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*Gelanda Shkurtaj, Giorgio Beretta and Claudio Cipollini**

Albanian Tax Reform: A Leap Forward Towards Closer International and EU Integration

Albania passed a ground-breaking tax reform in 2023. This is the most significant tax development since the enactment of the Income Tax Code in 1998, a time when the country was still transitioning from the communist era and prolonged isolationism. Law No. 29/2023, effective 1 January 2024, reshapes the fundamentals of the Albanian tax system in an effort to align the Balkan country with international and EU tax standards. In this article, the authors illustrate the main aspects of the reform from an international and EU perspective and evaluate them in light of recent developments in respect of Albania's EU candidacy status.

1. Introduction

Albania (in Albanian: *Shqipëri* or *Shqipëria*) is a country in the Balkan peninsula in southeast Europe. It has an area of approximately 28,000 km^2 and borders Montenegro to the north, Kosovo to the northeast, North Macedonia to the east, Greece to the south and the Adriatic and Ionian Seas to the west.[1] According to the latest statistics, the resident population is 2.4 million.[2]

Albania was proclaimed independent in 1912 after almost five centuries of the Ottoman Empire's rule. After being invaded by Italian and German forces during World War II, Albania became a communist state under the dictatorship of Enver Hoxha, remaining isolationist until it transitioned to democracy after 1990.[3] Since then, the country has undergone profound economic and social reforms, progressively adopting a liberal foreign investment regime designed to attract foreign direct investment (FDI).[4] The country is currently experiencing significant economic growth. Real GDP growth is projected to be 3.4% in 2025.[5]

Albania is one of nine states in the process of joining the European Union.[6] It received official status as an EU candidate state in June 2014, after applying for EU membership on 28 April 2009.[7] Accession negotiations between Albania and EU institutions began in March 2020.[8] After an initial stalemate, the negotiation rounds of the first chapters between the EU institutions and the Albanian delegation opened on 15 October 2024.[9]

Various steps preceded Albania's achievement of its status as an EU membership candidate. The signing of the Stabilisation and Association Agreement (SAA) on 12 June 2006 represented a milestone in strengthening EU-Albania relationships.[10] In light of the Albanian legal system, the SAA is considered an international agreement, and its norms prevail over Albanian domestic law in the event

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1. WorldData, *Albania*, available at https://www.worlddata.info/europe/albania/index.php (accessed 27 Jan. 2025).
2. Instat, *The Population of Albania*, available at https://www.instat.gov.al/en/statistical-literacy/the-population-of-albania/ (accessed 27 Jan. 2025).
3. European Commission, *Albania* (21 Jan. 2025), available at https://eurydice.eacea.ec.europa.eu/national-education-systems/albania/historical-development#:~:text=Albania%20was%20proclaimed%20independent%20after,transition%20to%20democracy%20after%201990 (accessed 27 Jan. 2025).
4. Albanian Investment Development Agency (AIDA), *Foreign Direct Investments*, available at https://aida.gov.al/en/investment-in-albania/fdi/ (accessed 27 Jan. 2025).
5. International Monetary Fund (IMF), *Albania*, available at https://www.imf.org/en/Countries/ALB#ataglance (accessed 27 Jan. 2025).
6. European Union, *EU Enlargement*, available at https://european-union.europa.eu/principles-countries-history/eu-enlargement_en (accessed 27 Jan. 2025). At the time of writing (Jan. 2025), Kosovo had the status of a potential candidate, having applied to join the European Union but not having yet received the status of a candidate state.
7. European Commission, *Albania – Membership Status: Candidate Country*, available at https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/albania_en (accessed 27 Jan. 2025).
8. EU Council, *Press Release:Second Meeting of the Accession Conference with Albania at Ministerial Level* (15 Oct. 2024), available at https://www.consilium.europa.eu/en/press/press-releases/2024/10/15/second-meeting-of-the-accession-conference-with-albania-at-ministerial-level/ (accessed 27 Jan. 2025).
9. Negotiations regarding accession to the European Union are structured around six clusters, including 33 chapters. The chapters currently under discussion between the EU institutions and the Albanian delegation are (i) Public Procurement, (ii) Statistics, (ii) Judiciary & Fundamental Rights, (iv) Justice, Freedom & Security and (v) Financial Control. The opening of the first chapters on the EU accession path followed the decoupling of Albania from North Macedonia, which had delayed further talks.
10. Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part – Protocols – Declarations, pp. 166-502, OJ L 107 (2009) [hereinafter SAA], available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22009A0428%2802%29 (accessed 27 Jan. 2025). To review the progress of EU-Albania relations under the stabilization and association process, representatives from the European Union and Albania meet periodically within the EU-Albania Stabilisation and Association Council. As of Jan. 2025, there have been 12 EU-Albania Stabilisation and Association Council meetings. *See* EU Council, *EU-Albania Stabilisation and Association Council, 16 March 2023*, available at https://www.consilium.europa.eu/en/meetings/international-ministerial-meetings/2023/03/16/ (accessed 27 Jan. 2025).

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of conflict.[11] In the 2024 progress report, the EU Commission highlighted partial alignment between the two pieces of legislation, although differences remain.[12] The SAA framework has also been proven important in aligning Albanian tax legislation with the EU tax framework.[13] This framework provides for closer cooperation between Albania and the European Union in various tax matters, including all reform measures of the fiscal system and tax administration to improve efficiency in tax collection and fight tax evasion.[14]

Currently, Albania has a network of 47 tax treaties, 46 of which were in force in January 2025.[15] Of those, 33 concern both income and capital, while 14 are restricted to income. Albania does not have any treaties with other countries for inheritance and gift taxes. Albania has tax treaties with 22 EU Member States, including France (2002), Germany (2010), Italy (1994), the Netherlands (2004), Poland (1993), Romania (1994) and Spain (2010). It has also concluded treaties with China (People's Rep.) (2004), India (2013), Israel (2021), Malaysia (1994), Russia (1995), Saudi Arabia (2019), Singapore (2010), Switzerland (1999), Türkiye (1994), the United Arab Emirates (2014) and the United Kingdom (2013). No tax treaty exists with the United States, despite a solid political and diplomatic relationship between the two countries.[16]

Albania's tax treaties, especially those signed with EU Member States, generally follow the OECD Model.[17,18] However, several tax treaties depart from the OECD Model by including provisions from the UN Model,[19] such as those regarding independent personal services and technical fees.[20] Albania typically employs the credit method to avoid double taxation, while other countries resort to either the credit or exemption method.

Albania is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (2016) (MLI),[21] which entered into force in the country on 1 January 2021. Notably, Albania signed the MLI on 28 May 2019 and deposited its final MLI position on 22 September 2020, including the tax treaties that it wishes to be covered by the MLI. Albania is implementing the BEPS minimum standards in its tax agreements through the inclusion of the preamble statement and the principal purpose test (PPT).[22]

As of 2021, Albania is part of the OECD Common Reporting Standard (CRS) for the automatic exchange of tax information (AEOI).[23] The country has also committed to the Multilateral Competent Authority Agreement on Automatic Exchange of Country-by-Country Reports (2016) (CbC MCAA), which it joined on 11 March 2024. This agreement facilitates the automatic exchange of CbC

11. *See* AL: Constitution of the Republic of Albania, 1998 art. 122(3) (amended 2016), available at https://www.gjk.gov.al/web/constitution_of_albania_1722.pdf (accessed 27 Jan. 2025). For a discussion, *see* G. Skara, *Europeanisation of Private Enforcement of Competition Law. The Case of Albania* pp. 226-229 (Springer Nature 2022).
12. EU Commission, *Commission Staff Working Document – Albania 2024 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2024 Communication on EU Enlargement Policy*, SWD(2024) 690 final (30 Oct. 2024), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2024:690:FIN (accessed 27 Jan. 2025). The EU Commission found that "Albania is moderately prepared in the area of taxation". In particular, the progress made in abolishing the industrial incentive scheme was praised, which resulted in Albania being removed from the list of potentially harmful tax regimes within the scope of the OECD Forum on Harmful Tax Practices (OECD FHTP). The EU Commission, however, urged Albania to progress in other fields, such as reducing tax exemptions, aligning VAT and excise duty rates with the EU acquis, encouraging more tax compliance and improving the use of third-party data in the fight against tax fraud and tax evasion.
13. For an overview (up to 2021) of Albania's efforts to align its tax legislation with the EU acquis under the Stabilisation and Association Agreement (SAA) terms, *see* P. Shehaj, *The Alignment of Albania's Legislation with the EU Acquis: The Taxation of Cross-Border Profit Distributions*, 61 Eur. Taxn. 2/3, pp. 99-108 (2021), Journal Articles & Opinion Pieces IBFD. According to B. Hajdini & G. Skara, *Lost in Implementation: EU Law Application in Albanian Legal System*, 19 Journal of Legal Studies 33, pp. 43-64 (2017), by implementing the SAA provisions into national legislation through a top-down approach, the EU norms are penetrating the Albanian legal system by obligating the Albanian government to approximate its laws and ensure proper implementation of the SAA.
14. Art. 98(1) SAA. According to D. Popovic & S.V. Kostic, *EU Integration Process and Direct Taxation from a Southeast Perspective: Part II Impact of Accession Negotiations on Direct Taxation in Acceding Countries*, 41 Intertax 11, p. 558 (2013), although this is the only article addressing direct taxation, it is the real force behind the adoption of the EU acquis.
15. Luxembourg ratified its tax treaty and protocol with Albania on 18 Dec. 2024 (*Agreement between the Government of the Grand Duchy of Luxembourg and the Council of Ministers of the Republic of Albania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital* (14 Jan. 2009), Treaties & Models IBFD). Albania began concluding tax treaties in 1993 when the first tax treaty with Hungary was signed (*Synthesised Text of the MLI and the Convention between the Republic of Hungary and the Republic of Albania for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital* (14 Nov. 1992), Treaties & Models IBFD).
16. Such a privileged relationship is reflected in the fact that the United States and Albania signed a bilateral investment treaty in 1995, which entered into force in Jan. 1998. *See* US Department of State, *2023 Investment Climate Statements: Albania*, https://www.state.gov/reports/2023-investment-climate-statements/albania/#:~:text=Albania%20signed%20a%20Bilateral%20Investment,due%20to%20concerns%20about%20corruption (accessed 27 Jan. 2025).
17. The most recent version being, *OECD Model Tax Convention on Income and on Capital: Commentary on Article 5* para. 139 (21 Nov. 2017), Treaties & Models IBFD.
18. Notably, all Albanian tax treaties cover the taxation of income from business profits, international transport, dividends, interest, royalties, employment and real estate.
19. The most recent version being *UN Model Double Taxation Convention between Developed and Developing Countries* (1 Jan. 2021), Treaties & Models IBFD.
20. According to Shehaj, *supra* n. 13, at p. 104, "the Albanian model agreement reflects elements of both the OECD and UN Models."
21. *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (24 Nov. 2016), Treaties & Models IBFD.
22. OECD, *Albania*, available at https://www.oecd-ilibrary.org/fr/albania_a32bedc3-en.pdf?itemId=%2Fcontent%2Fcomponent%2Fa32bedc3-en&mimeType=pdf (accessed 27 Jan. 2025). The tax treaty with Saudi Arabia is not currently covered under the MLI.
23. OECD, *AEOI Standard's Implementation Status by Jurisdiction* (7 Mar. 2024), available at https://web-archive.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/index.htm (accessed 27 Jan. 2025). Albania voluntarily committed to commence exchanges under the CRS in 2021 but did so in 2020 as well, based on AL: Law No. 4 of 30 Jan. 2020. According to the latest automatic exchange of tax information (AEOI) peer-review update, "Albania's legal framework implementing the AEOI Standard is in place but needs improvement in order to be fully consistent with the requirements of the AEOI Terms of Reference". *See* OECD, *Peer Review of the Automatic Exchange of Financial Account Information 2023 Update*, pp. 12 and 36-38 (OECD 2023), available at https://www.oecd-ilibrary.org/docserver/5c9f58ae-en.pdf?expires=1731936085&id=id&accname=guest&checksum=F00DDD488B122C824CF64A5534BDE9CD (accessed 27 Jan. 2025).

