Article 4
Permanent Establishment

1) The term "*permanent establishment*" means a certain place of business through which the business activity of a person is wholly or partly carried on.

2) It is considered as permanent establishment an administrative office, a branch, a factory, a workshop, a mine or any other place for exploitation of natural resources, as well as a building, reconstruction, installation or assembling site.

3) A person is deemed not to have a permanent establishment if such person:

a. uses facilities solely for the purpose of storage or display of goods belonging to such person;
b. maintains stocks of goods belonging to him solely for the purpose of storage or display;
c. maintains stocks of goods belonging to such person solely for the purpose of processing such stocks by another person;
d. maintains a certain fixed place of business solely for the purpose of purchasing goods or collecting information for the business of such person;
e. maintains a fixed place of business solely for the purpose of exercising any preparatory or auxiliary activity for the business of such person.

3a) The term "*permanent establishment*" also encompasses:

a) A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;

b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within the Republic of Albania for a period or periods aggregating more than six months within any twelve-month period.

The draft law takes the UN Model on permanent establishment and ignores the OECD Model and all double taxation avoidance treaties which are built on that as the actual law explicitly does, therefore such paragraph should be adjusted to the actual one, which makes reference to the OECD model and of the DTTs signed in relation to it.

Article 15
Investment income

1) An investment income received jointly by more than one family member is allocated to the family member with the highest annual taxable income.

The intent is to take more money from the individual, why is that so when the tax authorities have the right to overcome any agreement signed between them and the taxpayer (article _____) if the transactions fails to provide for economic content??? What economic content does the above paragraph adheres to???

Article 17
Taxable Investment Income on Sale of Shares

1) If taxable investment income according to this Article results in loss in a tax period, such a loss can be compensated with taxable investment income from the alienation of shares participations and securities in five next tax periods, according to principle "the first loss before the last one".

Why should the loss be compensated only with the same type of loss in the future years? Income/loss from shares it's related to business income, so why not then compensating it with future business profits?

Article 27
Personal Income Tax Calculation

1) The personal income tax payable is calculated as the annual tax base multiplied by the personal income tax rate and reduced by
    a. Withholding tax according to Chapter 5 of this Law,
    b. Foreign tax credit according to Article 26 of this Law,
    c. Payroll tax withheld by the payroll tax agent during the taxable period,
    d. Advance payments for personal income tax paid during the taxable period.

2) If the difference calculated in the paragraph 1 is negative, personal income taxpayer can claim the tax overpaid and tax administration will return this amount to the taxpayer no later than 60 days within the application. In case taxpayer does not claim the personal income tax overpaid back it is considered an advance payment for personal income tax of the following taxable period.

It cannot be done under the current circumstances. Even during last year a lot of people did not lodge the annual personal income declaration and remained unaffected by taxation since the infrastructure to control and schedule all individuals inside the tax system is missing and it will not work also for a couple of years to come taking into account the precedent of VAT reimbursements which took a lot of years to stabilize and still are not going well. Our system is not able to reimburse the individual, and is too far from that. It will remain on paper.

Article 31
Thin Capitalization

1) Interest expenses are disallowed as deductible expenses if the excess net interest expense exceeds 30% of taxable earnings before interest and taxes ("*EBIT*"). The EBIT is determined based on the financial statements using the accounting rules with tax adjustments as prescribed by this Law.

What if taxable earnings are zero, it means that the interest expenses are non - deductible for tax purposes? There are a lot of companies which have a more than one year investment period.

Article 32
Bad Debt Reserve Financial Institutions

1) Notwithstanding the provision of Article 13, paragraph 1, in determining the taxable profit of financial institutions (banks and insurance companies) regulated by regulatory authorities, a deduction is allowed for amounts to establish and/or increase:

a) Mandatory technical reserves created pursuant to Law no. 8081, date 7/3/1996 "For insurance and reinsurance activities"; and
b) Mandatory provisions for commercial banks and other financial institutions created according to supervisory rules issued by the Bank of Albania for this purpose.

2) A full deduction of the bad debt is allowed if the following conditions are simultaneously met:

a) The bad debt is written off in the accounting of the taxpayer;
b) All possible legal actions to collect the debt have been undertaken; and
c) The reserve or provision created according to paragraph 1 of this Article must be added to the taxable profit.

The Albanian version of point 1.b) above does not say 'mandatory provisions' but 'mandatory dispositions issued for the commercial banks…….
Paragraph 2.c should continue: … up to the amount of the recognized bad debt (as far as provisions or technical reserves may not always match with the amount of bad debt deductible allowance for tax purposes.
The actual law allowed for provisions to be recognized based on the International Financial Reporting Standards if certified by a licensed independent auditor, which might have provided to the above taxpayers a better solution to the draft law.

