or ideal part of land, there will be imposed 1) the tax corresponding to the piece of land transferred as well as 2) the tax related to the building or unit acquired. The said tax is collected by the RERO upon application for the registration of the establishment of the new ownership or other in rem rights.

VAT

Supply of land and buildings are exempt from VAT, except when used for parking or warehouses.

The leasing of buildings is exempt supply except when the leasing of buildings is made for a period less than 2 months. Nevertheless, the lessor reserves the right to charge VAT on the lease amount but only upon a prior request and approval from the relevant tax office. Furthermore, if the lessee is a VAT exempt entity the lessor should obtain the consent of the lessee prior to filing a request with the tax authorities.

Tax implications regarding the financing of real estate acquisitions

A local company acquiring real estate may be financed either by debt or equity. However, for loan financing there are thin capitalization rules as well as transfer pricing aspects which need to be observed, specifically:

Interest paid for the part of the loan exceeding in average four times the equity, is non-deductible for the purpose of calculating corporate income tax. The restriction does not apply for banks, insurance and leasing companies.

In addition, the Albanian Income Tax Code does not recognize as tax deductible the portion of the interest exceeding the average annual interest rate as published by Bank of Albania, regardless of whether the thin capitalization rules are triggered or not.

There are also transfer pricing rules under the Income Tax Code that require the pricing of the interest for debt transactions between related parties to be set on an arm's length basis with the maximum deductible amount being, however, the annual average inter-banking interest rate as published by Bank of Albania.

In case the debt financing is obtained from abroad, the interest payments to the non resident lender would be subject to a withholding tax of 10% upon payment. However, this tax may be reduced under the provisions of an applicable double taxation treaty of Albania with the country of tax residence of the interest income beneficiary, following an advance clearance procedure with the Albanian Tax Administration for the application of the respective treaty relief.

Ownership and exploitation of real estate

Corporate income tax

Local entities should tax the rental income related to the real estate property, as part of their annual taxable profit, at 10% rate.

Companies must make monthly advance payments of corporate income depending on the amount of profit, realized in previous periods. Newly established companies should calculate their advance payments on a best estimate basis, unless they are involved in production activities in which case they will not be subject to the monthly advance payments for a period of either 6 months or until the end of the first fiscal year, whichever is shorter. Any advance payment made is credited against the annual corporate tax liability.

No other taxes or levies apply to the leasing of property.

Depreciation

Land itself is not depreciable. Any construction affixed thereto is depreciable, provided it is used for the business activities of the company, and booked as a fixed asset.

Buildings must be depreciated using the declining balance method at a rate of 5% per annum.

Tax losses

Tax losses can be carried forward for three consecutive years, unless there is a change in ownership of 25% of the entity's ownership in which case the remaining tax losses would be forfeited. Loss carryback is not allowed.

Withholding tax on dividends

Dividends paid by Albanian resident companies to resident individuals and nonresident individuals and entities are subject to withholding tax at a rate of 10% unless the rate is reduced under an applicable double taxation treaty. Dividends paid to resident companies are not subject to withholding tax and are not subject to further taxation in the hands of the recipient company.

By contrast, there is no branch remittance tax for profits remitted by the branch to its head office.

Annual real estate tax

Annual Real Estate Tax (ARET) is levied yearly on all completed buildings based on the area/square meter of the building for each and every floor of the building over and below the ground. The tax is in the range between 5 ALL/m² and 200 ALL/m² per annum depending on the municipality where the property is located. The tax is 200 ALL/m² per annum for the buildings located in the municipality of Tirana and Durres.

Other relevant local taxes

Other local taxes which may be relevant are the green tax and the waste disposal tax. These taxes are applicable only in case when the property is being used for the activity of the company and not for investment purposes and are calculated as monthly lump sum liabilities of the taxpayer.

Disposal of real estate

Capital gains realized from the disposal of assets owned by a domestic entity, including shares, are subject to the annual profit tax at 10%, along with the rest of its income. Capital losses are deductible for tax purposes.

There is no clarity in the law about the taxation of capital gains realized by a non domestic company from the sale of domestic shares. However, in the tax administration guidelines, it is stated that such gain is subject to taxation. Furthermore, it is stated that if the buyer is a domestic entity, it is obliged to withhold and pay the tax calculated on the net basis, i.e the sale price minus the acquisition costs. By contrast if the buyer is a foreign entity, the relevant tax liability will be settled by the seller. In most double taxation treaties, income from sale of shares in an Albanian entity is taxable only in the residence state of the seller, provided the advance clearance procedure with the Albanian Tax Authorities for obtaining tax treaty relief has been completed.

By contrast, direct sale of the real estate assets is subject to taxation in Albania, i.e via withholding tax, when the buyer is a domestic entity, or via self reporting of the seller through an annual income tax return, when the buyer is an individual or a foreign entity.

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