PKF International Limited

PKF

# Worldwide Tax Guide

EDITION 2022/23


LOCAL
KNOWLEDGE,
GLOBAL
EXPERTISE

# FOREWORD

A country's tax regime is always a key factor for any business considering moving into new markets.

What is the corporate tax rate? Are there any incentives for overseas businesses? Are there double tax treaties in place? How will foreign source income be taxed?

Since 1994, the PKF network of independent member firms, administered by PKF International Limited, has produced the PKF Worldwide Tax Guide (WWTG) to provide international businesses with the answers to these key tax questions.

As you will appreciate, the production of the WWTG is a huge team effort and we would like to thank all tax experts within PKF member firms who gave up their time to contribute the vital information on their country's taxes that forms the heart of this publication.

The PKF Worldwide Tax Guide 2022/23 (WWTG) is an annual publication that provides an overview of the taxation and business regulation regimes of the world's most significant trading countries.

On a country-by-country basis, each summary addresses the major taxes applicable to business; how taxable income is determined; sundry other related taxation and business issues; and the country's personal tax regime. The final section of each country summary sets out the double tax treaty and nontreaty rates of tax withholding relating to the payment of dividends, interest, royalties and other related payments.

While the WWTG should not to be regarded as offering a complete explanation of the taxation issues in each country, we hope readers will use the publication as their first point of reference and then use the services of their local PKF member firm to provide specific information and advice.

Services provided by member firms include:

- Assurance & Advisory;
- Tax Advisory & Compliance;
- Financial Planning / Wealth Management;
- Corporate Finance;
- Management Consultancy;
- IT Consultancy;
- Insolvency - Corporate and Personal;
- Forensic Accounting; and,
- Hotel Consultancy.

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While utmost care has been taken in the compilation of this publication, no responsibility will be accepted for any inaccuracies, errors or omissions.

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### PKF INTERNATIONAL LIMITED

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# AFGHANISTAN

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Kabul | Qamar Ali Mumtaz | +93 799 195344<br>qamar@pkf.com.pk |

## BASIC FACTS

| | |
|---|---|
| Full name: | Islamic Republic of Afghanistan |
| Capital: | Kabul |
| Main languages: | Pashto, Dari |
| Population: | 40.64 million (2022 estimate) |
| Monetary unit: | Afghani (AFN) |
| Internet domain: | .af |
| Int. dialling code: | +93 |

## KEY TAX POINTS

- All businesses irrespective of the legal status of the entity or company are subject to 20% corporate income tax on income under Article 4 of the Income Tax law in Afghanistan.
- Capital gains from the sale, exchange, or transfer of certain assets are treated as taxable income. Capital gains include the sale of a trade or business (including goodwill), a factory (including equipment, machinery, buildings and land, or any part of such assets), equipment used in the business of transporting persons and property, and shares of stock in corporations or limited liability companies.
- The calculation of tax on the taxable profits of branch offices of non-resident companies is the same as for other businesses. The tax is calculated at 20% of income after allowing certain deductible expenses.
- Individuals are subject to tax at progressive rates. The monthly maximum limit is 20% + AFN 8,900 fixed amount.
- Any income tax paid to the government of a foreign country may be taken as a credit according to the principle of reciprocity.

## A. TAXES PAYABLE

## CORPORATE TAX

All businesses irrespective of the legal status of the entity or company are subject to 20% corporate income tax under article 4 of the Income Tax law in Afghanistan.

## BUSINESS RECEIPT TAX

Business Receipt Tax (BRT) is also applicable on the gross revenue of businesses at the rates given below. BRT is treated as a deductible expense from revenue.

- Automobiles and their spare parts: 4% or 7%;
- Travel agents: 4%;
- Revenue from public entertainment, exhibitions and support events: 4%;
- Sale of merchandise and services: 4%;
- Restaurant earning less than AFN 750,000 per quarter: 4%;
- Guest house, restaurant and hotel earning AFN 750,000 per quarter: 5%;
- Club hall (without any threshold): 5%.

BRT does not apply to the following categories of Income:

- Interest income;
- Fees earned from banking transactions;
- Proceeds of futures contracts whether settled in cash or otherwise;
- Insurance or reinsurance premiums;
- Distributions received by shareholders with respect to their interest in the company;
- Export of goods and services;
- Salaries, dividends, royalties and other payments that are subject to withholding tax;
- Income received from the rent or lease of residential property to a natural person if the tenant uses the property for residential purposes for more than six months of the tax year;
- Income of persons not having a business licence that are taxed at a fixed rate.

Note:

The VAT law entered into force on 22nd December 2021 at a rate of 10%. Taxpayers who are not registered for VAT will continue to be subject to BRT.

## CAPITAL GAINS TAX

Capital gains under article 23 of the tax legislation refer to any gain from the sale, exchange, or transfer of the following assets:

1) A trade or business, including goodwill;
2) A factory including equipment, machinery, buildings and land, or any part of such assets;
3) Equipment used in the business of transporting persons and property; and
4) Shares of stock in corporations or limited liability companies.

Chargeable capital gains are treated as and included in taxable income. A gain from the sale or transfer of movable or immovable property acquired by inheritance is excluded from the provisions of paragraph (1) of this Article.

A loss incurred on the sale or exchange of capital items used in a business is deductible from the taxable income of the business from other sources for the year. While a loss on the sale of shares can only be offset against the sale or exchange of other shares in the same year.

## CALCULATION METHOD OF CAPITAL GAINS

Gains (receipts less allowable expenses) arising from capital asset transactions are divided by the number of years of usage of the said asset. The average rate so obtained is then applied to the total income of the person (natural or legal) for the year. The rate so calculated cannot be less than 2%.

## BRANCH PROFITS TAX

The calculation of tax on the taxable profits of branch offices of non-resident companies is the same as for other business. The tax is calculated at 20% of income after allowing certain deductible expenses.