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reports between countries in fulfilment of BEPS Action 13.[24]

In the past, Albania was included in the list compiled by the OECD Forum on Harmful Tax Practices (FHTP) regarding two regimes concerning software production and development. Since the two regimes were abolished, however, Albania was removed from the list in the OECD FHTP update of February 2024.[25] Albania is now also included in the list of countries that cooperate with the European Union.[26] Previously, Albania was included in Annex II of the EU list of non-cooperative jurisdictions due to having pending commitments with the European Union.[27]

Albania has progressively adjusted its domestic tax law framework to algin with international and EU developments. With the assistance of the International Finance Corporation, a more elaborate transfer pricing regulation was drafted in accordance with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2010) and published in 2014. Subsequently, in 2015, the regulation was extended to include detailed instructions on advance pricing agreements (APAs).[28] Albania joined the Multilateral Convention on Mutual Administrative Assistance in Tax Matters,[29] as amended by the 2010 Protocol, on 1 December 2013.[30] However, a reservation concerning administrative assistance for certain taxes applies.[31]

Other developments relate to the enactment of a new VAT law,[32] effective 1 January 2015, which has been significantly harmonized with the EU VAT Directive (2006/112).[33] Further, a new customs code[34] has been structured in line with the Union Customs Code (UCC).[35] Another major development concerns the amendments to the Law on Tax Procedures, which introduced a general anti-avoidance rule (GAAR) and allowed the tax administration more power to carry out tax assessments.[36]

2. The Albanian Tax Reform (2023)

The Albanian tax system dates back to the early 1990s, when the communist regime collapsed. Notably, Law No. 74606 of 15 July 1992 (On the Administration of Taxes and Duties in the Republic of Albania) can be considered the foundation of the modern Albanian tax system.[37] However, the first law laying down a comprehensive income tax system is Law No. 8438 of 28 December 1998 (On Income Tax).[38]

Since its initial adoption, Law No. 8438/1998 has undergone various amendments, ultimately being repealed as a result of the entry into force of the new Law No. 29/2023 (On Income Tax), which the Albanian Parliament adopted on 30 March 2023 (hereinafter the Albanian Tax Reform (2023)).[39] The Albanian Tax Reform (2023) overhauls the Balkan country's tax system by providing a new legal framework for the imposition, declaration and collection of personal income tax, corporate income tax and withholding tax on income.[40]

The provisions contained in Law No. 29/2023 entered into force on 1 January 2024, unless specified otherwise.[41] As of January 2025, Law No. 29/2023 has undergone four subsequent updates.[42] Albania's Ministry of Finance was

24. OECD, *Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports*, available at https://www.oecd.org/en/topics/sub-issues/convention-on-mutual-administrative-assistance-in-tax-matters.html (accessed 27 Jan. 2025).
25. OECD, *Harmful Tax Practices – Peer Review Results. Inclusive Framework on BEPS: Action 5 Update (as of July 2024)* OECD 2024), available at https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/harmful-tax-practices/harmful-tax-practices-consolidated-peer-review-results-on-preferential-regimes.pdf (accessed 27 Jan. 2025).
26. EU Council, *Taxation: Bahamas, Belize, Seychelles and Turks and Caicos Islands Removed from the EU list of Non-Cooperative Jurisdictions for Tax Purposes* (20 Feb. 2024), available at https://www.consilium.europa.eu/en/press/press-releases/2024/02/20/taxation-bahamas-belize-seychelles-and-turks-and-caicos-islands-removed-from-the-eu-list-of-non-cooperative-jurisdictions-for-tax-purposes/ (accessed 27 Jan. 2025).
27. EU Council, *EU List of Non-Cooperative Jurisdictions for Tax Purposes*, available at https://taxation-customs.ec.europa.eu/document/download/75fa18ef-9652-47aa-a916-91ded28ba4fb_en?filename=eu_list_update_08-10-2024_0.pdf (accessed 27 Jan. 2025).
28. AL: Ministry of Finance, Republic of Albania, Instruction No. 9 of 27 Feb. 2015.
29. OECD/Council of Europe, *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters 2011, Amended by the 2010 Protocol* (OECD 2011), available at https://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm [hereinafter Multilateral Convention].
30. OECD, *Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters. Status – 7 November 2024*, available at https://www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf (accessed 27 Jan. 2025).
31. Council of Europe, *Reservations and Declarations for Treaty No. 127 – Convention on Mutual Administrative Assistance in Tax Matters (ETS No. 127)*, available at https://www.coe.int/en/web/conventions/full-list;?module=declarations-by-treaty&numSte=127&codeNature=2&codePays=ALB (accessed 27 Jan. 2025).
32. AL: Law No. 2 of 31 July 2014, Primary Sources IBFD.
33. Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, OJ L347 (2006), Primary Sources IBFD [hereinafter VAT Directive].
34. Law No. 2 (2014).
35. Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269 (2013), Primary Sources IBFD [hereinafter UCC].
36. AL: Law No. 9920 (On Tax Procedures) of 19 May 2008, Primary Sources IBFD.
37. AL: *LIGJ Nr. 7546 Për administrimin e tatimeve dhe taksave në Republikën e Shqipërisë* [Law No. 7546 (On the Administration of Taxes and Duties in the Republic of Albania) of 14 July 1992].
38. AL: *LIGJ Nr. 8438 Për Tatimin mbi të ardhurat* [Law No. 8438 (On Income Tax) of 28 Dec. 1998].
39. AL: *LIGJ Nr. 29/2023 Për Tatimin mbi të ardhurat* [Law No. 29/2023 (On Income Tax) of 30 Mar. 2023 (hereinafter Albanian Tax Reform (2023))] OG 2 May 2023, Primary Sources IBFD.
40. Art. 1. Albanian Tax Reform (2023).
41. Art. 72 Albanian Tax Reform (2023) provides for arts. 22 (Deduction from Tax Base), 23 (Application for Tax Base Reduction) and 24, point 1 (Tax Rate), which took effect 1 Jan. 2025. *See also* art. 69 Albanian Tax Reform (2023), which contains various transitional provisions for certain activities. Notably, this provision prescribes that a 5% corporate tax rate continues to apply to existing companies and other legal entities whose activity consists of producing and developing software up to 31 Dec. 2025. A 5% corporate tax rate also applies to persons exercising agritourism, agricultural cooperatives and entities carrying out economic activities in the automotive industry until 31 Dec. 2029. However, the most relevant transitional measure concerns corporate and individual businesses and self-employed persons with annual gross revenue of up to ALL 14 million (approximately EUR 140,000). These taxpayers will pay 0% income tax (thus, being effectively exempt) until 31 Dec. 2029.
42. AL: Council of Ministers, Act No. 2 of 7 June 2023; Council of Ministers, Act No. 7 of 14 Dec. 2023; Constitutional Court, 27 June 2024, Decision No. 52; and Council of Ministers, Act No. 4 of 27 Nov. 2024.

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empowered to adopt the general instructions for implementing the provisions contained in Law No. 29/2023, which can be found in General Instruction No. 26/2023.[43]

Law No. 29/2023 claims to be partially aligned with EU tax law. Notably, Law No. 29/2023 stipulates that the provisions contained therein are partially aligned with the EU Anti-Tax Avoidance Directive (2016/1164)[44] and the EU Merger Directive (2009/133).[45]

The Albanian tax system, as envisaged under the Albanian Tax Reform (2023), is somewhat progressive.[46] Only three tax rates apply to employment income, i.e. 0%, 13% and 23%.[47] Income from business and self-employment is subject to two flat tax rates, as follows: (i) up to ALL 14 million (approximately EUR 140,000), 15%; and (ii) over ALL 14 million (approximately EUR 140,000), 23%.[48]

Various transitional rules are, however, currently in force. Notably, for companies, solo proprietors and self-employed individuals with a gross income of up to ALL 14 million (approximately EUR 140,000) per year, a 0% income tax rate applies until 31 December 2029.[49] This is the result of a decision by the Albanian Constitutional Court, which declared that the 0% tax rate could not be limited to companies and other incorporated businesses, as originally stated in Law No. 29/2023, but ought to be extended to sole proprietors and self-employed individuals; otherwise, the freedom of economic activity and the principle of proportionality would be violated.[50]

Given this framework, this article aims to illustrate the main elements of the Albanian Tax Reform from an international and EU perspective and evaluate them in light of Albania's EU candidacy status. The analysis is divided into different topics, one per section. Notably, following these introductory sections, section 3. delves into the definition of tax residence as modified by the Albanian Tax Reform (2023). Section 4. describes the concept of permanent establishment (PE), while section 5. focuses on withholding tax at source. Sections6. and 7. are dedicated to, respectively, controlled foreign companies (CFCs) and interest deduction limitations. Section 8. provides the authors' conclusions.

3. Residence

Albania has a worldwide personal and corporate tax system. Individuals and companies, as well as other legal persons who are residents of Albania, are taxed on both domestic and foreign income.[51] Non-resident individual and corporate taxpayers, including foreign company PEs, are liable to tax only on income sourced in Albania. Individual and corporate taxpayers are treated as residents or non-residents of Albania for the entire tax year, which is the calendar year. Neither a split-year treatment nor a partial residence concept exists under Albanian tax law.

