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No. 42, dated 24.04.2014

FOR SOME AMENDMENTS AND CHANGES IN THE LAW NO. 8438, DATE 28.12.1998 "ON INCOME TAX” AMMENDED

Subsequent to Articles 78, 83, section 1 and Article 155 of the Constitution, with the proposal of the Council of Ministers,

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA

DECIDED:

In the Law no. 8438, date 28.12.1998 “On Income Tax”, amended, the following amended and changes have to be made:

Article 1

In Article 2, of the Law no. 8438, date 28.12.1998 “On Income Tax”, amended, after paragraph 3, is added paragraph 4, as following:

4) For the purpose of articles 36 – 36/7 of this Law, the following terms shall mean:

a) Two persons are considered to be **associated parties** where:
   i. One person participates directly or indirectly in the management, control or capital of the other person, or
   ii. The same person or persons participate(s) directly or indirectly in the management, control or capital of both persons.

b) A person **participates directly or indirectly in the management, control or capital** of another person where:
   i. That person owns, directly or indirectly, 50% or more of the share capital of the other (juridical) person, or
   ii. That person effectively controls the business decisions of such other person.

c) **Independent parties** are parties that are not associated parties.

ç) A **controlled transaction** is:
   i. any transaction between associated parties where:
      - one party to the transaction is a resident and the other party is a non-resident,
      - one party to the transaction is a non resident that has a permanent establishment in Albania to which the transaction is attributable and the other party is another non resident,

- one party to the transaction is a resident and the other party is a resident that has a permanent establishment outside of Albania to which the transaction is attributable.

ii. any dealings between a non resident and a permanent establishment in Albania of that non-resident,

iii. any dealings between a resident and its permanent establishment outside of Albania,

iv. any transaction between a resident or a non resident that has a permanent establishment in Albania to which the transaction is attributable with a resident of a jurisdiction, listed in the Instruction of the Minister of Finance.

d) An **uncontrolled transaction** is any transaction that is between independent parties.

dh**) Transaction** includes a direct or indirect arrangement, understanding, agreement, or mutual practice whether or not legally enforceable or intended to be legally enforceable and includes any dealing between related persons.

e) The **conditions of a transaction** include, but are not limited to, the financial indicator measured in applying the appropriate transfer pricing method, for example the price of the transaction, the gross margin or net profit earned by one of the parties to the transaction, or the division of profit between the parties to the transaction.

ë) An **advance pricing agreement** is a procedural agreement between one or more taxpayers and one or more tax administrations intended to resolve potential transfer pricing disputes in advance by determining, in advance of controlled transactions, an appropriate set of criteria for the determination of consistency of those transactions with the market principle.

Article 2

Article 36 “Transfer pricing” is abrogated and is replaced with the following articles:

Article 36

Transfer Pricing

1) If a taxpayer that is subject to profit tax engages in one or more controlled transactions, it shall determine its taxable profits in a manner that is consistent with the market principle.

2) The taxable profits of a taxpayer that engages in one or more controlled transactions shall be consistent with the market principle if the conditions of those transactions do not differ from the conditions that would have applied between independent parties in comparable transactions carried out under comparable circumstances.

3) Where the conditions made or imposed in one or more controlled transactions entered into by a taxpayer are not consistent with the market principle, then the taxable profits of that taxpayer may be increased so as to be consistent with the market principle.

4) Determination of whether the conditions of a controlled transaction are consistent with the market principle, and the quantum of any adjustment under paragraph 3, shall be made in accordance with Article 36 of this Law.

Article 3

After Article 36, the articles 36/1, 36/2, 36/3, 36/4, 36/5 36/6 and 36/7 with the following contents have to be added :

Article 36/1

Comparability

1) An uncontrolled transaction is comparable to a controlled transaction for the purposes of this chapter:
   a) When there are no significant differences between them that could materially affect the financial indicator being examined under the appropriate transfer pricing method; or
   b) where such differences exist, a reasonably accurate comparability adjustment is made to the relevant financial indicator of the uncontrolled transaction in order to eliminate the effects of such differences on the comparison.

2) To determine whether two or more transactions are comparable, the following factors shall be considered to the extent that they are economically relevant to the facts and circumstances of the transactions:
   a) The characteristics of the property or services transferred;
   b) The functions undertaken by each party with respect to the transactions, taking into account assets used and risks assumed;
   c) The contractual terms of the transactions;
   d) The economic circumstances in which the transactions take place; and
   e) The business strategies pursued by parties in relation to the transactions.