The only exception to the rule is that any amount remitted outside Afghanistan to principal office or any other branch office shall be regarded as a dividend and shall be subject to withholding tax at 20%

## VALUE ADDED TAX

- The VAT law entered into force on 22nd December 2021 at a rate of 10%.
- Taxpayers who are not registered for VAT will continue to be subject to the above-mentioned BRT.
- Registration will be mandatory if the total value of taxable supplies made by the person in the past or upcoming 12 months is equal to or more than AFN 150 million (510 companies are eligible). A person registered shall remain registered for a period of at least one year from the date of registration.
- Turnover for optional registration is AFN 100 million: at least 75% of the person's taxable supplies are to registered persons or at least 25% of the supplies are for export. Once registered, these individuals must remain registered for at least two years.
- Exempted goods and services: health services, educational services, financial and insurance services, transfer or lease of immovable properties for residential purposes, provision of religious services, humanitarian aid, goods and services provided to a government entity for the purposes of rehabilitation after natural disasters, industrial incidents and catastrophes, sport services.
- Zero-rated goods and services: export of goods or services for use outside the country, international land transport of goods or passengers including the supply of goods and related services, transfer of part or whole of a business as a going concern by a registered person to another registered person, provided by a written agreement between parties and notified the Ministry of Finance, some basic foods items (wheat, flour, rice, sugar, cooking oil, tea, onions, potatoes, salt), books and educational materials, basic materials used for household purposes (coal, wood, gas, soap).
- Whenever a non-resident without a fixed place in Afghanistan makes taxable supplies of goods and services exceeding the VAT registration threshold, he shall appoint his representative who is subject to certain conditions.

## LOCAL TAXES

No local taxes are payable in respect of income of companies.

## OTHER TAXES

Other important levies in Afghanistan include customs duty and various import duties.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is calculated as revenue for the year from all sources less the following admissible expenses:

1. Any expense related to the cost of production or trade and business, such as insurance and freight expenses, etc.;
2. The cost of supplies, materials, fuel, electricity, water, and ordinary and necessary expenses used in the production of income, or in a trade or business;
3. Wages, salaries, commissions, and fees paid for services rendered by employees in trade or business;
4. Interest paid on business loans;
5. Rent paid on property necessary to and used in trade or business;
6. Cost of repairs and maintenance of properties and equipment necessary to and used for purposes of the business or trade;
7. Depreciation of movable and immovable property at rates mentioned below:

| No. | Assets | Useful Life (in Years) | Annual Percentage Allowed |
|---|---|---|---|
| 1 | Bricks or stone structures | 50 | 2 |
| 2 | Loam structure | 20 | 5 |

| No. | Assets | Useful Life (in Years) | Annual Percentage Allowed |
|---|---|---|---|
| 3 | Wooden structures | 10 | 10 |
| 4 | Machinery and equipment not otherwise specified below | 10 | 10 |
| 5 | Mining equipment | 6.5 | 15 |
| 6 | Tools | 4 | 25 |
| 7 | Printing equipment and machines | 2 | 50 |
| 8 | Handicraft machines | 3 | 33 |
| 9 | Metallurgical machines | 10 | 10 |
| 10 | Carpets | 10 | 10 |
| 11 | Rugs and other furnishings | 4 | 25 |
| 12 | Chairs, seats, and sofas | 4 | 25 |
| 13 | Desks, tables, and cabinets | 10 | 10 |
| 14 | Office equipment (calculators, typewriters, telephone, etc.) | 6.5 | 15 |
| 15 | Bicycles | 5 | 20 |
| 16 | Trucks | 2 | 50 |
| 17 | Cars | 2 | 25 |
| 18 | Tyres and tubes | 2 | 50 |
| 19 | Sacks | 2 | 50 |
| 20 | Impure iron stoves and pipes | 10 | 10 |
| 21 | Iron stoves | 2 | 50 |
| 22 | Carriages, animal carts, and handcarts | 3 | 33 |
| 23 | Construction machines, rollers and mixers | 5 | 20 |
| 24 | Computers and computer related equipment | 3 | 33 |
| 25 | Televisions, radios, and cellular phones | 3 | 33 |
| 26 | Telecommunication equipment/ cell towers | 7 | 14 |

8. Any tax or charge that is a necessary expense for doing business, holding property for income, or for producing income, if paid or accrued during the taxable year. Taxes imposed by this Law and taxes not qualifying as a necessary business expense are not deductible, except as otherwise provided for by this Law;
9. Damages to movable or immovable property caused by fire, earthquake, and by casualty or disaster of any kind, over a three year period, to the extent that the cost is determined and substantiated by records and the loss was not recovered by insurance;
10. Losses in business or trade from bad debts according to the Income Tax Manual;
11. Dividends paid in money by a legal entity organized under the laws of Afghanistan; and
12. Other expenses of doing business and of holding movable or immovable property for the production of income under relevant legislative documents.

## NON-ADMISSIBLE DEDUCTIONS

The following deductions are not allowable for tax purposes:

1. Expenses incurred to provide entertainment or advertising that are not connected with economical or commercial activities;
2. Dividends, interest, royalties, rent, commissions, wages, salaries, in case the tax has not been withheld as required by the law;
3. In case of a branch in Afghanistan of a non-resident person, any expenses paid or incurred by the non-resident person or any person connected to the non-resident person;
4. Personal expenses are not deductible;
5. Capital expenditure that is subject to depreciation;
6. Taxes paid to foreign countries by non-resident persons on income from sources within Afghanistan, if the double tax treaty is not entered into with that country.

## C. FOREIGN TAX RELIEF

Any income tax paid to the government of a foreign country may be taken as credit on the principle of reciprocity. The tax credit on a foreign tax payment is calculated as follows:

$$\text{Afghanistan tax on global taxable income} \times \frac{\text{foreign country income}}{\text{total global taxable income}}$$

## D. RELATED PARTY TRANSACTIONS

The tax authorities have the power in respect of a transaction between associates to distribute, apportion, or allocate income, deductions, or tax credits between such associates to reflect the income that would have been realised in an arm's-length transaction.