An individual is considered a resident[52] of Albania for personal tax purposes if they fulfil any[53] of the following five criteria:

(i) they have a permanent home in Albania;
(ii) they stay in Albania for more than 183 days in a calendar year, either consecutively or intermittently;
(iii) they have a shop, professional office, factory or other place where the natural person exercises activity in Albania;
(iv) their habitual residence is in Albania, unless the individual has a permanent residence in another country; or
(v) their centre of vital interests is in Albania.[54]

The first criterion refers to the concept of a "permanent home". This means that the individual must possess a home owned, donated, inherited or rented in Albania, living therein for at least six months in the tax year at issue. Accommodation intended to be used for a short duration of less than six months does not qualify. In the event that an individual has a permanent home in a country other

43. AL: Ministry of Finance, Instruction No. 26 of 8 Sept. 2023 [hereinafter Instruction No. 26 (2023)].
44. Council Directive 2016/1164 of 12 July 2016 Laying Down Rules against Tax Avoidance Practices that Directly Affect the Functioning of the Internal Market, OJ L 193/1 (2016), Primary Sources IBFD [hereinafter ATAD].
45. Council Directive 2009/133/EC of 19 October 2009 on the Common System of Taxation Applicable to Mergers, Divisions, Partial Divisions, Transfers of Assets and Exchanges of Shares Concerning Companies of Different Member States and to the Transfer of the Registered Office of an SE or SCE between Member States (Codified Version), OJ L310 (2009), Primary Sources IBFD [hereinafter Merger Directive].
46. During the 2007-2014 period, Albania had a 10% flat income tax system with a no-tax bracket up to ALL 10,000 (approximately EUR 100).
47. Gross monthly salaries and other remuneration in connection with employment were taxed at the following progressive rates for the period 1 Jan. 2024 to 31 Dec. 2024: (i) Up to ALL 50,000, 0%; (ii) between ALL 50,001-60,000, 0% on the first ALL 35,000 (approximately EUR 350) and 13% on the amount over ALL 35,000 (approximately EUR 350) up to ALL 60,000 (approximately EUR 600); (iii) over ALL 60,000 (approximately EUR 600), 0% on the first ALL 30,000 (approximately EUR 300), 13% on the amount over ALL 30,000 (approximately EUR 300) up to ALL 200,000 (approximately EUR 2,000), and ALL 22,100 (approximately EUR 210) + 23% of the amount over ALL 200,000 (approximately EUR 2,000) (*see* art. 69(2) Albanian Tax Reform (2023)). As of 1 Jan. 2025, the following rates and brackets for employment income apply: (i) up to ALL 2,040,000 (approximately EUR 2,040), 13%; and (ii) over ALL 2,040,000 (approximately EUR 2,040), 23% (*see* art. 24(1) Albanian Tax Reform (2023)).
48. Art. 24(2) Albanian Tax Reform (2023). However, entrepreneurs or self-employed individuals with annual business turnover of up to ALL 10 million (approximately EUR 100,000) may elect to deduct presumed/deemed business expenses (without providing documents on the actual business cost), or they may choose to calculate taxable income by subtracting the actual business costs supported by the relevant tax documentation for any expense incurred.
49. Art. 69(1)(dh) Albanian Tax Reform (2023).
50. AL: Constitutional Court, 27 June 2024, Decision No. 52.
51. Art. 8(1) Instruction No. 26 (2023).
52. The concept of tax residence is independent from the immigration status of an individual in Albania. However, to be entitled to stay in Albania for more than 90 consecutive days, a visa/residence permit is generally required. A 90-day period for entry without a visa/residence permit applies to all EU and EEA countries. US citizens can, instead, stay in Albania for up to one year without a visa/residence permit. Various types of visas/residence permits exist for a fixed term and a long or indefinite period. The reasons for issuing a visa/residence permit vary and include family reunification, humanitarian reasons, education, training and research, as well as investment in the Albanian economy. Visas/residence permits are also available to real estate owners, pensioners and digital nomads.
53. Art. 8 Albanian Tax Reform (2023) and art. 8(2) Instruction No. 26 (2023).
54. Art. 8 Albanian Tax Reform (2023). A special rule applies to Albanian citizens performing diplomatic, consular or other official functions on behalf of the Albanian government abroad, who are considered tax residents of Albania, even if they are living abroad. *See* art. 8(5) Instruction No. 26 (2023).

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than Albania, the centre of vital interest criterion functions as a tiebreaker to determine the individual's tax residence.[55]

The second criterion is the individual's physical presence in Albania for more than 183 days in a tax year. For calculation purposes, both the date of entry and exit count as days of physical presence in Albania.[56] The same applies to work and holiday stays.[57]

No further clarification exists regarding the third criterion. It appears that an individual only qualifies as a tax resident of Albania when he exercises a business or professional activity and maintains a shop, professional office, factory or other place in Albania.[58]

The concepts of habitual residence in Albania and permanent residence outside Albania are not further elaborated on. However, it appears that a permanent residence outside Albania must exist for the entire tax year.[59]

The fifth and last criterion refers to the individual's "centre of vital interests". This concept considers the individual's personal and economic ties on an equal basis. Personal ties include links such as a family, minor children, husband or wife, and cohabitants. For economic ties, what counts is where the individual has his business, properties and investments.[60]

The Albanian Ministry of Finance's General Instruction No. 26 of 8 September 2023 contains a decisive statement stipulating that "[i]n the event that the residence of a natural person cannot be determined according to the above criteria, reference can be made to the provisions of internationally accepted conventions or agreements signed by the Republic of Albania." It is not clear whether this statement simply refers to the fact that tiebreaker rules included in tax treaties concluded by Albania prevail over domestic tax provisions or whether the interpretation of the tiebreaker criteria, as expressed in the OECD and/or UN Commentaries, must be taken into account in clarifying residence criteria under Albanian tax law.

No special tax regimes for inward or outward migrants currently exist. Albanian nationals returning to Albania are also not entitled to special tax treatment. However, individuals who have obtained a visa/residence permit as digital nomads are not deemed residents for Albanian tax purposes for up to 12 months.[61] During this period, digital nomads also do not create a permanent establishment (PE) for a foreign employer, provided they do not have the authority to conclude contracts or perform other activities on behalf of the foreign employer.[62]

A company or other legal entity is a resident of Albania for corporate tax purposes if, alternatively:
- it is established under Albanian law; or
- at any time during the tax year, the management and control of the affairs of the entity are exercised in Albania.[63]

Albanian tax law also provides for the concept of "management and control".[64] The management and control of the affairs of an entity are deemed to be exercised in Albania if:
- the meetings of the board of directors of the entity are held in Albania; or
- at least two of the following conditions are met:
  - decisions relating to the daily management of the entity are made in Albania;
  - at least 50% of the board members or directors of the entity are resident in Albania; and
  - at least 50% of the capital or voting rights of the entity are owned, directly or indirectly, by persons resident in Albania.

These criteria to define tax residence for Albanian corporate tax purposes apply to all legal entities, whether established under a legal form available under Albanian corporate law or a foreign jurisdiction.[65] Partnerships – whether foreign or domestic – are not transparent for tax purposes and are subject to corporate tax. Albanian branches of foreign entities are also considered taxpayers for corporate tax purposes.[66] Certain entities, such as government bodies or those carrying out various religious, humanitarian, charitable, scientific or educational activities, are not liable to corporate tax, provided the assets or profits are not used for the benefit of their organizers or members.[67]

The definitions regarding the tax residence of both individual and corporate taxpayers under Albanian tax law need to be coordinated with the relevant definitions under Albanian tax treaties. In this regard, the authors note that the definition of residence for individuals under Albanian tax treaties includes the hierarchical tiebreaker rules laid down in article 4(2) of the OECD Model (2017). Therefore, it can be assumed that the interpretation of the concepts

55. Art. 8(3) Instruction No. 26 (2023).
56. Art. 8 Albanian Tax Reform (2023).
57. Art. 8(4) Instruction No. 26 (2023).
58. Art. 8 Albanian Tax Reform (2023) and art. 8(6) Instruction No. 26 (2023).
59. Art. 8 Albanian Tax Reform (2023).
60. Art. 8 Albanian Tax Reform (2023) and art. 8(7) Instruction No. 26 (2023).
61. AL: Law No. 25 of 10 Mar. 2022, art. 5(1) (amended by Law No. 36 of 8 June 2023). AL: Law No. 79 of 24 June 2021 concerning visa/ residence permits for foreigners moving to Albania defines "mobile digital workers" as "foreign nationals who work in different countries not from an office or the headquarters of an establishment and whose work is mainly mobile with the primary work tool being information technology tools" [unofficial authors' translation]. A similar definition of "digital employees" is contained in art. 3(ç) Law No. 25 (2022) (amended by Law No. 36 (2023)).
62. Art. 5(2) and (3) Law No. 25 (2022) (amended by Law No. 36 (2023)).
63. Art. 28(1) Albanian Tax Reform (2023) and art. 28(1) Instruction No. 26 (2023).
64. Art. 28(2) Albanian Tax Reform (2023) and art. 28(2) Instruction No. 26 (2023). Before 2024, a company was considered a resident of Albania if it had its legal seat or place of effective management in Albania, but no criteria to determine the place of management were provided.
65. Art. 27(1) Albanian Tax Reform (2023). Albanian corporate law (AL: Law No. 9901 of 14 Apr. 2008 (On Entrepreneurs and Commercial Companies)) provides for two main types of legal forms for a company: the limited liability company (*Shoqëri me përgjegjësi të kufizua*, Sh.p.k) and the joint stock company (*Shoqëri Aksionere*, Sh.A.). Other forms of companies are general partnerships (*Shoqëri Kolektive*), limited partnerships (*Shoqëri Komandite*) and joint ventures (*Shoqëri e Thjeshtë*).
66. Art. 27(3) Instruction No. 26 (2023).
67. Art. 27(2) Albanian Tax Reform (2023).

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laid down in the tiebreaker rules follows that of paragraph 2 of the Commentary on Article 4 of the OECD Model.[68]

The tiebreaker rule for companies and other legal entities is not the same for all tax treaties concluded by Albania. While some Albanian tax treaties[69] refer to the place of effective management (POEM) – the relevant tiebreaker criterion under the OECD Model up to 2017[70] – other tax treaties[71] refer to the mutual assistance procedure (MAP),[72] which is the relevant tiebreaker criterion under the OECD Model from 2017 onwards. Moreover, some tax treaties use the place of incorporation as a tiebreaker rule for dual-resident companies and other legal entities.[73] A combination of two or more criteria under the tiebreaker rule is also possible.[74]

The concept of Albanian tax residence is ignored in the event of dual-resident companies or other legal entities for which a tax treaty is available. The authors also submit that the interpretation of the concept of "management and control" under Albanian tax law must be kept separate from the concept of effective management and control under the relevant tax treaty, since the two concepts are not the same.