Article 33
Valuation of a Share Exchange

1) The shares received in connection with an incorporation or a transfer of a branch or branches are valued at the market value of the business assets and liabilities transferred.

2) Upon written request by both the acquired and acquiring company with the tax administration, the shares received in connection with an exchange of shares, a merger or a division, are valued at the original acquisition price of the shares that were transferred.

3) Any qualified cash payment that is received in connection with an exchange of shares, a merge or division, is recognized as a taxable capital gain up to an amount equal to the difference between the market price of the share received and the original acquisition price of the shares transferred.

Market price of the share received, which market, there is no market of shares in Albania. The tax authorities most probably will refer to 'similar transactions' and such transactions are never similar, they are unique in their nature, due also to the associated good will of the acquired company, if any. The law should simply state the difference between the value of the shares in the books of the acquired company and the sale's value.

Article 36

Transfer Pricing Methods

1) The accordance with the market principle of a controlled transaction shall be defined by applying the proper method of the price transference, according to circumstances and definitions provided in the instruction of the Minister of Finance. Despite it is defined in paragraph 2, the proper method of price transference shall be solved between the following methods:

a) method of comparable uncontrolled price, which consists of the comparable decided price for goods or transferred services in a comparable uncontrolled transaction.
b) method of resale price, which consists in the comparison of the resale margin, that a goods buyer in a controlled transaction benefits from the resale of that property in an uncontrolled transaction, with the resale margin that benefits from the sale-purchase, uncontrolled, comparable;
c) method cost plus, which consists of a comparable increase (profit margin) on direct and indirect costs in the supply of goods and services in a controlled transaction with the increase, profit margin of this direct or indirect costs in the supply of goods and services in the comparable uncontrolled transaction;
ç) net transaction margin method, which consists of the comparison of the net comparable margin through a proper base, for example: costs, sales, assets, that a party reaches in a controlled transaction, with the net margin of the profit through the same achieved uncontrolled comparable transaction;
d) the method of division of the profit transaction , according to which each related person that participates in a controlled transaction, is allocated the mutual profit/loss part that derives from this transaction, that a independent person would gain from the participation in an uncontrolled comparable transaction.

2) Taxpayer may apply a price transference method different from the above methods, when he proves that none of the approved methods may not be used in a proper way defining the compliance with the market principles for the controlled transactions and this method results in compliance with the market principle. The taxpayer that uses a different method from those approved, mentioned in the item 1 of this article, shall have the burden of proof, demonstrating that the requirements of this chapter are fulfilled.

3) To define the compliance with the market principle for a controlled transaction, it is not required the application of more than one method.

4) When a taxpayer has used a method of the price transference to decide the benefit of his controlled transaction and if this method of price transference is in compliance with the provisions of this article, then the control of tax administration on the fact if the conditions of the controlled transaction of the taxpayer are in accordance with the market principle, based on the methods of applied price transference from the taxpayer.

Article 37
Evaluation of controlled combined transactions

If a taxpayer performs, in same of similar circumstances, two of more controlled transactions, that are economically related with each other or constitute a continuance/relevant combination, in a way that they cannot be analyzed separately in a reliable way, these transactions may be combined:

a) to perform the comparability analysis, defined in article 35; and
b) to apply the price transfer pricing methods, defined in article 36

Article 38
Range of Market Indicators

1) Market range is a group of relevant financial indicators, for example prices, margins or profit parts, issued from the relevant method application of the transference of the price for an uncontrolled number of transactions, where each of them is almost similarly comparable with the controlled transaction, based on an comparability analysis done in accordance with article 35.

2) A controlled transaction or a group of transactions will not be part of the adjustments, according to Article 34, when the relevant financial indicators, that derive from the controlled transaction/ transactions that are being tested according to the method of price transference, is within the market range.

3) When the relevant financial indicator, which derives from the controlled transactions, get out of the market range, tax administration may regulate it according to Article 34 of this Law, and this kind of regulation will be in the average range market, besides the cases when the

tax administration or taxpayer may certify that the circumstances in that case guarantee the adjustment of a different point of the market diversification, according to the definitions in the instruction of the Minister of Finance.

Article 39
Documentation Requirements

1) A Taxpayer should submit information and an analysis sufficiently to certify that the conditions of his controlled transactions are in accordance with the market principles. The transference of the documentation of the price is defined with an instruction of Minister of Finance.