## E. PERSONAL INCOME TAX

Following are the rates at which natural persons are subject to tax:

| Income slab per month (AFN) | Applicable Rate |
|---|---|
| 0 – 5,000 | 0% |
| 5,001 – 12,500 | 2% |
| 12,501 – 100,000 | 10% + AFN 150 fixed amount |
| Over 100,000 | 20% + AFN 8,900 fixed amount |

## F. WITHHOLDING TAX RATES

Individuals and organisations are subject to the following withholding taxes:

| Type of income | Applicable Rate |
|---|---|
| Salary | At rates discussed in the preceding paragraph |
| Interest | 20% |
| Dividends | 20% |
| Royalties | 20% |
| Prizes | 20% |
| Rewards | 20% |
| Lotteries | 20% |
| Bonuses | 20% |
| Service charges | 20% |
| Rent | If monthly rent is between AFN 10,000 and AFN 100,000 - 10 %.<br>If monthly rent exceeds AFN 100,000 -15%. |
| Contractors for supplies of goods and services | 7% for contractors without a business licence<br>2% for contractors having a business licence |

# ALBANIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Tirana | Taulant Asllani | +355 69 94 44 920<br>taulant.asllani@pkf.al |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Albania |
| Capital: | Tirana |
| Main languages: | Albanian |
| Population: | 2.87 million (2022 estimate) |
| Monetary unit: | Lek (ALL) |
| Internet domain: | .al |
| Int. dialling code: | +355 |

## KEY TAX POINTS

- Taxpayers with a total annual income of up to ALL 14 million are subject to a 0% corporate income tax rate while those with a total annual income exceeding this amount are subject to a 15% corporate income tax rate.
- The standard VAT rate is 20%. Reduced rates of 6% and 10% apply to certain supplies.
- Dividends and profit shares of partnerships paid to non-resident companies are subject to an 8% final withholding tax rate, subject to the application of a double tax treaty.
- Interest, royalties, technical service fees and management fees paid to non-resident companies are subject to a 15% final withholding tax rate, subject to the application of a double tax treaty.

## A. TAXES PAYABLE

### COMPANY TAX

A company is considered a resident of Albania if it has its legal seat or place of effective management in Albania.

Resident companies are subject to tax on their worldwide income while non-resident companies are subject to tax only on Albania-sourced income.

Taxpayers with a total annual income of up to ALL 14 million are subject to a 0% corporate income tax rate while those with a total annual income exceeding this amount are subject to a 15% corporate income tax rate.

## CAPITAL GAINS TAX

Capital gains derived from the sale of a company's fixed business assets are taxed as part of the company's ordinary business income.

Specific rules apply to capital gains derived from sales of shares.

## BRANCH PROFITS TAX

There is no branch remittance tax in Albania.

## VALUE ADDED TAX (VAT)

The standard VAT rate is 20%. Reduced rates of 6% and 10% apply to certain supplies.

Certain supplies are zero rated, like e.g. exports and inward processing activity allowing the deduction of the relevant input VAT.

## B. DETERMINATION OF TAXABLE INCOME

Taxable profit is the difference between gross profits and related expenses. Income and expenses are accounted for on an accruals basis.

## DISALLOWED EXPENSES

Non-deductible expenses include among others corporate income tax, dividends, gifts, penalties and fines, the cost of in-kind benefits granted to employees (tax free at the level of the recipient), expenses in respect of technical, consulting and management services provided by third parties for which no withholding tax was paid in the relevant tax year, etc.

## DEPRECIATION

The straight-line method of depreciation is used only for intangible assets (at a 15% rate).

Tangible assets are divided into three main categories:

- computers, software products and information systems are depreciated using the declining-balance method at a rate of 25% on a pooled basis;
- buildings, structures and machinery with a long useful life are depreciated individually, using the declining-balance depreciation method at a rate of 5%;
- other assets are depreciated using the declining-balance method at a rate of 20% on a pooled basis.

Non-depreciable assets include land, fine art, antiques and jewellery.

## INTEREST DEDUCTIONS

Thin capitalisation rules limit interest deductions on loans if the debt-to-equity ratio exceeds 4:1. This rule does not apply to banks, insurance, and leasing companies.

The net interest expense (i.e. interest expense less interest income within a tax period) on loans and funding from related parties is considered deductible up to 30% of EBITDA. The non-deducted interest part can be carried forward and tax deductibility can be claimed in subsequent periods, except when the taxpayer's ownership has changed by more than 50%.

## LOSSES

Losses can be carried forward for 3 consecutive years. If during the tax year more than 50% of direct or indirect ownership of the share capital or voting rights of the company transferred losses cannot be carried forward.

Losses cannot be carried back.

From tax year 2020 taxpayers investing in business projects with a value of more than ALL billion can carry losses forward to the following 5 tax years.

## C. FOREIGN TAX RELIEF

Double taxation relief may be granted under the application of a double tax treaty. Treaty relief is optional. Unilaterally, an ordinary credit is granted for foreign taxes incurred on foreign-sourced income. The credit is calculated on a per-country basis and any excess credit can be carried forward.

## D. CORPORATE GROUPS

There is no group taxation in Albania.

## E. RELATED PARTY TRANSACTIONS

In 2014, Albania introduced detailed legislation on transfer pricing. This legislation aims to regulate controlled transactions between associated parties and to ensure that those transactions respect the arm's length principle.

Subject to transfer pricing rules are persons engaging in controlled transactions with related parties. Two persons are considered to be related parties, when:

- one person participates directly or indirectly in the management, control or capital of the other person; or
- the same person or persons participate(s) directly or indirectly in the management, control or the capital of both persons.

A person participates directly or indirectly in the management, control or capital of another person when:

- that person owns, directly or indirectly, 50 percent or more of the share capital of the other person; or
- that person effectively controls the business decisions of such other person.

**Controlled transaction notice**

A taxpayer engaged in controlled transactions (including loan balances) exceeding ALL 50 million in aggregate must submit an Annual Controlled Transactions Notice. When determining aggregate transactions, income and expenses cannot be offset.

The form of the Controlled Transactions Notice is specified in Appendix 2 of transfer pricing instruction No. 16 of 18th June 2014. A taxpayer must submit the form together with their annual financial statements to the regional tax directorate where they are registered. Submission may be in hard copy or electronic, as requested by the tax administration. The due date for submission is the end of March of the calendar year following the relevant tax year.