While uncertainties exist regarding the POEM concept under tax treaties, notably whether it relates to the top-level management of the enterprise (where decisions are made at a strategic level) or to day-to-day management (where the main strategic decisions are executed by managerial staff),[75] the criterion of "place of management and control" under Albanian tax law is anchored to objective criteria. This is the case, in particular, with regard to situations in which at least 50% of board members or capital and voting rights are attributable to Albanian residents, which seems to be less prone to subjective evaluation.

68. *OECD Model Tax Convention on Income and on Capital: Commentary on Article 4* para. 2 (21 Nov. 2017), Treaties & Models IBFD.
69. E.g. the tax treaties with France (2002), Germany (2010), Ireland (2009), Italy (1994), Malaysia (1994), the Netherlands (2004), Poland (1993), Romania (1994), Russia (1995), Saudi Arabia (2019), Spain (2010) and Switzerland (1999).
70. Before the 2017 update to the *OECD Model*, the POEM test was the standard *OECD Model* test for resolving issues of dual residence for persons other than individuals. The relevant provision of art. 4(3) *OECD Model* (prior to 2017) reads as follows: "[w]here by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated."
71. E.g. tax treaties with China (2004), Estonia (2010), Latvia (2008), Sweden (1998) and the United Kingdom (2013).
72. *OECD Model Tax Convention on Income and on Capital* art. 4(3) (21 Nov. 2017), Treaties & Models IBFD. For this change, *see* OECD, *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances – Action 6: 2015 Final Report*, p. 74 (OECD 2015), Primary Sources IBFD. Following the update to the *UN Model* in 2017, art. 4(3) *UN Model* (2021) now mirrors this provision. Accordingly, both the *OECD* and the *UN Models* provide for mutual agreement as the standard tiebreaker for dual-residence cases involving persons other than individuals.
73. E.g. the tax treaties with Bulgaria (1998) and the United Arab Emirates (2014).
74. E.g. the tax treaties with Finland (2022), India (2013), Israel (2021), Korea (2006), Singapore (2021), Slovak Republic (2024) and Türkiye (1994).
75. B.R. Obuoforibo, *Article 4: Resident - Global Tax Treaty Commentaries*, para. 5.2.2.2.2., Global Topics IBFD (accessed 27 Jan. 2025).

4. Permanent Establishment

Corporate income tax applies to companies and other legal entities, whether resident or non-resident.[76] PEs of foreign businesses in Albania, in the form of a branch or any other form, are also subject to corporate income tax.[77] Notably, the PEs of foreign businesses are subject to Albanian corporate income tax in respect of all profits attributed to them on a worldwide basis, whether originating in Albania or elsewhere.[78] Business income attributable to a PE is considered sourced in Albania and this attribution prevails over other source rules under Albanian tax law.[79]

Foreign entities can establish a PE in Albania through various means, such as setting up a branch, shop, or local office or operating in Albania through employees or dependent agents. The foreign business must declare the PE's existence in Albania as soon as it anticipates meeting the conditions for creating a PE in the country.[80]

The concept of "permanent establishment" is defined in article 5 of Law No. 29/2023.[81] The PE definition under Albanian tax law follows the PE clauses included in the OECD and UN Models.[82] As illustrated below in this section, the UN Model seems to have been the reference for article 5 of Law No. 29/2023 since the PE definition under Albanian tax law includes service and insurance PEs, which are only listed in the UN Model (2021). Since international agreements, such as tax treaties, prevail over domestic legislation, the PE concept, as defined in the relevant tax treaty, takes precedence over the PE definition under Albanian tax law.[83]

Under Albanian tax law, a PE means a fixed place of business through which a non-resident person conducts business activities in whole or in part in Albania.[84] This includes, in particular, a place of administration, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place for extracting natural resources.[85] It is immediately evident that this PE definition and this illustrative list closely follow the corresponding PE definition and illustrative list under the OECD (2017) and UN (2021) Models.[86] All 47 tax treaties concluded by

76. Art. 27 Albanian Tax Reform (2023). *See also* art. 28(1) Instruction No. 26 (2023), providing that "[e]ntities established under Albanian legislation in force, or under any foreign legislation, and which establish a permanent establishment in Albania, are subject to taxes under this Law."
77. Art. 27(3) Instruction No. 26 (2023).
78. Art. 2(2) Albanian Tax Reform (2023).
79. Art.2(1)(d) Albanian Tax Reform (2023); art. 5(3)(a) Instruction No. 26 (2023).
80. Art. 5(4)(1) Instruction No. 26 (2023). Noteworthy, branches of foreign companies must be registered with Albania's National Business Centre.
81. Art. 5 Albanian Tax Reform (2023).
82. *See* art. 5(1) Instruction No. 26 (2023) stipulating that "[t]his is because Albania applies the principles of these model conventions in negotiations with other countries, regarding bilateral agreements for the elimination of double taxation."
83. Art. 5(5) Instruction No. 26 (2023).
84. Art. 5(1) Albanian Tax Reform (2023).
85. Art.5 (2)(a)-(dh) Albanian Tax Reform (2023).
86. Art. 5(1) and (2) *OECD Model* (2017) and *UN Model* (2021). According to B.J. Arnold & G.T. Loomer, *Article 5: Permanent Establishment – Global Tax Treaty Commentaries*, para. 2.3.1., Global Topics IBFD (accessed 27 Jan. 2025), "[a]lthough not unanimous, the generally accepted view

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Albania with other countries include a PE definition and illustrative list, as similarly enshrined in article 5 of Law No. 29/2023.[87]

A temporary place of business, such as a building or construction site, also constitutes a PE under Albanian tax law.[88] Notably, a PE is created through a building or construction site whether the business activities carried on through such a site last, in Albania, for a period or periods in the aggregate of more than six months in any 12-month period.[89] Business activities that qualify for building PE status also include activities related to an assembly or installation project, as well as any related supervisory activity.[90] This PE clause closely resembles the one included in the UN Model (2021) in relation to a building or construction site.[91] This is because article 5(3) of the OECD Model (2017) provides that a PE exists only if a "building site or construction or installation project" lasts for more than 12 months.[92] Moreover, in contrast to the UN Model (2021) and Albanian tax law, the OECD Model (2017) does not include an "assembly project" and "supervisory activities" for PE purposes.[93] Most of the tax treaties concluded by Albania with other countries include a similar clause and expansive definition of a building or construction PE.[94]

Article 5(2) of Law No. 29/2023 lays down two further instances leading to PE status. The first situation relates to a "substantial equipment PE".[95] According to this rule,[96] the use or installation of significant equipment by a foreign business to carry out economic activities relating to the exploration, extraction or exploitation of natural resources in Albania, for at least 90 days, creates a PE. However, no definition is provided in Albanian tax law or the implementing regulations regarding any of the terms used, such as "significant equipment", "exploration, extraction or exploration", or "natural resources".[97] A provision on a "substantial equipment PE" is included only in two tax treaties concluded by Albania.[98]

The second situation relates to a "services PE". According to this clause, a PE exists in the event that the foreign business performs services, including consulting services, through its employees or other individuals, in Albania for a period or periods totalling more than six months during any 12-month period. Services provided to the same person or a related person both count.[99] It is also irrelevant how the flow of payments is arranged between the parties if the contracts, invoices and payments show that a third party is actually paying for the services provided by the non-resident business on behalf of an Albanian recipient.[100] This clause was drafted along the lines of the "services PE" included in article 5(3)(b) of the UN Model (2021).[101] The effect of this provision is to broaden the PE definition to encompass situations in which a foreign business performs services in Albania for a substantial period, even where those services are not provided through a fixed place of business.[102] No definition of the term "services" is provided in Albanian tax law or the implementing regulations.[103] One can, however, assume that the services must be performed in the territory of Albania since the relevant PE clause under Albanian tax law refers to the performance of services in Albania. Arguably, article 5(3)(f) of Law No. 29/2023 does not attribute taxing rights to Albania merely because the services pro-

is that article 5(3) of the *OECD Model* operates as an additional condition to the general rule in article 5(1). A building site is obviously a fixed place of business for purposes of article 5(1) of the *OECD Model*". These two authors further note (at para. 2.3.5.) that "the most significant difference between article 5(3)(a) of the UN Model and article 5(3) of the *OECD Model* is that there is a much stronger argument that article 5(3)(a) of the UN Model is a deeming provision that operates independently from the general rule in article 5(1) of the UN Model".

87. The PE definition and illustrative list may differ in each tax treaty.
88. Art. 5(2)(e) Albanian Tax Reform (2023).
89. Art. 5(2)(e) Albanian Tax Reform (2023).
90. Art. 5(2)(e) Albanian Tax Reform (2023).
91. Art. 5(3)(a) *UN Model* (2021).
92. Art. 5(3) *OECD Model* (2017).
93. *UN Model Double Taxation Convention between Developed and Developing Countries: Commentary on Article 5*, para. 21 (1 Jan. 2021), Treaties & Models IBFD.
94. 30 out of the 46 tax treaties concluded by Albania and currently in force contain an expansive definition of a building or construction PE. However, the minimum duration for creating a building or construction PE varies, ranging from 6 to 9 or 12 months, depending on the relevant tax treaty.
95. *See* Arnold & Loomer, *supra* n. 86, at para. 5.3., who state that "several states include a special provision in their tax treaties dealing with the exploration for and exploitation of natural resources. Most of these provisions would apply to the use of substantial equipment in the offshore area."
96. Art. 5(2)(ë) Albanian Tax Reform (2023). Under this clause, a PE is created through "any activity, including the use or installation of significant equipment carried out in the Republic of Albania in connection with the exploration, extraction or exploitation of natural resources for a period or periods in the aggregate of more than 3 months during any 12-month period."
97. In 2023, the OECD launched a public consultation to work on the Commentary on Article 5 of the *OECD Model* to develop an alternative provision on activities in connection with the exploration and exploitation of extractible natural resources. *See* OECD, *Public Consultation Document. Provision on Activities in Connection with the Exploration and Exploitation of Extractible Natural Resources. 16 November 2023 – 4 January 2024* (OECD 2023), available at https://www.oecd.org/tax/treaties/public-consultation-document-provision-on-exploration-and-exploitation-activities-of-extractible-natural-resources.pdf (accessed 27 Jan. 2025).
98. Notably, this clause is included in the tax treaties concluded by Albania with Norway (1998) and Latvia (2008). The tax treaties concluded by Albania with Greece (1995), Malta (2000), Ireland (2009), Kuwait (2010), Qatar (2011), United Arab Emirates (2014), Israel (2021) and Slovak Republic (2023) contain a reference to a PE as a place of exploration, extraction or exploitation of natural resources. However, there is no special provision for a "substantial equipment PE".
99. Art. 5(2)(f) Albanian Tax Reform (2023). Art. 5(4)(2) Instruction No. 26 (2023).
100. *See* art. 5(4)(2) Instruction No. 26 (2023), which reads as follows: "[i]n cases where for services received by an Albanian tax resident "B", the latter does not make any payment, but the payment transaction for this received service is made by an Albanian tax non-resident "A" to another tax non-resident "C", the value of this service will be considered temporary financing for the Albanian tax resident "B" and then a payment (compensation) from the Albanian tax resident "B" to the non-resident "A". Transactions must be based on verifiable contracts, invoices and payments."
101. Art. 5(3)(b) *UN Model* (2021). However, the *OECD Model: Commentary on Article 5* provides an alternative services PE provision that is similar to art. 5(3)(b) *UN Model* (2021), which states may choose to include in their tax treaties. *See* paras. 132-169 *OECD Model: Commentary on Article 5* (2017).
102. *See* Arnold & Loomer, *supra* n. 86, at para. 5.1.1.2.1.
103. The *UN Model* and Commentaries also do not provide a definition of the expression "services" for PE purposes. For a discussion, *see* M. Castelon, *International Taxation of Income from Services under Double Taxation Conventions: Development, Practice and Policy* pp. 10-12 (Kluwer International Law 2018).