2) Taxpayers included in the controlled transactions over the relevant value should submit a notification/annual form for the controlled transactions. The Minister of Finance defines, with an instruction, the border/value mentioned above, the format and the deadline for the submission of the information on controlled transactions.

Article 40
Corresponding Adjustments

In the cases of controlled transactions there is done an adjustment from the tax administration of another country and this adjustment results in the taxation in that country, for which the taxpayer is already taxed in Albania, and the country which proposes the adjustment has an agreement with Albania for the elimination of the double taxation, in this conditions, the tax administration of Albania, after the submission of a demand from the Albanian taxpayer, shall control the compliance of that adjustment with the market principles, as defined in Article 34. If the tax administration concludes that the adjustment is in compliance with the market principles, it does the necessary adjustments in the tax value that is charged to the Albanian taxpayer. The procedure for the demand for a corresponding adjustment, according to this article, shall defined in the instruction of the Minister of Finance.

Article 41
Advance Pricing Agreements

1) Advance pricing agreement is a procedural agreement between one or more taxpayers and one or more tax administration, with the purpose of solving the possible transfer price disagreements in advance, defining before the controlled transactions, a group of appropriate criteria for the determination of the compliance of these market principles of transactions.

2) The taxpayer may require that the tax administration shall enter into a advance price agreement to define a proper group of criteria for the compliance with the market principle for future controlled transactions for a relevant period of time.

3) When the tax administration enter into a price agreement in advance with a taxpayer, there is not made any adjustment of the transference of the price according to Article 34, for the controlled transactions that are within the field of the agreement, as long as the terms and conditions are fulfilled in the advance price agreement.

4) It is charged the Minister of Finance for issuing a special instruction related with the advance price agreement.

Articles 36-41: In case there is no transparency from part of the tax authorities on the transfer pricing policies, such articles may become a real abuse, left at the discretion of the tax authorities. To my opinion, since this law is really upgraded and in compliance with western standards, why is not foreseen in the law as obligatory the usage of a well known transfer pricing software to be used of mandatory usage by the tax authorities when dealing with transfer pricing transactions (such as AMADEUS for ex.), in order to ensure the right of the taxpayer for transparency and fair treatment. If the law foresees a lot of things that are not doable given the current market situation, why not introducing this as well? In this way at least at some point in the law is finally shown how the taxpayers' rights are protected and not just mentioned by the law on tax procedures (the right to be heard on tax appeals does not exist for example, unless you know somebody who will let you enter the premises of the General Tax Directorate).

Article 40 : Corresponding adjustments, to my opinion the Albanian version of it is not translated properly, we do not have a proper word for it, it cannot be 'Pershtatje" it should be 'Korrigjime' in this case, as we are not speaking about for ex. Adjustments to environmental conditions but for corrections to the calculation of the tax.

Article 46
General Provision Against Tax Avoidance

1) In calculating taxable profit, the Tax Administration may disregard any arrangement or series of arrangements, which has been put in place for the main purpose or one of the main purposes of obtaining a tax benefit. Such arrangements are treated, for tax purposes, by reference to their economic substance.

2) For the purposes of paragraph 1, an "*arrangement*"means any transaction, action, operation, agreement, grant, understanding, promise, undertaking or event. An arrangement may comprise more than one steps or parts.

3) In order to determine whether an arrangement or a series of arrangements is lacking economic substance, the Tax Administration examines whether one or more of the following situations exist:

a) the legal characterization of the individual steps, which an arrangement consists of, is inconsistent with the legal substance of the arrangement as a whole;

b) the arrangement or series of arrangements is implemented in a manner which would not agree with a regular business conduct;
c) the arrangement or series of arrangements includes elements which have the effect of offsetting or cancelling one another;
d) the transactions concluded are circular in nature;
e) the arrangement or series of arrangements leads to a significant tax benefit but this is not reflected in the business risks undertaken by the taxpayer or his cash flow;
f) the anticipated pre-tax margin is significant in comparison to the amount of the anticipated tax benefit.

4) For the purposes of paragraph 1, the objective of an arrangement or series of arrangements consists in avoiding taxation where, regardless of any subjective intentions of the taxpayer, it defeats the object, rationale and purpose of the tax provisions that would otherwise apply.

This article should be omitted to my opinion, it is a detailed, worthless consideration, which gives more power to the tax authorities than needed, putting into question legal agreements, for which maybe the tax authorities do not have the right formation as well to review them. Moreover, it puts into question also agreements such as the advance pricing agreements.
Further, to my opinion the law on tax procedures should provide for such articles and not the law on income tax, since it is related to subsequent administrative offences.