**Transfer pricing documentation**

The law requires taxpayers to have in place sufficient documentation to verify that a controlled transaction is consistent with the arm's-length principle. The content of the documentation is specified in Article 15 of the 2014 transfer pricing instruction. The documentation must be provided to the tax administration within 30 days from its request.

Taxpayers with an annual turnover of less than ALL 50 million are considered to satisfy the transfer pricing documentation requirements. Provided there have been no material changes to the controlled transactions, this applies even when external comparable transactions are used to benchmark against the arm's-length standard and the external comparables are updated only every third reporting period.

## F. PERSONAL TAX

Effective 1st July 2022 the following progressive rates will apply:

| Monthly remuneration (ALL) | Rate |
|---|---|
| Up to 40,000 | 0% |
| 40,001 – 50,000 | 0% up to ALL 30,000<br>6.5% of the amount over ALL 30,000 up to ALL 50,000 |
| Over 50,000 | 0% up to ALL 30,000<br>13% of the amount over ALL 30,000 up to ALL 200,000<br>ALL 22,100 + 23% of the amount over ALL 200,000 |

## G. WITHHOLDING TAX

- Dividends and profit shares of partnerships paid to non-resident companies are subject to an 8% final withholding tax rate, subject to the application of a double tax treaty.
- Interest, royalties, technical service fees and management fees paid to non-resident companies are subject to a 15% final withholding tax rate, subject to the application of a double tax treaty.

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 8 | 8 | 15 | 15 |
| Individuals | 8 | -- | 15 | 15 |
| **Treaty countries:** | | | | |
| Austria | 15 | 5 | 5 | 5 |
| Belgium | 15 | 5 | 5 | 5 |
| Bosnia and Herzegovina | 10 | 5 | 10 | 10 |
| Bulgaria | 15 | 5 | 10 | 10 |
| China | 10 | 10 | 10 | 10 |
| Croatia | 10 | 10 | 10 | 10 |
| Czech Republic | 15 | 5 | 5 | 10 |
| Egypt | 10 | 10 | 10 | 10 |
| Estonia | 10 | 5 | 5 | 5 |
| France | 15 | 5 | 10 | 5 |
| Germany | 15 | 5 | 5 | 5 |
| Greece | 5 | 5 | 5 | 5 |
| Hungary | 10 | 5 | 0 | 5 |
| Iceland | 10 | 5 | 10 | 10 |
| India | 10 | 10 | 10 | 10 |
| Ireland | 10 | 5 | 7 | 7 |
| Israel | 15 | 5 | 10 | 5 |
| Italy | 10 | 10 | 5 | 5 |
| Korea (South) | 10 | 5 | 10 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Kosovo | 8 | 5 | 10 | 10 |
| Kuwait | 0/10 | 0/5 | 10 | 10 |
| Latvia | 10 | 5 | 5/10 | 5 |
| Malaysia | 15 | 5 | 10 | 10 |
| Malta | 15 | 5 | 5 | 5 |
| Moldova | 10 | 5 | 5 | 10 |
| Montenegro | 15 | 5 | 10 | 10 |
| Netherlands | 15 | 0/5 | 5/10 | 10 |
| North Macedonia | 10 | 10 | 10 | 10 |
| Norway | 15 | 5 | 10 | 10 |
| Poland | 10 | 5 | 10 | 5 |
| Qatar | 0/5 | 0/5 | 5 | 6 |
| Romania | 15 | 10 | 10 | 15 |
| Russia | 10 | 10 | 10 | 10 |
| Saudi Arabia | 5 | 5 | 6 | 5/8 |
| Serbia | 15 | 5 | 10 | 10 |
| Singapore | 5 | 5 | 5 | 5 |
| Slovenia | 10 | 5 | 7 | 7 |
| Spain | 10 | 0/5 | 6 | 0 |
| Sweden | 15 | 5 | 5 | 5 |
| Switzerland | 15 | 5 | 0/5 | 5 |
| Turkey | 15 | 5 | 10 | 10 |
| United Arab Emirates | 0/10 | 0/5 | 0 | 5 |
| United Kingdom | 10 | 5/15 | 0/6 | 0 |

# ALGERIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Algiers | Stefaan De Ceulaer | +44 20 3691 2511<br>stefaan.deceulaer@pkf.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | People's Democratic Republic of Algeria |
| Capital: | Algiers |
| Main languages: | Arabic |
| Other languages | French (business and education); Berber (constitutionally national) |
| Population: | 44.37 million (2022 estimate) |
| Monetary unit: | Algerian Dinar (DZD) |
| Internet domain: | .dz |
| Int. dialling code: | +213 |

## KEY TAX POINTS

- All companies are liable for corporate income tax on their profits arising from any business they carry on in Algeria, except for certain restricted categories mentioned in the tax code.
- All economic activities conducted in Algeria, including sales operations, imports, construction works and services, which are of an industrial, commercial or handicraft nature made in Algeria on a regular or occasional base are subject to VAT.
- Dividend withholding tax at a rate of 15% is imposed on dividends paid from Algerian sources to individual residents or non-resident individuals and legal entities, subject to the application of a double tax treaty.
- Relief from foreign taxes in Algeria depends on whether the country in question has entered into a double tax treaty with Algeria.
- Withholding tax applies to interests, dividends, royalties and technical service fees.

## A. TAXES PAYABLE

### INCOME TAX

Resident companies incorporated in Algeria and non-resident companies that have a permanent establishment in Algeria are liable for corporate income tax on their profits arising from any business carried on in Algeria. Depending on the activity, the rates vary as follows:

- 19% for the sector of the production of goods;
- 23% for construction, public works and hydraulic activities as well as thermal and tourist activities, excluding travel agencies;
- 26% for other activities.

## TAX ON PROFESSIONAL ACTIVITY

This tax is levied on turnover and depends on the sector. The rate varies as follows:

- 1% for manufacturing activities;
- 1.5% for building, public works and hydraulic activities;
- 3% for hydrocarbon pipeline transport activities;
- 2% for other activities (trade, services, construction, etc.).