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vided are used and consumed within its territory.[104] Less clear is how the 183 days are counted, i.e. whether days employees or other individuals related to the foreign business are physically present in Albania but not working must also be taken into account.[105] Several of the tax treaties concluded by Albania with other countries include a clause on a services PE.[106]

Article 5(4) of Law No. 29/2023 lays down a list of preparatory or auxiliary activities, which narrows the scope of the PE definition.[107] This list closely resembles the similar list of activities included in the OECD Model (2017).[108] For instance, following the OECD Model, and in contrast to the UN Model, the "delivery of goods" is an excluded activity.[109] The main reason for excluding preparatory or auxiliary activities from the PE definition is that these activities contribute only marginally to the profits of the enterprise or are so remote from the actual realization of profits that it is difficult to allocate any profit to the fixed place of business.[110]

As provided in both the OECD (2017) and UN (2021) Models, the PE definition under Albanian tax law contains an anti-fragmentation rule.[111] In a nutshell, according to this rule, the exceptions related to the exclusionary list included in article 5(4) of Law No. 29/2023 do not apply if a business or a closely-related business carries on complementary functions that are part of a cohesive business operation at the same fixed place or another place in the contracting state where the place constitutes a PE or if the overall activity is not preparatory or auxiliary.[112] This anti-fragmentation rule is intended to prevent a business from fragmenting a cohesive business operation into several smaller operations that might qualify as preparatory or auxiliary activities on their own.[113]

The PE definition, under article 5 of Law No. 29/2023 also contains a clause on "agency PEs".[114] Following similar clauses under the OECD and UN Models,[115] Albanian tax law stipulates that a PE exists if a person (i.e. a dependent agent) acts for the foreign business by habitually concluding contracts or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise.[116] In order to trigger an agency PE, these contracts must be in the name of the enterprise or provide for the transfer of ownership of property or the right to use property owned or leased by the enterprise, or the furnishing of services by the enterprise.[117] Importantly, the dependent agent must not be engaged exclusively in preparatory or auxiliary activities as defined in article 5(4) of Law No. 29/2023.[118]

Finally, it is also necessary that the person is not an agent of independent status acting in the ordinary course of business, as defined in article 5(9) of Law No. 29/2023. The concept of "agent of independent status" closely follows the similar definition included in the OECD (2017) and UN (2021) Models.[119] In defining the concept of "agent of independent status", reference is made to whether the person acts "in the ordinary course of his business".[120] A person who acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related cannot be considered an independent agent.[121]

In contrast to article 5(5) of the OECD Model (2017), and following article 5(5)(b) of the UN Model (2021), an agency PE is deemed to exist where a person (other than an agent of independent status acting in the ordinary course of business), although not concluding or leading to the conclusion of any contract, maintains a stock of goods or commercial products from which the person regularly delivers goods or products on behalf of the foreign busi-

104. *See* Arnold & Loomer, *supra* n. 86, at para. 5.1.1.2.4., stipulating that "Article 5(3)(b) of the UN Model requires the services to be provided 'within' the other state for at least 183 days in any 12-month period. This wording indicates that the employees or other personnel of an enterprise must be present and providing services in the source state…". These two authors further add that "the rule operates on the basis of where the services are performed, not where the services are consumed or used. It also does not matter whether or not the services are provided to residents of the source state."
105. With reference to the services PE under the *UN Model*, *see* Arnold & Loomer, *supra* n. 86, at para. 5.1.1.2.5. note that "[a]s article 5(3)(b) of the *UN Model* applies only if the furnishing of services 'continue … within a Contracting State' for at least 183 days, only those days on which employees or other personnel are actually performing services in a state are taken into account. Days on which such individuals are present in a state but not working (for example, weekends and holidays) are not counted. In this regard, article 5(3)(b) of the *UN Model* differs from article 14(1)(b), which applies if an independent contractor 'stays' (i.e. is present) in the source state for at least 183 days".
106. Thirty-two out of forty-six tax treaties concluded by Albania and currently in force contain a services PE clause.
107. Under this provision, the PE definition does not include: (a) the use of premises solely for the purpose of storing, displaying or delivering goods belonging to the non-resident person; (b) maintaining a stock of goods belonging to the non-resident person solely for storage, display or distribution; (c) maintaining a stock of goods belonging to the non-resident person solely for processing by another person; (ç) maintaining a fixed place of business solely for the purpose of purchasing goods or collecting information for the non-resident person; (d) the maintenance of a fixed place of business solely for the purpose of carrying on any other activity for the non-resident person; (dh) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs "a" to "d" of this point, provided that the overall activity of the fixed place of business is of a preparatory or auxiliary character.
108. It seems clear that an activity that is not described in subparagraphs (a) to (ç) may still be excluded under the general exceptions in subparagraph (d) if the activity is of a preparatory or auxiliary character. *See* also para. 70 *OECD Model: Commentary on Article 5* (2017).
109. *See* para. 62 *UN Model: Commentary on Article 5* (2021), noting that it may be preferable to include "delivery" in the text of subparagraphs (a) and (b) during negotiations, as "even if the delivery of goods is treated as giving rise to a permanent establishment, it may be that little income could properly be attributed to this activity."
110. Para. 55 *OECD Model: Commentary on Article 5* (2017). *See also* Arnold & Loomer, *supra* n. 86, at para. 4.1.1.2.
111. Art. 5(4.1) *OECD Model* (2017) and art. 5(4)(1) *UN Model* (2021).
112. Art. 5(4) Albanian Tax Reform (2023).
113. Arnold & Loomer, *supra* n. 86, at para. 4.1.6.
114. Art. 5(5) Albanian Tax Reform (2023).
115. Art. 5(5) *OECD Model* (2017) and art. 5(5) *UN Model* (2021).
116. Art.5(5). Albanian Tax Reform (2023).
117. Art.5(5)(a)(ii) Albanian Tax Reform (2023).
118. Art. 5(5)(a)(iii) Albanian Tax Reform (2023).
119. Art. 5(6) *OECD Model* (2017) and art. 5(7) *UN Model* (2021).
120. Paras. 110-11 *OECD Model: Commentary on Article 5* (2017). The OECD BEPS Action 7 Final Report rejected the addition to art. 5 *OECD Model* of a provision similar to art. 5(6) *UN Model*, instead considering that insurance activities can be adequately dealt with by the revised wording of art. 5(5) and (6) *OECD Model*. *See* OECD/G20, *Preventing the Artificial Avoidance of Permanent Establishment Status – Action 7: 2015 Final Report*, p. 44 (OECD 2015), Primary Sources IBFD.
121. For a discussion of the concept of "exclusivity", *see* Arnold & Loomer, *supra* n. 86, at para. 3.4.2.3.

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ness.[122] A provision to that effect is included in some tax treaties concluded by Albania.[123]

Article 5(6) of Law No. 29/2023 contains a clause for an "insurance PE".[124] The "insurance PE" clause is included in the UN Model (2021),[125] while it is mentioned only as an option for contracting states in the Commentary on Article 5 of the OECD Model (2017).[126] Along the lines of the similar provision included in the UN Model (2021), article 5(6) of Law No. 29/2023 deems a PE to exist in Albania if a foreign business collects insurance premiums or insures risks located in Albania through a person other than an independent agent, as defined in article 5(7) of Law No. 29/2023.[127] This provision does not apply to reinsurance activities.[128]

Finally, similar to the OECD (2017) and UN (2021) Models,[129] article 5(10) of Law No. 29/2023 provides that the mere fact that a foreign business is closely related to a resident business does not imply the former has a PE in Albania. Similar to the OECD (2017) and UN (2021) Models,[130] the "separate-entity principle"[131] applies to individual businesses, as well as companies. The concept of closely-related persons is defined in the subsequent paragraph of article 5 of Law No. 29/2023, and it depends on the facts and circumstances, as well as objective parameters, such as capital and voting power.[132]

In addition to attributing taxing rights to Albania over a foreign business's profits, the PE concept under Albanian tax law has other functions. Notably, the PE concept is used to source income in Albania. In particular, article 4 of Law No. 29/2023 establishes that items of income, such as interest, rents, lease contracts, licence fees, technical and/or automatic digital service fees, royalties and winnings from games of chance are sourced in Albania if paid by a PE in Albania.[133] Further to applying withholding tax at source, as discussed in the next section, the PE concept is also relevant to the definition of dividends. In particular, according to article 4(ë) of Law No. 29/2023, the concept of dividends does not include the transfer of after-tax profits of a PE in Albania.[134]

5. Withholding Tax at Source

Article 58 of Law No. 29/2023 deals with income and payments that are considered sourced in Albania, in respect of which a withholding tax, whether as a final or only provisional payment, applies. Notably, a provisional withholding tax applies at a 15% rate on the gross amount of the following items of income paid to an Albanian resident or PE in Albania: (i) dividends, (ii) interest, (iii) royalties, (iv) rental payments, and (v) income from lotteries and gambling. The withholding tax amount may be credited against the tax payable on business income for tax-registered individuals.[135]