Article 47
Arm's Length Principle

Transactions among related parties must be consistent with the arm's length principle. Taxable profit of a taxpayer who takes part in one or more transactions with related parties are not different from the conditions that would be applied between the independent parties in comparable transactions, performed in comparable circumstances.

This article is repetitive now that a number of articles exist about related parties and transfer pricing. Some outcome from the law as a whole (extended interpretation of law) should be left to legal interpretation and not try to be exhaustive in the law itself.

Article 48
Long Term Contracts

1) A long-term contract is one which complies with the following conditions:
    a. It is concluded for the purpose of manufacturing, installation or construction or the performance of services;
    b. Its term exceeds, or is expected to exceed, 12 months.

2) Revenues relating to a long-term contract must be recognized, for Personal Income Tax and Corporate Income Tax purposes, at the amount corresponding to the part of the contract completed in the respective taxable period. The percentage of completion shall be determined either by reference to the ratio of costs of that year to the overall estimated costs or by reference to an expert evaluation of the stage of completion at the end of the taxable period.

3) Tax deductible expenses relating to long-term contracts are taken account of in the tax year in which they are incurred.

This is a very particular subject for being inserted in the law. There are a lot of particular subjects which need particular treatment as per the national and international financial reporting standards, which are obligatory to be known not only by the taxpayers but also by the tax authorities. Since the law says that the financial statements are prepared in accordance with the law on accounting which refers to the national and international reporting standards, it is not normal to introduce this topic and leave others out. It is the same as recognizing benefits to the taxpayers who are engaged in long term contracts.

Article 49
Capital Gain on Business Assets and Liabilities in Reorganizations

1) The capital gain realized on the transfer of business assets and liabilities in connection with an incorporation, a transfer of a branch or branches of activity, a merger or a division, may be deferred until the sales of these assets and liabilities by the receiving company. This tax deferral is conditional upon the request of both transferring and receiving company with the tax administration, whereby the receiving company agrees to continue valuing the transferred assets and liabilities received at their book value on the moment immediately before the transfer occurs.

Good article introduced, the only amendment to be considered as useful. However, under current situation even this transaction will be very difficult to be applied, it might leave space for abuse.
The alternative treatment of payment by five annual installments is more feasible, as it can be entirely controlled for taxation purposes.

Article 52
Non-deductible Expenses

The following expenses are not deductible:

a) Costs of acquisition and improvement of land and building sites;
b) Cost of acquisition, improvement, renovation, and reconstruction of depreciable assets;

c) Depreciation expenses according to accounting rules;
d) Increases of basic capital of the company or capital contributionsin a partnership;
e) Dividends and profit distributions toshareholders or partners, as well as profit distributions in case of other entities subject to this Law;
f) Interest paid which extends the average annual rate of the market interest charged by commercial banks, as officially published by the Bank of Albania;
g) Fines and penalties payable to a public authority for breach of any legislation;
h) Amounts set aside for the creation or increase of provisions, reserves and other special funds, except when it is defined otherwise by this Law;
i) Corporate income tax and the refundable VAT;
j) Representation expenses and expenses for reception that exceed 0.3 per cent of the annual turnover;
k) Expenses incurred as personal consumption of shareholders, partners, persons executing power in management of the taxpayer and their families;
l) Expenses, which exceed limits established by law or by-laws. On the limits defined by law no. 7892 dated 21.12.1994 “On sponsorship” for tax purpose, are not deductible the sponsoring amounts that exceed 3% of profit before tax and the sponsoring amounts for press publishers exceeding 5 % of the profit before tax;
m) Gifts and donations;
n) Expenses for technical services, consultancy and management invoiced by non-resident if not paid by the taxpayer by the deadline for submission of the tax return. In case such expenses are paid later, theyare tax deductible in the tax period when they are paid;
o) Expenses on wages, remunerations and other forms of personal income that relate to employment relationship paid to employees including administrators and are not made through the banking system. The Council of Ministers defines by decision exemption cases from this rule;
p) Amounts paid in cash in excess to the limits defined by provisions of article 36/1 of Law no. 8560, dated 22/2/1999 “On tax procedures in the Republic of Albania”, as amended.
q) Expenses of life and health insurance of the employees of the taxpayer that exceed […] per tax period;
r) Scholarships given to the pupils and students of public and private educational institution other than those determined by the Council of Ministers.
s) Expenses for the contributions made by the employer on behalf of its employees in a voluntary pension plan, exceeding the amount specified by Law no. 10197, dated 10/12/2009 " On voluntary pension funds ";
t) Expenses linked to income not included in taxable profit according to this Law;
u) Bribes.

