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Albania – Labour Code Provisions Affecting Secondments in Force from June

by KPMG, Albania (a KPMG International member firm)

Albania's parliament has approved some amendments to the Albanian Labour Code which become effective starting from 23 June 2016.¹ These amendments aim to regularize:

- the secondment of personnel from foreign companies to Albanian companies;
- the labor rights of the seconded employees; and
- the conditions of the secondment agreements.

Context

The new provisions do not intend to change the current tax treatment of a company's seconded personnel or the agreements under which they are seconded. From a tax perspective, the most important provision introduced has to do with a limitation of the period of the secondment of these employees in Albania: it cannot exceed a 12-month period. Previously, the period was not defined. The period of secondment is calculated by taking as the reference the assignment's start date and also takes into consideration any prior period of temporary secondment.

Why This Matters

The amendments are important since they may affect the deductibility of expenses for those Albanian entities hosting seconded employees. In case the tax authorities verify that the secondment agreement of a specific employee exceeds the term of 12 months, they may claim that any charges from the home country company to the host company (Albanian company) can be considered as non-deductible for corporate income tax purposes.

Even though no direct provision is specified in the Albanian Income Tax Law, the tax authorities may support their assessment based on the fact that secondment agreements that last more than 12 months become invalid if the above-mentioned duration has elapsed.

KPMG Note

In our view the framework agreements for secondments of personnel entered into between two contracting entities may be valid for a term longer than 12 months, however, the period of assignment of any individual seconded under this framework agreement should not exceed the period of 12 months.

As per the current wording of the amendments, it is not clear whether following the termination of a specific secondment agreement which may last a maximum of 12 months, the parties may enter into a new agreement for the secondment of the same individual. Uncertainties remain also for the secondment agreements of employees that have entered into force prior to the date the new provisions become effective.

Footnote:

1 *Ligi nr. 136/2015, datë 5.12.2015, Për disa shtesa dhe ndryshime në ligjin nr. 7961, datë 12.7.1995, "Kodi i Punës i Republikës së Shqipërisë", të ndryshuar / Law No.136/2015 dated 5 December 2015, on Some Additions and Amendments to Law No. 7961 Labour Code in the Republic of Albania dated 12 July 1995, published in the Official Gazette (*Fletorja Zyrtare*) No. 220 dated 22 December 2015.*

See (in Albanian): http://www.qbz.gov.al/botime/fletore_zyrtare/2015/PDF-2015/220-2015.pdf .

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