A final withholding tax applies at a 15% rate on the gross amount of the following items of income paid to a non-resident individual or a foreign business without a PE in Albania: (i) interest and royalties, (ii) income from lotteries and gambling, (iii) service income, (iv) insurance payments, (v) income derived by an entertainer, artist or athlete performing in Albania or persons acting as their intermediaries, (vi) payments for construction, installation, assembly or related supervisory work, and (vii) payments for participating in management boards. A final withholding tax of 8% is levied on the gross amount of dividends and partner profit share distributions.[136] However, when a tax treaty is in force with the income recipient's country of residence, and this provides for a more favourable treatment, the latter applies.[137]

No withholding tax applies to the following items of income: (i) income paid to persons exempt from income tax, (ii) dividends qualifying for the participation exemption regime, (iii) income from capital gains, as well as interest income on Eurobonds issued by the Republic of Albania paid to non-resident entities without a PE in Albania, and (iv) interest income paid to banks and other financial institutions.[138]

The application of withholding tax at source by the payer includes situations in which the recipient is an Albanian resident or a PE in Albania. This withholding tax at source applies regardless of whether the income recipient is an individual, a natural person, self-employed or an entity

122. Art. 5(5)(b) Albanian Tax Reform (2023).
123. This clause is included in the tax treaties concluded by Albania with Romania (1994), Greece (1995), Bulgaria (1998), Macedonia (1998), Norway (1998), Malta (2000), Moldova (2002), Montenegro (2004), Serbia (2004), South Korea (2006), India (2013), United Arab Emirates (2014) and Saudi Arabia (2019).
124. Art. 5(6) Albanian Tax Reform (2023).
125. Art. 5(6) *UN Model* (2021).
126. Para. 114 *OECD Model: Commentary on Article 5* (2017).
127. Art. 5(6). Albanian Tax Reform (2023).
128. According to Arnold & Loomer, *supra* n. 86, at para. 5.2.1., n. 400: "The reason for the exception for reinsurance is unclear."
129. Art. 5(7) *OECD Model* (2017) and art. 5(8) *UN Model* (2021).
130. Art. 5(7) *OECD Model* (2017) and art. 5(8) *UN Model* (2021).
131. Arnold & Loomer, *supra* n. 86, at para. 4.2.1.
132. Art. 5(11) Albanian Tax Reform (2023).
133. Art. 4(1)(g),(gj) and (h) Albanian Tax Reform (2023).
134. Art. 4(12) Instruction No. 26 (2023).
135. Art. 58(1) Albanian Tax Reform (2023) reads as follows: "1. The following income and payments are subject to withholding tax, against the final tax liability, when paid to a resident taxpayer or a permanent establishment in the Republic of Albania of a non-resident taxpayer: a) dividends; b) interest; c) royalties; ç) income from gambling; d) rental income only when paid to the individual" [authors' translation].
136. Art. 58(2) Albanian Tax Reform (2023) reads as follows: "2. The following payments are subject to final withholding tax when paid by a resident taxpayer or a permanent establishment in the Republic of Albania to a non-resident natural person or a non-resident entity without a permanent establishment in the Republic of Albania: a) dividends, interest and royalties; b) winnings from gambling; c) payments for services, except for services physically received outside the territory of the Republic of Albania; ç) insurance services; d) fees for participation in governing boards and councils or other governing bodies; dh) payments for construction, installation, assembly or related supervisory work; e) payments for the performance of actors, musicians or sportsmen, including such payments made to persons who employ artists or sportsmen or who act as intermediaries in the organization of shows or performances" [authors' translation].
137. Art. 58(7) Instruction No. 26 (2023).
138. Art. 58(2) Albanian Tax Reform (2023) reads as follows: "3. The following income is not subject to withholding tax: a) income paid to persons exempt from income tax; b) dividends under the conditions set out in Article 29 of this law; c) income from capital gains, as well as income from interest from the issuance of Eurobonds by the Republic of Albania, paid to non-resident entities without a permanent establishment in the Republic of Albania; ç) income from interest paid to banks and other financial institutions" [authors' translation].

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unless the payment relates expressly to excluded income.[139] Income from royalties, such as copyrights, licence fees, trademarks, rights of use of intangible assets, and gambling, are also subject to withholding tax at source, regardless of whether the beneficiary of the income is an entity, an individual, self-employed or a trader.[140] The withholding tax is also levied when payments are made in relation to rents, but only when the lessor – i.e. the income recipient – is an individual and the lessee – i.e. the payor – is either an entity, self-employed, a trader, a state entity, an NGO, a project, a programme, or another tax-registered person.[141]

The application of article 58 of Law No. 29/2023 raises several issues. Based on this provision of the Albanian Tax Reform (2023), banks must withhold tax at source on interest paid to entities, with the exception of situations in which these payments are made to entities that are exempt from profit tax or when they are paid to other financial institutions. However, in practice, banks may find it extremely difficult to determine whether the interest is being paid to a legal entity excluded from profit tax, such as a non-profit organization (NPO).

Also, the provision excludes certain payments, such as interest paid to banks or non-banking financial institutions, from withholding tax.[142] In the meetings that the Albanian Association of Banks (AAB) had with the Albanian Ministry of Finance, it was underlined that only financial institutions licensed by the Albanian Financial Supervisory Authority (AFSA) and/or the Bank of Albania should be considered for this purpose. However, no clarification has been made in this regard.

It might also be that the activity to which the income subject to withholding tax relates combines different elements. In the event of a mixed activity, it is not clear how a bank or another financial institution must separate interest income, which is subject to withholding tax at source, from other types of income, for example, income deriving from foreign currency exchange, which is not subject to any withholding tax at source.

A thorny issue relates to the various forms of "fees" paid by taxpayers, legal or natural persons, which, under Albanian tax law, are subject to withholding tax. In this regard, difficulties arise with the definition and delimitation of the term "fee". There might be several misunderstandings in relation to the distinction between payments of "royalties", which are subject to withholding tax, and payments on invoices for the provision of services or intangible assets, in respect of which no tax must be withheld.[143]

Under Law No. 29/2023, the term "royalties" means the right to use a copyright or industrial/scientific patent for mass reproduction.[144] The term "royalty", however, does not include the use of software in itself.[145]

Another critical point relates to the fact that withholding tax applies to income from technical services and royalties at the same rate, i.e. 15%. Under Albanian tax law, the two items of income must, however, be distinguished since royalties are subject to withholding tax, while technical fees are not. Moreover, since the withholding tax also applies to a purely domestic payment, in the event that the software development companies are subject to a 5% tax rate on their profits and with regard to licences or fees for the right to use this software, the purchasing entity will withhold a 15% withholding tax. This will create a tax credit situation for software development companies, leading to refund claims and an additional administrative burden.

In general, the administrative burden that the application of the withholding tax provisions creates for taxpayers and the tax authorities can hardly be justified compared to the amount of income tax often involved. For all these reasons, in the authors' view, article 58 of Law No. 29/2023 should be amended to make the withholding tax at source applicable only when payments are made to individuals and companies who are not tax registered or when payments are made to non-resident individuals or businesses without a PE in Albania.

6. Controlled Foreign Companies

Albania's Controlled Foreign Company (CFC) rules represent a pivotal milestone in the country's efforts to implement internationally recognized anti-tax avoidance measures and address the challenges posed by base erosion and profit-shifting (BEPS).[146] Under the provisions of article 19 of Law No. 29/2023,[147] the application of these rules requires the simultaneous fulfilment of three conditions:

- the presence of a CFC;
- low effective taxation on its profits; and
- the generation of passive income.

139. Art. 58(1) Instruction No. 26 (2023).
140. Art. 58(2) and 58(3) Instruction No. 26 (2023).
141. Art. 58(4) Instruction No. 26 (2023).
142. Art. 58(3) Albanian Tax Reform (2023) the following income is not subject to withholding tax: "a) income paid to persons exempt from income tax; b) dividends according to the conditions defined in Article 29 of this law; c) income from capital gains, as well as income from interest from the issuance of Eurobonds from the Republic of Albania, paid to non-resident entities, without a permanent seat in the Republic of Albania; ç) income from interest paid to banks and other financial institutions" [authors' translation].
143. Art. 3(21) Albanian Tax Reform (2023) reads as follows: "'Royalties' are payments for the use or right to use an intangible asset and include the following: a) the use or right to use a copyright of a literary, artistic or scientific work, including films or video or audio recordings, whether the work is in electronic format or otherwise; b) the use or right to use a patent, license, invention, trademark, design or model, plan, formula or secret process, or other similar property or right; c) receiving or the right to receive any visual image or sound or both transmitted by satellite, cable, fibre optic or similar technology in connection with television, radio or Internet broadcasting; ç) the use or the right to use information related to industrial, commercial or scientific experience; d) a payment postponement, total or partial, in relation to the letters "a" to "ç" of this point; dh) a premium, or very similar in relation to the cases listed in letters "a" to "ç" of this point" [authors' translation].
144. For instance, a royalty payment arises when the author of a literary work is paid for the reproduction and sale of the work, but not when a literary work is purchased for personal or business use.
145. For instance, no royalty payment occurs when a person buys a computer that also has "Microsoft Office" licences, software and e-books.
146. For an overview of the phenomenon of base erosion and profit shifting, *see* Y. Brauner, *What the BEPS?*, 16 Fla. Tax Rev. 2, p. 55 et seq. (2014).
147. Art.19(1) Albanian Tax Reform (2023) and art. 19(1) Instruction No. 26 (2023).

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These criteria are in line with those outlined in the Anti-Tax Avoidance Directive (2016/1164) (ATAD),[148] highlighting Albania's commitment to harmonizing its tax framework with EU standards and establishing a robust system for combating tax avoidance.

The first condition is the identification of a CFC, which is central to the application of the CFC rules. A foreign entity qualifies as a CFC if it is under the control of a natural person, either alone or together with related parties.[149] The underlying rationale for this condition is to identify entities that are effectively under the control of an Albanian taxpayer, thus allowing tax authorities to monitor and attribute income generated in a foreign jurisdiction to the controlling parties.[150] The application of the CFC rules aims to prevent the shifting of income to low-tax or no-tax jurisdictions through foreign subsidiaries or affiliates that are controlled by the taxpayer.[151] In practice, this condition ensures that the CFC rules only target entities with a substantial link to the Albanian tax base.

This condition introduces the need for the tax authorities to make a critical determination: whether the entity in question is "controlled" by the taxpayer. Article 19(2)(a) of Law No. 29/2023 sets the threshold for direct or indirect control as more than 50% of the voting rights, capital ownership or profit entitlement in the foreign entity.[152] This is consistent with the approach taken by the ATAD, which similarly establishes a 50% threshold for voting rights, ownership and profit entitlement.[153] The reliance of Albanian tax law on control through voting rights, capital ownership or profit entitlement ensures clarity and avoids ambiguity in establishing whether a foreign entity falls under the CFC rules. Moreover, Albania has incorporated the CRS for the exchange of financial information, enabling tax authorities to access data on foreign financial accounts held by Albanian taxpayers.[154] This exchange of information enhances the practical enforcement of this criterion, allowing Albanian tax authorities to identify controlled entities and verify compliance.