Article 36/2

Transfer Pricing Methods

1) Consistency of a controlled transaction(s) with the market principle shall be determined by applying the most appropriate transfer pricing method to the circumstances of the case, according the definitions made by the Instruction of the Minister of Finance. Except to the extent provided in paragraph 2, the most appropriate transfer pricing method shall be selected from the following methods:

   a) **Comparable Uncontrolled Price Method**. The comparable uncontrolled price method consists of comparing the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction.

b) **Resale Price Method**. The resale price method consists of comparing the resale margin that a purchaser of property in a controlled transaction earns from reselling that property in an uncontrolled transaction with the resale margin that is earned in comparable uncontrolled purchase and resale transactions.
c) **Cost Plus Method.** The cost plus method consists of comparing the mark up on those costs directly and indirectly incurred in the supply of property or services in a controlled transaction with the mark up on those costs directly and indirectly incurred in the supply of property or services in a comparable uncontrolled transaction.
ç) **Transactional Net Margin Method.** The transactional net margin method consists of comparing the net profit margin relative to an appropriate base, for example costs, sales, assets, that a party achieves in a controlled transaction with the net profit margin relative to the same base achieved in comparable uncontrolled transactions.
d) **Transactional Profit Split Method**. According to this method each associated enterprise participating in a controlled transaction is allocated the portion of common profit/loss derived from such transaction that an independent enterprise would expect to earn from engaging in a comparable uncontrolled transaction.

2) The taxpayer may apply a transfer pricing method other than the approved methods, where it can be proved that none of the above methods can be reasonably applied to determine consistency with the market principle for the controlled transaction, and such other method yields a result consistent with the market principle. The taxpayer asserting the use of a method, other than the approved methods in paragraph 2, shall bear the burden of demonstrating that the requirements of this paragraph have been satisfied.

3) It is not required to apply more than one method to determine consistency with the market principle for a given controlled transaction.

Where a taxpayer has used a transfer pricing method to establish the remuneration of its controlled transactions and that transfer pricing method is consistent with the provisions of this article, then the tax administration’s examination of whether the conditions of the taxpayer’s controlled transactions are consistent with the market principle shall be based on the transfer pricing method applied by the taxpayer.

Article 36/3

Evaluation of combined controlled transactions

If a taxpayer carries out, under the same or similar circumstances, two or more controlled transactions that are economically closely linked to one another or that form a continuum such that they cannot reliably be analyzed separately, those transactions may be combined to

(a) perform the comparability analysis set out in Article 36/1 and
(b) apply the transfer pricing methods set out in Article 36/2.

Article 36/4

Market Range

1) A market range is a set of relevant financial indicator figures, for example prices, margins or profit shares, produced by the application of the most appropriate transfer pricing method to a number of uncontrolled transactions, each of which is relatively equally comparable to the controlled transaction based on a comparability analysis conducted in accordance with Article 36/1.

2) A controlled transaction, or a set of transactions, shall not be subject to an adjustment under Article 36, paragraph 3, where the relevant financial indicator derived from the controlled transaction(s) being tested under the appropriate transfer pricing method is within the market range.

3) Where the relevant financial indicator derived from the controlled transaction(s) falls outside the market range, the tax administration may adjust it pursuant to Article 36, paragraph 3, and any such adjustment shall be to the median of the market range, unless the tax administration or taxpayer can demonstrate that the circumstances of the case warrant adjustment to a different point in the market range, according the definitions made by the Instruction of the Minister of Finance.

Article 36/5

Transfer Pricing Information

1) A taxpayer must have in place sufficient documented information and analysis to verify that the conditions of its controlled transactions are consistent with the market principle. Transfer pricing documentation shall be provided to the tax administration at its request within 30 days of receiving the tax administration’s request. The content and form of the transfer pricing documentation will be specified by Instruction of the Minister of Finance.

2) Taxpayers engaging in controlled transactions above a specified threshold are required to submit an annual controlled transactions notice/form. The Minister of Finance by Instruction will define the above-mentioned specified threshold, format and deadline for submission of the controlled transactions notice.

Article 36/6
Corresponding Adjustments

Where an adjustment to the conditions of a controlled transaction is made by a tax administration in another country, and this adjustment results in the taxation in that other country of profits on which the taxpayer in Albania has already been charged to tax in Albania and the country that has made the adjustment has a treaty with Albania that reflects an intention to provide for the relief of double taxation, then, in such circumstances, the tax administration of Albania, after a request is made by the Albanian taxpayer, shall examine the consistency of that adjustment with the market principle, as defined in Article 36, paragraph 2. If the tax administration concludes that the adjustment is consistent with the market principle, it shall make an appropriate adjustment to the amount of the tax charged to the Albanian taxpayer. Procedure for request for a corresponding adjustment under this Article will be specified in the instruction of the Minister of Finance.

Article 36/7

Advance Pricing Agreements

1) A taxpayer may request that the tax administration enter into an advance pricing agreement to determine an appropriate set of criteria for the determination of conditions that are consistent with the market principle for certain future controlled transactions a defined period of time.

2) Where the tax administration enters in to an advance pricing agreement with a taxpayer, no adjustment will be made under Article 36, paragraph 3, to controlled transactions that are within the scope of the agreement as long as the terms and conditions set by the advance pricing agreements are satisfied.

3) The Minister of Finance will issue a specific instruction concerning Advance Pricing Agreements.

Article 4

This Law shall enter into force 15 days after being issued on the Public Gazette.

Approved on 24.04.2014

Issued by the Decree no. 8563, dated 16.05.2014