## VALUE ADDED TAX (VAT)

VAT applies to the supply of most goods and the provision of services in Algeria. All economic activities conducted in Algeria, including industrial and handicraft activities and liberal or commercial professions, are subject to VAT. Exports by definition are consumed abroad and are in principle not subject to VAT. Any VAT charged under such circumstances is usually refundable. This avoids downward pressure on exports.

(1) Rates.

Two different VAT rates apply in Algeria:

- A special reduced rate of 9% applies to goods and services of particular economic, social or cultural interest; and,
- 19% for operations related to services and goods not subject to another rate.

(2) Filing and payment.

Monthly returns and any tax payable are generally due by the 20th day of the following month.

## SINGLE FLAT TAX (Alternative Taxation)

This is a tax that replaces several taxes (Income Tax, VAT, and Tax on Professional Activities) and is applied to taxpayers whose turnover does not exceed 8 million DZD.

The rates are as follows:

- 5%: applicable to production and sales activities;
- 12%: applicable to all other activities.

These taxpayers can also submit a request to be taxed according to the general scheme.

## PROPERTY TAX

It is a tax that applies to developed and undeveloped properties. The rate of PT varies between 3 and 10%.

## OTHER TAXES AND LEVIES VOCATIONAL TRAINING TAX

Companies that employ more than six (6) permanent employees are subject to a tax of 1% on the annual payroll for vocational training. An additional tax of 1% on the annual payroll is also payable (for learning) for all companies that employ more than 20 permanent employees. Taxpayers may be exempt from paying this tax provided they initiate training and learning activities.

## DOMICILIATION TAX

A bank domiciliation tax is imposed on the importation of goods or services.

The tax is paid at the rate of 0.5% on the amount of the importation for any request to open a file of a transaction of importation of goods. The amount of the tax cannot be less than DZD 20,000.

The rate of the tax is fixed at 4% of the amount of the domiciliation for the imports of services.

Equipment and raw materials that are not intended for resale in the State, subject to registration prior to each import commitment are exempt from this tax.

## BRANCH PROFITS AND REMITTANCE TAX

Branches of non-resident companies are subject to the same corporate tax rates as regular resident Algerian companies, i.e. the above mentioned 19%, 23% and 26%.

However, also a branch remittance tax was introduced by the Finance Act 2009 (Section 6). This tax is applicable to profits transferred to a non-resident by the branch or permanent establishment of a foreign company. The tax is payable on the profit after deduction of company tax at a rate of 15%.

## LUXURY VEHICLE TAX

Vehicles registered in the category of passenger cars (PC) which are less than five (5) years old and disclosed in the Balance Sheet of a company established in Algeria, or rented by the company for a cumulative period equal to or greater than three (3) months during a tax period, are subject to an annual tax determined.

**Vehicles rented**

- Between DZD 3,500,000 and DZD 6,000,000 = DZD 250,000;
- Over DZD 6,000,000 = DZD 500,000.

**Vehicles acquired by the company**

- Between DZD 3,500,000 and DZD 6,000,000 = DZD 350,000;
- Over DZD 6,000,000 = DZD 600,000.

However, the tax does not apply to vehicles intended exclusively for sale, either to rent or to execute a transport service available to the public, when these operations correspond to the normal activity of the owning company.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is determined on the basis of regular accounting results. When there are discrepancies between tax rules and accounting principles, adjustments are made to the accounting results. Profits are in principle considered to be gross revenue less production, salary and wages and rental expenses. Generally, all expenses generated in the conduct of a business are deductible if they are incurred in gaining or producing assessable income. However, expenses exceeding DZD 300,000 (USD 3,000) paid in cash are non-deductible from the taxable base.

### DEPRECIATION

Fixed assets owned by a company are normally written off over their normal useful life. For tax purposes, the straight-line method is normally adopted but other methods may be used in certain circumstances and with the authorisation of the tax authorities following a request.

### STOCK / INVENTORY

For the determination of net income, inventories must be evaluated at their cost price. If, at the end of the year, the market or realisable value is lower, the company must set up reserves for depreciation of the inventories. The tax authorities are very strict regarding the deductibility of provisions as they require that provisions be documented.

### DIVIDENDS

Dividends paid by a company established under Algerian law to another company established under Algerian law are subject to withholding tax at a rate of 15% at the level of the dividend-paying company.

### LOSSES

Losses may be carried forward for four years. The carry back of losses is not permitted.

### FOREIGN SOURCED INCOME

Revenues from a foreign source that are subject to tax at source on the payment in the country of origin are in principle not subject to tax in Algeria in case there is a double tax treaty. Non-resident legal entities are taxable on their Algerian source income and on gains from the disposal of buildings and the disposal of shares in real estate companies. The taxable capital gain is the difference between the sale price and the purchase cost. Relief from foreign taxes in Algeria depends on whether a double tax treaty has been concluded by Algeria.

### INCENTIVES

The Algerian tax legislation has established a number of incentives to facilitate investment and the creation of projects in certain sectors. Incentives are aimed at accelerating the growth rate and job creation within activities related to fields determined by the specific legislation. Major incentives are available for investments made by enterprises located in areas that require development. Investment project can be granted tax advantages during the launch phase and for three years during the operational phase.

### INTERCOMPANY LOANS

Interest paid to shareholders in respect of sums they surrender or make available to the company in addition to their capital shares, irrespective of the form of the company, is deductible within the limits of the average effective interest rate as established by the Central Bank of Algeria.

However, this deduction is subject to two conditions:

- The capital has been fully paid up; and
- The sums placed at the disposal of the company do not exceed 50% of the capital.

For the purpose of determining corporate income tax, the sums made available to the shareholders by the company shall be deemed to be distributed (as a dividend).

Interest on loans between related companies is deductible within the limits of the average effective interest rates as established by the Central Bank of Algeria.

For the purpose of determining corporate income tax, the proceeds of loans granted between enterprises without interest or at a reduced interest are determined by applying to the sums lent the average effective interest rates as established by the Central Bank of Algeria.

## C. FOREIGN TAX RELIEF

No unilateral double taxation relief is granted under domestic Algerian tax law for foreign taxes. Bilateral relief of foreign taxes in Algeria depends on whether the country in question has concluded a double tax treaty with Algeria. Algeria has concluded more than 30 double tax treaties.