A critical shortcoming of Albania's CFC rules, however, is their narrow application to natural persons as controlling entities, as stated in article 19(1) of Law No. 29/2023. This provision mandates that undistributed profits deriving from passive income in foreign-controlled entities must be included in the taxable income of natural persons holding controlling interests. While this is consistent with Albania's aim to address tax avoidance among individuals, the exclusion of legal persons (such as companies) from the scope of the rules significantly undermines the framework's comprehensiveness.

Corporate entities are frequently at the core of profit-shifting strategies employed by multinational enterprises (MNEs), using layered ownership structures to channel passive income into low-tax jurisdictions. By failing to include legal persons as controlling entities, Albania's CFC rules risk overlooking significant BEPS risks associated with corporate intermediaries. The ATAD, by contrast, applies its CFC framework equally to natural and legal persons, ensuring comprehensive coverage of all potential controlling parties.[155] Expanding Albania's CFC rules to include legal persons would close this loophole, strengthening the regime's ability to address sophisticated tax avoidance strategies that rely on corporate vehicles.[156]

Another notable gap in Albania's CFC rules is the absence of provisions addressing PEs. Under the ATAD, PEs directly controlled by the taxpayer are explicitly included within the scope of the CFC rules, as the Directive recognizes their potential use in aggressive tax planning. By omitting PEs from its framework, Albania leaves a critical loophole that could be exploited. PEs, often used as intermediaries in cross-border arrangements, can facilitate profit-shifting by reallocating income to jurisdictions with more favourable tax regimes. Incorporating PEs into Albania's CFC rules would not only enhance the comprehensiveness of the framework but also demonstrate a commitment to addressing the full spectrum of BEPS risks. This would align Albania's regime more closely with the ATAD, ensuring its compatibility with broader international efforts to combat tax avoidance.

The second condition for the application of the CFC rules is that the foreign entity's profits must be subject to low effective taxation. Article 19(2)(b) of Albania's Law No. 29/2023 stipulates that a CFC will be considered subject to low taxation if the tax paid on its profits is less than 50% of the tax that would have been payable had the entity been resident in Albania. This condition is designed to capture foreign entities that are located in jurisdictions with low or zero tax rates and are used to shift profits from higher-tax jurisdictions to these tax-favourable environments.

Albania's framework does not, however, specify whether the calculation of effective tax rates should be based on the nominal or effective tax rate.[157] Albania's lack of explicit

148. For the tax literature on the topic, *see*, inter alia, O. Popa, *An Overview of ATAD Implementation in EU Member States*, 59 Eur. Taxn. 2/3 (2019), Journal Articles & Opinion Pieces IBFD and D. Gutmann et al., *The Impact of the ATAD on Domestic Systems: A Comparative Survey*, 57 Eur. Taxn. 1 (2017), Journal Articles & Opinion Pieces IBFD.
149. Art. 19(2)(a) Albanian Tax Reform (2023) and art. 19(3)(a) Instruction No. 26 (2023).
150. For the policy perspective behind the CFC rules, *see* I.M. de Groot & B. Larking, *Implementation of Controlled Foreign Company Rules under the EU Anti-Tax Avoidance Directive (2016/1164)*, 59 Eur. Taxn. 6 (2019), Journal Articles & Opinion Pieces IBFD.
151. *See* D. Smit, *The Anti-Tax Avoidance Directive (ATAD)*, in *Terra/Wattel European Tax Law - Volume 1: General Topics and Direct Taxation* pp. 548-549 (S. Douma et al. eds., Wolters Kluwer 2023).
152. *See also* art. 19(3) Instruction No. (2023).
153. Art. 7(1)(a) ATAD.
154. Art. 19(4) Instruction No. 26 (2023).
155. Art. 7(1) ATAD.
156. The omission of legal persons also raises concerns about the equal treatment of taxpayers under Albania's tax system. Allowing corporate entities to escape the scope of CFC rules while subjecting natural persons to rigorous compliance requirements creates an asymmetry that undermines the fairness and neutrality of the tax system. This distinction could incentivize taxpayers to restructure their ownership arrangements to exploit the exclusion of legal persons, further eroding the integrity of Albania's tax base. Addressing this issue is essential to fostering equity among taxpayers and ensuring that the CFC regime operates as a balanced and effective anti-tax avoidance measure.
157. Although the Instruction issued by the Ministry of Finance includes a calculation example that incorporates tax expenditure, it remains unclear whether this refers to the effective tax rate or the nominal tax rate. *See* art. 19(5) Instruction No. 26 (2023)).

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guidance on this point could lead to confusion or inconsistent application, particularly when it comes to multinational structures involving transfer pricing, tax base erosion or complex intercompany transactions. To resolve this, Albania could issue further guidance to clarify that the effective tax rate should be used and that it should reflect the actual tax paid after considering the full range of applicable tax laws and adjustments in the foreign jurisdiction.

The third condition for the application of the CFC rules is that the foreign entity must generate passive income. Passive income is often the target of tax avoidance strategies because it can easily be relocated to jurisdictions with favourable tax rates without impacting actual business operations. For example, an MNE might shift royalties or interest payments to a subsidiary in a low-tax jurisdiction, thereby reducing its overall tax liability. This provision is designed to prevent such practices by ensuring that income from passive sources is included in the tax base of the parent company, thus avoiding the deferral of tax through international profit shifting.

According to article 19(3) of Albania's Law No. 29/2023, passive income – also referred to as "bad income"[158] under the ATAD – includes earnings from interest, royalties, dividends, the sale of securities and financial leasing.[159] By explicitly defining these categories, Albania is ensuring that its CFC framework targets the same high-risk income streams identified by the ATAD. Indeed, the concept of passive income is closely aligned with the ATAD's framework, which similarly targets income derived from interest, royalties, dividends, as well as from intellectual property or other assets that are not used in active business activities.[160]

However, Albanian tax law includes a 30% threshold for the proportion of passive income in relation to total profits. Specifically, if the passive income of the CFC constitutes 30% or less of its total profits, the CFC rules do not apply.[161] While this threshold is in line with the ATAD's proportionality principles, it can present challenges in terms of practical implementation. An accurate classification of income as "passive" or "active" requires a detailed analysis of the underlying business operations of the foreign entity, which can be complex in cases of multinational structures or cross-border transactions. In addition, the threshold may allow some entities with significant passive income to avoid the application of the CFC rules, potentially undermining the effectiveness of this provision.

To improve the accuracy and enforcement of this condition, Albania should ensure that tax authorities are adequately equipped to determine the economic substance of transactions and the degree to which they contribute to real value creation. This requires strengthening the Albanian tax authorities' capabilities and providing clear guidance on what constitutes passive versus active income in complex, cross-border scenarios.

Albania's legislation also incorporates safeguards to prevent double taxation, allowing for deductions of previously taxed CFC income when subsequently distributed.[162] These provisions are aligned with the ATAD's objective of promoting fairness and avoiding over-taxation, enhancing the credibility and effectiveness of Albania's CFC regime. Additionally, the inclusion of tax credit mechanisms for taxes paid in the CFC's jurisdiction demonstrates a commitment to mitigating the risk of double taxation, ensuring compliance with international principles.[163]

However, Albania's decision not to include the optional *de minimis* carve-outs available under the ATAD[164] raises questions about the proportionality of its CFC rules. These carve-outs allow Member States to exclude low-profit-margin CFCs from the scope of the rules, reducing the compliance burden on low-risk taxpayers.[165] By omitting these provisions, Albania is imposing uniform compliance requirements on all entities, regardless of their risk profile. This approach could discourage legitimate cross-border investments and increase the administrative burden for both taxpayers and tax authorities. Incorporating *de minimis* carve-outs into Albania's CFC framework would enhance its proportionality and focus resources on addressing high-risk entities, aligning the regime more closely with the ATAD's objectives.

In summary, the three conditions for the application of Albania's CFC rules – the existence of a CFC, low effective taxation of its profits, and the generation of passive income – are designed to target and address aggressive tax avoidance strategies, particularly those involving the shifting of profits to low-tax jurisdictions. While the legislation demonstrates substantial alignment with the ATAD, significant shortcomings remain, such as the exclusion of legal persons and PEs, the lack of clarity on tax rate calculations, and the omission of *de minimis* carve-outs. Addressing these issues is critical to ensuring a robust and equitable CFC regime capable of adapting to the complexities of a globalized economy.

7. Interest Limitation Rules

Article 30 of Law No. 29/2023 includes interest limitation rules in Albania. The purpose of these rules is to ensure that profits are taxed where the underlying economic activities occur, fostering a fair and balanced tax system. The inclusion of interest limitation rules under Albanian tax law represents a significant step forward in the coun-

158. *See* Smit, *supra* n. 151, at p. 551.
159. Art. 19(3) Albanian Tax Reform (2023) and art. 19(6) Instruction No. 26 (2023).
160. Art. 7(2)(a) ATAD.
161. Art. 19(4) Albanian Tax Reform (2023) and art. 19(2) Instruction No. 26 (2023).
162. Art. 19(5) Albanian Tax Reform (2023) and art. 19(7)Instruction No. 26 (2023).
163. Art. 19(6) Albanian Tax Reform (2023) and art. 19(8) Instruction No. 26 (2023).
164. Art. 7(4) ATAD.
165. For an overview of the carve-outs under the ATAD, *see* C. Docclo, *The European Union's Ambition to Harmonize Rules to Counter the Abuse of Member States' Disparate Tax Legislations*, 71 Bull. Intl. Taxn. 7 (2017), Journal Articles & Opinion Pieces IBFD.

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try's efforts to address BEPS risks, limiting the deductibility of interest expenses in alignment with the OECD BEPS Action 4 recommendations.[166]

Curbing harmful tax practices prevents MNEs from gaining an unfair advantage at the expense of local businesses and national tax revenue. Specifically, the rules target tax avoidance strategies employed by MNEs that allocate excessive interest expenses to high-tax jurisdictions to reduce their overall tax liabilities. Such practices distort economic realities and undermine the principle that profits should be taxed in the jurisdictions where value is created.[167]

Article 30 of Law No. 29/2023 closely mirrors the provisions of article 4 of the ATAD. By capping the deductibility of interest expenses at a fixed percentage of EBITDA (earnings before interest, tax, depreciation and amortization), the Albanian tax rules limit aggressive tax avoidance while ensuring that taxation reflects genuine economic activity.