Article 52:
m) gifts and donations: to my opinion donations should be left as deductible, as well as gifts to customers up to a minimum annual amount.
q) the law cannot establish a threshold as deductible for life and health insurance expenses paid by the employer for the employees. Such expenses should be deductible in full.
s) the same reasoning as for point q)

u) Bribes??? It should be omitted, because it acknowledges that bribes are given but not recognized for tax purposes.

Article 55
Bad Debt Deductions

1) A deduction is allowed for part of the nominal value of any receivable from an unrelated party that was accounted for as income, which remains unpaid, and for which the taxpayer reasonably believes that the debt will not be wholly or partially satisfied and the taxpayer has taken reasonable steps to pursue payment('*bad debt*') as follows:

a) Up to 20% of the bad debt where at the end of the tax period the bad debt is due for more than 6 months;
b) Up to 40% of the bad debt where at the end of the tax period the bad debt is due for more than 12 months;
c) Up to 60% of a bad debt where at the end of the tax period the bad debt is due for more than 24 months;
d) Up to 85% of a bad debt where at the end of the tax period the bad debt is due for more than 36 months.

The phrase: " ……..reasonably believes that the debt will not be wholly or partially satisfied and the taxpayer has taken reasonable steps to pursue payment…." Leave area for abuse and leaves the recognition of such deduction at the discretion of the tax authorities. Taxpayers have accumulated debts for years – in a market as Albania where there is almost no possibility of contract enforcement, the clients one day decide not to pay any longer due to difficult conditions or they just decide they do not need the services or goods any longer, they just interrupt the payments, so the last invoices are left unpaid. If invoices are verified as declared and the VAT is paid by the seller, but the invoice is never paid but declared for VAT purposes by the buyer that should be sufficient evidence for the tax authorities to allow for the above deductions of bad debt.

Article 56
Loss Carry Over

1) If taxable profit results in loss in a tax period, such a loss can be compensated with taxable profits in five next tax periods, according to principle "the first loss before the last one".

The law introduces a five year period of loss carry over, instead of the three years provided by the current law.

Article 64
Supplementary Tax Declaration

1) In case the taxpayer finds out that the tax payable in his last declaration of income should have been higher or the tax loss lower the taxpayer is obliged to submit a supplementary tax declaration and pay the difference between the last personal tax

payable and the supplementary tax payable within 30 days from having found about the difference. The [*interest/penatly*] calculated in accordance with the Law no. 9920, dated 19.05.2008 "On tax procedures in the Republic of Albania" is decreased by 50% if the supplementary tax return is submitted before the tax audit of a respective taxable period is initiated.

2) In case the taxpayer finds out that the tax payable in his last return should have been lower or the tax loss higher the taxpayer can submit a supplementary tax declaration within 30 days from having found about the difference. Higher amounts of any allowances or deductions can only be claimed in the supplementary tax declaration on higher personal income tax payable reported according to paragraph 1 of this Article.

The current online tax system allows for a blank declaration to be used as a supplementary declaration to pay an additional tax amount as per article 64.1 above. However, there is no supplementary tax declaration in the system to adjust for overpayments. As a matter of fact, once you submit an online declaration it is either with or without payment, but cannot be with minus.
The actual law provides for a written notification by the taxpayer addressed to the tax authorities, when he evaluates that its ongoing profit will decrease, hence his tax on profit prepayments should decrease accordingly. And as long as the notification for the payment of tax on profit are posted in the system by the tax authorities, this system is more feasible to be followed, rather than the non applicable point 64.2 above.

Chapter 2
Personal Income Tax Collection Provisions

Article 65
Payroll Tax Agent

1) Any legal person, entity or physical person conducting business in the territory of the Republic of Albania, who pays an employment income to a personal income taxpayer is obliged to withhold a payroll tax from such an income and transfer the withholding to tax administration not later than date 20 of the next month.

2) Payroll tax agent is obliged to withhold a payroll tax according to previous paragraph at

   a. Progressive rate according to Article25 if the personal income taxpayer signed the Statement on personal status with this employer.
   b. [*15%*]in other cases.

3) Payroll tax agent is obliged to take into consideration on a monthly basis 1/12 of tax allowances according to Article22 paragraph 1when calculating a payroll tax for employees who signed the statement on personal status with this payroll tax agent.

Allowances according to Articles22 paragraph 2 and 23 can only be claimed in the annual tax declaration by personal income taxpayer.

Provisions of UK taxation are introduced in the draft law, accounting for employee forms (Statement of Personal Status). However such forms are useful only in case they are connected to the online tax system, otherwise they are another burden for the employer.

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