## D. CORPORATE GROUPS

When an Algerian joint-stock company holds 90% or more of the shares of one or more Algerian joint-stock companies, the group may choose to be taxed as a single entity. Hence, the subsidiaries are treated as branches of the parent company and corporate tax is payable only by the parent company. Under this system, the profits and losses of all controlled branches, subsidiaries and partnerships in Algeria are consolidated. Once elected, the option is binding for four years.

Companies operating in the hydrocarbon sector are excluded from this regime.

## E. WITHHOLDING TAX

For certain categories of income, the payer of income has to withhold tax at source, file tax returns and submit the amount of tax withheld to the tax authorities.

- Dividends paid to shareholders are subject to a 15% withholding tax, which may be reduced under a double tax treaty;
- Interest paid to a non-resident is subject to a 10% withholding tax, which may be reduced under a double tax treaty;
- The withholding tax on royalties is 30% (effective 1 May 2020; previously 24%), which may be reduced under a double tax treaty.
- The withholding tax on technical service fees is 30% (effective 1 May 2020; previously 24%) and applies to the gross income derived from any service fee paid abroad by a local company to a foreign company;
- Most services performed in Algeria by non-resident companies are generally subject to a 30% (effective 1 May 2020; previously 24%) withholding tax.

## F. PERSONAL INCOME TAX

Personal income tax is a direct tax levied on the income of an individual. Taxpayers are classified into residents and non-residents. Income subject to tax is called assessable income and is divided into six categories:

1. Professional benefits;
2. Farm income;
3. Rental income from built and/or undeveloped properties;
4. Income from shares;
5. Salaries, wages, pensions and life annuities;
6. Capital gains on the sale of built or undeveloped buildings against payment.

For each category of income, certain deductions and allowances are granted in the calculation of the taxable income. Taxpayers should keep their accounting records in compliance with the accounting legislation in order to benefit from these deductions. In general, a person liable for personal income tax has to compute his tax liability, file a tax return and pay tax, if any, on a calendar year basis. There is no obligation to submit a tax return for taxpayers who do not receive other remuneration than salary.

Married couples file tax returns as separate individuals. Income of children is reported on the tax return of the head of the family. A spouse can report the income of their children on his/her tax return in certain circumstances.

Wages and salaries are subject to withholding tax and paid by the employer after deducting the personal income tax. The tax base includes all the pay sections subject to tax at the progressive rate detailed in the table below (effective 1 January 2022):

| Taxable income (DZD) | Rate (%) |
|---|---|
| Up to 240,000 | 0 |
| 240,001 – 480,000 | 23 |
| 480,001 – 960,000 | 27 |
| 960,001 – 1,920,000 | 30 |
| 1,920,001 – 3,840,000 | 33 |
| Over 3,840,000 | 35 |

## G. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Algeria has concluded double tax treaties with the following countries:

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 15 | 15 | 10/40[10] | 21/30[11] |
| Individuals | 15 | -- | 10/50[10] | 21/3011 |
| **Treaty countries:** | | | | |
| Arab Maghreb Union | –[1] | –[1] | –[1] | –[1] |
| Austria | 15 | 5[3] | 0/10 | 10 |
| Bahrain | 0 | 0 | 0 | – |
| Belgium | 15 | 15 | 0/15 | 5/15[13] |
| Bosnia and Herzegovina | 10 | 10 | 10 | 12 |
| Bulgaria | 10 | 10 | 10 | 10 |
| Canada | 15 | 15 | 0/15 | 15 |
| China | 10 | 5[4] | 7 | 10 |
| Egypt | 10 | 10 | 5 | 10 |
| France | 15 | 5[5] | 10/12[12] | 5/10/12[14] |
| Germany | 15 | 5[3] | 10 | 10 |
| Indonesia | 15 | 15 | 15 | 15 |
| Iran | 5 | 5 | 5 | 5 |
| Italy | 15 | 15 | 15 | 5/15[15] |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Jordan | 15 | 15 | 0/15 | 15 |
| Korea (South) | 15 | 5[4] | 10 | 2/10[16] |
| Lebanon | 15 | 15 | 0/10 | 10 |
| Libya | –[2] | –[2] | –[2] | –[2] |
| Mauritania | 10 | 10 | 10 | 15 |
| Netherlands[18] | 15 | 0/5[5] | 0/8[19] | 5/15[20] |
| Portugal | 15 | 10[6] | 15 | 10 |
| Qatar | 0 | 0 | 0 | 5 |
| Romania | 15 | 15 | 15 | 15 |
| Russia | 15 | 5[4] | 15 | 15 |
| Saudi Arabia | 0 | 0 | 0 | 7 |
| South Africa | 15 | 10[4] | 10 | 10 |
| Spain | 15 | 5[7] | 5 | 7/14[17] |
| Switzerland | 15 | 5[8] | 0/10 | 10 |
| Syria | 15 | 15 | 10 | 18 |
| Turkey | 12 | 12 | 10 | 10 |
| Ukraine | 15 | 5[4] | 0/10 | 10 |
| United Arab Emirates | 0 | 0 | 0 | 10 |
| United Kingdom[9] | 15 | 5[4] | 7 | 10 |

Notes:

1. No reduction under the treaty, the domestic rate applies.
2. Income is subject to tax in the source country only, the domestic rate applies.
3. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the paying company.
4. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
5. The reduced rate applies if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the paying company.
6. The reduced rate applies if the beneficial owner is a company which, during a consecutive period of two years preceding the payment of the dividends, holds directly at least 25% of the capital of the paying company.
7. The reduced rate applies if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the paying company.
8. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the paying company.
9. Effective date: Algeria: 1 January 2017 (withholding and other taxes). United Kingdom: 1 January 2017 (withholding taxes)/1 April 2017 (corporate tax)/6 April 2017 (income and capital gains taxes).
10. Interest on debts, deposits and guarantees paid by resident persons to non-resident companies is subject to a final 10% withholding tax while a 40% (50% for individuals) final withholding tax applies to interest on bearer securities.
11. Royalties paid by resident persons to non-resident companies are subject to a 30% final withholding tax while an effective 21% withholding tax (70% calculated on 30% of the gross amount) is levied on the use of computer software.
12. 10% if the interest arises in France and 12% if it arises in Algeria.
13. The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic or scientific work, excluding cinematograph films and films or tapes for radio or television broadcasting while the 15% rate applies in all other cases.
14. The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic or scientific work excluding cinematograph films and works recorded for radio or television broadcasting while the 10% rate applies in all other cases when the royalties arise in France and 12% when they arise in Algeria.
15. The 5% rate applies to royalties related to copyright of literary, artistic or scientific work, with the exclusion of cinematograph films and films or tapes used for radio or television broadcasting while the 15% rate applies in all other cases.
16. The 2% rate applies to royalties which are paid for the use of, or the right to use, industrial, commercial, or scientific equipment while the 10% rate applies in all other cases.
17. The 14% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films, or films, tapes and other means of image or sound reproduction while the 7% rate applies in all other cases.
18. Effective date: 1 January 2021.
19. The 0% rate applies if (i) the payer of the interest is the Government, a political subdivision or a local authority thereof (ii) the interest is paid to the Dutch Government, a political subdivision or a local authority thereof, or to institutions or bodies (including financial institutions) wholly owned by the Netherlands or subdivision or authority, or the Dutch Central Bank (iii) the interest is paid to any institution or body (including a financial institution) in relation to loans made in application of an agreement concluded between the Governments of the Contracting States (iv) the interest is paid in respect of a loan granted by a bank, any other financial institution or a pension fund (v) the interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment.
20. The 15% applies to royalties paid for the use of, or the right to use any copyright of literary, artistic or scientific work including cinematographic films, or films, tapes and other means of image or sound reproduction. The 5% rate applies in all other cases.

# ANGOLA



## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Luanda | Tiago Rocha | +244 932 225 030<br>tiagorocha@pkf.co.ao |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Angola |
| Capital: | Luanda |
| Main languages: | Portuguese |
| Other languages | Umbundu, Kimbundu, Kikongo and others |
| Population: | 34.9 million (2022 estimate) |
| Monetary unit: | Angolan Kwanza (AOA) |
| Internet domain: | .ao |
| Int. dialling code: | +244 |

## KEY TAX POINTS

- Income obtained by corporate entities established in Angola is subject to three different taxes: (i) Industrial Tax, which is levied on the corporate taxable income, including capital gains on the sale of fixed assets; (ii) Investment Income Tax, applicable to capital gains on the sale of securities, royalties, interest and dividend income; and (iii) Rental Income Tax, on rents collected from rented real estate as well as on deemed rented income from real estate owned by companies.
- A tax reform was enacted in 2020. The law introducing the changes was published on 20th July 2020 and entered into force on 19th August 2020, as a result of which the standard CIT rate was reduced from 30% to 25%. This rate also applies to non-residents with a permanent establishment in Angola. Different rates may apply to certain sectors (like mining and Oil & Gas).
- Services rendered by non-resident entities are subject to a 15% withholding tax rate.
- Transfer pricing legislation enables the tax authorities to make corrections to taxable income when either the conditions (or prices) agreed between related parties are different from those that would have been agreed and accepted between independent entities in comparable transactions.
- The VAT Code was published on 24th April 2019 and entered into force on 1st October 2019. VAT is levied on domestic supplies of goods, services and imports at a rate of 14%, although certain specified products and services are exempt from tax. The VAT regime was revised in order to widen exemptions laid out in article 12(1)(e) of the VAT Code to the conveyance and lease of property, whether for commercial, industrial, housing or any other purpose.
- Excise duty entered into force in Angola from 1st October 2019 onwards. All production, imports, and sales by public auction are subject to excise duty, calculated at different rates of 2%, 5%, 19%, and 25%, depending on the kind of product. The applicable rates for oil derivatives remain at 2%.
- Stamp duty is levied on a number of operations and contracts. With the implementation of VAT, companies covered by standard and/or simplified VAT regimes are exempt from stamp duty on the receipts.
- Special tax regimes are in place for oil and mining companies.
- The main change to the Employment Income Tax relates to the tax rates. The aim of this change is to remove the burden imposed on lower incomes, maintain the tax burden imposed on average incomes, and progressively increase the tax burden imposed on high incomes. New tax brackets are included and the minimum tax applicable to income over AOA 10,000,000 increases from 17% to 25%.
- Social security is due on remunerations paid at an 8% rate for the employer and a 3% rate for the employee.
- A new Property Tax Code was approved that entered into force on 9th August 2020 and replaces the Urban Property Tax Code.
- Foreign currency transfers on technical assistance and management services are subject to a 10% surcharge (special contribution).

## A. TAXES PAYABLE

### CORPORATE INCOME TAX

Companies are subject to the Corporate Income Tax Code (*Código do Imposto Industrial*), which was introduced by Law 19/14 of 22nd October 2014 and entered into force on 1st January 2015.

Corporate income tax (CIT) is assessed on profits arising from business activities (industrial and commercial) carried out in Angola by companies (including permanent establishments (Pes) of non-resident entities). In addition to CIT, Investment Income Tax (IIT) is withheld from domestic dividends, repatriation of profits of PEs of non-resident entities, interest on shareholders' loans, capital gains, royalties, interest and other types of income from capital invested. CIT is imposed on a worldwide basis for resident companies.

The Angolan system has two tax regimes: the general regime and the simplified regime. The simplified regime applies to taxpayers subject to CIT who are subject to the general VAT regime (business turnover equal to or not exceeding USD 250,000). Are excluded from the simplified regime:

- public companies and public entities;
- financial institutions;

- companies covered by special tax regimes;
- telecom companies; and
- subsidiaries or branches of foreign entities.

Taxpayers who have been included in the simplified taxation regime may apply to join the general regime, subject to certain conditions, and must submit their application with the relevant tax office by the end of February of the year to which the CIT relates.

The general regime applies to taxpayers with revenue exceeding USD 250,000 for either 2 consecutive or non-consecutive years and the taxable income for a taxpayer subject to this regime is the business income or profits (i.e. profits from any commercial or industrial activities), covering all types of income and gains, including those of an extraordinary nature, whether derived from the main business activity of the enterprise or from ancillary activities, including certain other items.