One of the key components of Albania's interest limitation rules is the definition of EBITDA. In Albania, the proxy of EBITDA must be determined by adding back to the income subject to income tax the tax-adjusted amounts regarding exceeding borrowing costs, as well as the tax-adjusted amounts for depreciation and amortization. Tax-exempt income is excluded from the taxpayer's EBITDA.[168] This closely mirrors the approach taken by the ATAD, which also ties interest deductions to taxable economic activity and ensures that interest expenses are only deducted against genuine economic profits.[169]

In addition to the definition of EBITDA, another key aspect of Albania's interest limitation rules is the treatment of exceeding borrowing costs, which is defined as the difference between deductible interest expenses, on the one hand, and taxable interest income or other economically equivalent taxable income, on the other.[170] This definition is broadly consistent with the approach taken by the ATAD, which also includes other economically equivalent costs, such as guarantee fees and financing arrangement expenses, within the scope of exceeding borrowing costs.[171]

While this comprehensive approach helps to ensure that interest deductions are accurately tied to actual economic activity, one potential area for improvement is the treatment of hybrid financial instruments. These instruments, which possess characteristics of both debt and equity, are often used by multinational enterprises as part of sophisticated tax planning strategies. However, Albanian law does not explicitly address the treatment of such hybrid instruments, which may result in uncertainties regarding how they should be treated for purposes of calculating interest deductions. Providing clear guidance on the treatment of hybrid instruments would enhance the rule's effectiveness, reduce compliance uncertainties and improve its overall robustness by offering taxpayers and tax authorities greater clarity on how to handle these complex financial arrangements.

Albania's interest limitation rule limits interest deductions to 30% of EBITDA,[172] mirroring the threshold set by the ATAD.[173] This threshold strikes a balance between preventing excessive interest deductions and minimizing the administrative burden on businesses. However, a significant divergence between Albania's rule and the ATAD lies in the application of this threshold at the entity level rather than at the group level. Under the ATAD, group-level calculations are permitted,[174] which means that exceeding borrowing costs and EBITDA can be consolidated across entities within a domestic group. This allows for a more efficient allocation of interest deductions within the group, as entities with varying profitability levels can offset their exceeding borrowing costs against the more profitable entities within the same group. The standalone application of the Albanian rule simplifies administration but may inadvertently disadvantage multinational enterprises with complex group structures. These MNEs may find it difficult to optimize interest deductions across their operations in Albania, as the rule's application at the entity level may not accurately reflect the economic realities of their operations. This divergence from the ATAD's group-level calculation approach could affect Albania's competitiveness as an investment destination, particularly for MNEs with complex group structures seeking to optimize their tax position across multiple jurisdictions.

The carry-forward of non-deductible interest expenses is another critical aspect of interest limitation rules under Albanian tax law. In Albania, taxpayers are allowed to carry forward excess interest for up to five years using a first-in, first-out (FIFO) method.[175] While this provision provides some flexibility for taxpayers, it is more restrictive than the framework established under the ATAD, which allows for the indefinite carry-forward of excess interest expenses.[176] Limiting the carry-forward period

166. *See* OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments – Action 4: 2015 Final Report* (OECD 2015), Primary Sources IBFD. For critical considerations on the topic, *see* R.H.M.J. Offermanns et al., *BEPS Action 4: Policy Considerations and Implementation Status*, 57 Eur. Taxn. 2/3 (2017), Journal Articles & Opinion Pieces IBFD.
167. For the rationale behind the interest limitation rule, *see* J. Carmona Lobita, *The ATAD's Interest Limitation Rule – A Step Backwards?*, 59 Eur. Taxn. 2/3 (2019), Journal Articles & Opinion Pieces IBFD and M. Petutschnig, M. Rechbauer & S. Rünger, *Assessment of the Interest Barrier Rule of Article 4 of the EU Anti-Tax Avoidance Directive for a Sample of European Firms*, 11 World Tax J. 3 (2019), Journal Articles & Opinion Pieces IBFD.
168. Art. 30(2) Albanian Tax Reform (2023) and art. 30(2) Instruction No. 26 (2023).
169. Art. 4(2) ATAD.
170. Art. 30(3) Albanian Tax Reform (2023) and art. 30(3) Instruction No. 26 (2023).
171. Art. 2(2) ATAD. *See also* Smit, *supra* n. 151, at p. 541.
172. Art. 30(1) Albanian Tax Reform (2023) and art. 30(1) Instruction No. 26 (2023). For more insights on the EBITDA proxy, *see* H. Vermeulen & V.I. Dafnomilis, *The (Draft) Laws Implementing ATAD I – An Overview of Implementation for Financial Undertakings in Different Member States, Especially as Regards the EBITDA Rule*, 20 Fin. & Cap. Mkts 6 (2018), Journal Articles & Opinion Pieces IBFD (accessed 27 Jan. 2025).
173. Art. 4(1) ATAD.
174. Art. 4(1) ATAD.
175. Art. 30(7) Instruction No. 26 (2023).
176. Art. 4(6)(a) ATAD.

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to five years may discourage long-term investment, particularly that financed through debt. Businesses often require more than five years to realize returns on significant assets, and the inability to carry forward excess interest for longer periods may result in an unnecessary tax burden. Moreover, the FIFO method, while administratively straightforward, may not always be aligned with the taxpayer's strategic interest in optimizing their interest deductions.[177] Extending the carry-forward period or providing more flexible methods for carrying forward excess interest expenses could improve the effectiveness of the Albanian rules and increase their appeal to investors seeking long-term tax efficiency.

In addition to the general framework, Albania's law includes several carve-outs that exclude specific entities and transactions from the interest limitation rule. These carve-outs are consistent with the ATAD and cover entities such as banks, non-bank financial institutions, insurance companies, leasing companies and loans financing long-term public infrastructure projects (where the project operator, borrowing costs, assets and revenue are all located in Albania).[178] These exceptions reflect the lower BEPS risks associated with these entities and activities, recognizing that their business models are less likely to contribute to the erosion of the tax base.

However, Albania's law does not adopt other optional provisions available under the ATAD, such as the *de minimis* threshold and standalone entity exceptions.[179] The absence of a safe harbour provision, like the ATAD's EUR 3 million threshold, may increase the compliance burden for smaller taxpayers who may not have significant exceeding borrowing costs. Similarly, excluding standalone entities from the scope of the rule could reduce administrative complexities without significantly increasing BEPS risks. The absence of these provisions in Albania's rule may increase compliance costs for smaller businesses and create additional barriers for them to navigate the tax system efficiently.

Albania has also not incorporated certain optional provisions available under the ATAD, including the equity escape and group ratio rules.[180] These provisions allow taxpayers to deduct exceeding borrowing costs based on the ratio of their equity over their total assets or the ratio of their EBITDA over the EBITDA of the entire group. These rules provide greater flexibility and reduce distortions caused by rigid entity-level applications, allowing MNEs to reflect their overall financial position when calculating interest deductions more accurately. The absence of these provisions in Albania's law limits its alignment with the ATAD and may diminish its attractiveness to multinational enterprises seeking tax-efficient structures.

177. For example, businesses may prefer to offset the most recent interest expenses against future profits rather than using the FIFO method, which may not reflect their financial needs.
178. Art. 30(5) Albanian Tax Reform (2023) and art. 30(8) Instruction No. 26 (2023).
179. Art. 4(3) ATAD.
180. Art. 4(5) ATAD. *See* also Smit, *supra* n. 151, at pp. 544-545.

In conclusion, while the introduction of Albania's interest limitation rules marks an important step in aligning the country's tax framework with EU standards, particularly the ATAD framework, several areas of potential improvement remain. To enhance the effectiveness of the interest limitation rules, Albania could consider revising these rules to offer greater flexibility, become more aligned with the ATAD, and ensure that the country remains an attractive investment destination for multinational enterprises. Moreover, providing clearer guidance on complex financial instruments, such as hybrid instruments, would further enhance the rule's effectiveness in curbing tax avoidance and promoting a fair and efficient tax system.

8. Conclusions

The Albanian Tax Reform (2023) represents a crucial step forward in the ongoing modernization of this Balkan country's tax system, addressing long-standing issues and prioritizing alignment with international and EU standards. This reform is not just a technical adjustment but a strategic move towards fostering economic growth and combatting tax avoidance, which also strengthens Albania's position as an EU candidate state. More in general, this legislative initiative demonstrates a firm commitment of the former communist country to creating a robust and equitable tax system that supports both domestic and foreign investment.

The reform's introduction of new rules for tax residence for individual and corporate taxpayers, along with a clearer PE definition that is aligned with the country's tax treaty practice and a refined approach to sourcing foreign income, exemplify Albania's ambition to create a predictable and investor-friendly tax environment. Among the reform's most significant achievements is the Albanian tax system's alignment with international norms, including the OECD (2017) and UN (2021) Models and the ATAD (2016). The adoption of international tax measures, such as CFC rules, interest limitation provisions and enhanced transparency through the CRS, positions Albania as a trustworthy partner in global efforts to combat BEPS practices.

Various issues and challenges, however, remain. Not all criteria for establishing the tax residence of individuals, for Albanian tax purposes, have been clarified. The definition of "place of management and control" to establish corporate taxpayer residence is welcome. However, the POEM definition under Albanian tax law needs to be coordinated with the tax treaty definitions, which often rely on different criteria.

The PE definition under Albanian tax law is in line with OECD (2017) and UN (2021) Model clauses, as applied by Albania in its tax treaties. However, expansive definitions, such as those for building or construction site PEs, substantial equipment PEs, services PEs and insurance PEs might be too far-reaching and discourage foreign investment in the country.

The application of withholding tax on certain Albanian-sourced payments leads to various ambiguities,

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since income characterization is often unclear. The lack of clear boundaries between different types of payment might be problematic in the application of withholding tax at source and create significant administrative costs for taxpayers and tax authorities alike.

Excluding legal persons and PEs from the scope of CFC rules limits the framework's comprehensiveness since MNEs remain partially outside the reform's reach. Additionally, the lack of guidance on the calculation of effective tax rates and the treatment of hybrid financial instruments introduces uncertainty, which could undermine the practical enforceability of these provisions.

The interest limitation rules, while robust, could benefit from greater flexibility, such as allowing group-level calculations to better reflect the financial realities of MNEs. The absence of optional carve-outs, such as safe harbour provisions or *de minimis* thresholds, also places a heavier compliance burden on smaller taxpayers, potentially discouraging legitimate business activity.

The authors submit that the Albanian Tax Reform (2023) has significantly improved the country's tax system. By addressing the remaining gaps and ambiguities, Albania will make another leap forward towards aligning its tax system with international and EU standards, facilitating its path to EU membership.

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