A tax reform was enacted in 2020. The law introducing the changes was published on 20th July 2020 and entered into force on 19th August 2020, as a result of which the standard CIT rate was reduced from 30% to 25%. This rate also applies to non-residents with a PE in Angola. Non-residents without a PE in Angola are subject to final withholding taxes at various rates depending on the type of income derived from Angola.

Income derived exclusively from agricultural, aquaculture, apiculture, poultry, livestock, fishing and forestry activities (except for the exploitation of wood) is subject to a single rate of 10%.

Income from banking and insurance activities, telecommunications companies and Angolan oil companies is subject to a 35% CIT rate.

CIT advance payments may apply to corporate entities at the rate of 6.5% or 2% for service providers and 2% for sellers of goods.

Mining companies are subject to CIT at a rate of 25%. Oil companies are subject to an oil income tax (which substitutes the CIT) at a flat rate of 50%, or at an effective rate of 65.75% for production sharing agreement partners and joint venture partners, respectively.

## WITHHOLDING TAX ON SERVICE CHARGES

Most services are subject to withholding tax at a rate of 6.5%. The withholding tax rate applicable to services rendered by non-resident entities increased from 6.5% to 15%. This withholding tax should be retained by the company paying for the service, and may be deducted on the corporate income tax return ("Modelo 1") presented by the supplier of the service as an advance payment, up to the amount of the tax assessed. The excess of the amount withheld over the assessed tax amount may be carried forward and offset against the corporate tax liability of the subsequent 5 years.

Services provided by resident companies not subject to withholding tax are: (i) educational Services; (ii) medical services; (iii) hospitality services; (iv) passenger transport services; (v) rental of equipment subject to Investment Income Tax; (vi) telecommunications services; and (vii) financial brokerage and insurance services.

## OVERSEAS SERVICE CHARGES

Management and technical assistance services provided by foreign entities must be supported by a contract which can be subject to approval of the Ministry of Economy, depending on its amount. The total amount of services contracted with overseas service suppliers shall not exceed 10 times the equity value of the Angolan company acquiring such services. In case this condition is not met, the excess amount will be treated as a non-deductible expenditure.

Payment of services to non-resident companies is subject to a final withholding tax rate of 6.5%, except in the case of the following services, which are not subject to such levy: (i) educational services; (ii) medical services; (iii) transportation services, including passengers; and (iv) rental of equipment subject to Investment Income Tax.

## PERMANENT ESTABLISHMENT

In accordance with the Angolan General Tax Code, a fixed place of business from which the company exercises the whole or a part of its activity, namely an office, a branch or a factory is deemed to be a permanent establishment. The continued provision of services for periods longer than 90 days within any 12-month period may also be deemed to be a permanent establishment. Foreign companies with a permanent establishment in Angola are subject to Industrial Tax on: (i) profits obtained by the Angolan permanent establishment; (ii) profits obtained by the head office from the sale of goods in Angola of a similar nature to those sold by the permanent establishment in that territory; and (iii) profits obtained by the head office from other commercial activities carried out in Angola of a similar nature to those carried out by the permanent establishment in that territory.

An Angolan branch of a non-resident company is taxed on its profits and capital gains in the same way as a resident Angolan company. Repatriation of Angolan branch profits to its head office is subject to Investment Income Tax at a rate of 10%.

## CAPITAL GAINS

Capital gains obtained by resident companies on the sale of fixed assets are included in their taxable income, which is taxed under Industrial Tax at the standard flat rate of 25%. Capital gains on the sale of shares and other securities are taxed under Investment Income Tax at a rate of 10%.

## VAT

As from 1st January 2021, all companies with turnover exceeding USD 250,000 are subject to the standard VAT regime, under which taxpayers charge VAT and may deduct VAT paid on goods and services acquired for the purpose of (i) transactions liable to VAT (ii) transactions that would be liable to VAT if they were located in Angola and (iii) zero-rated transactions.

VAT related to the following expenses is not deductible:

(a) expenses related to tourist vehicles, recreational crafts, helicopters, airplanes, motorcycles and mopeds;

(b) accommodation and meals expenses; and

(c) tobacco expenses.

However, VAT on expenses (a) and (b) may be deductible when the supply or exploitation of such goods is the company's activity.

For purposes of VAT deduction, taxpayers must hold a properly issued invoice (or the customs note in case of VAT paid on import of goods). VAT is deductible in the month in which the invoice was issued, or in the following month.

The standard VAT rate is 14% while a reduced 7% rate is applicable to taxpayers that fall under the Simplified Regime.

The following supplies of goods and services, among others, are VAT exempt (without the right to deduct input VAT):

- medical services performed by hospitals, clinics and similar establishments;
- educational services provided by entities duly recognized by the Ministry of Education;
- books, including in digital format;
- sale and lease of immovable property, either for housing or commercial purposes (which do not include the provision of services regarding housing under the hotels industry);
- lease of immovable property for house purposes;
- collective transport of passengers;
- health insurance, life insurance, and reinsurance operations;
- financial intermediation services.

Foreign companies without a head office or PE in Angola supplying goods in Angola or services to private individuals are required to register for VAT purposes in Angola, and charge the VAT due.

In case of services rendered by said foreign companies to an Angolan taxpayer, the reverse charge mechanism applies and the responsibility to assess and pay the tax due lies with the acquirer of the services.

### EXCISE DUTIES

As a result of the publication of the VAT Code on 24th April 2019, the Consumption Tax Code has been revoked. At the same time, the Excise Duties Code has been introduced, which has entered into force as from 1st October 2019. The Excise Duties Code covers transactions on specific products, including alcoholic beverages, tobacco, jewels, airplanes, vehicles, firearms and art items at rates varying from 2% to 25%.

Producers are required to assess the excise duties when goods are made available to purchasers and/or clients and these should be submitted with the tax authorities by the end of each month.

### STAMP DUTY

Stamp Duty (“Imposto de selo”) is levied on a wide range of operations and contracts. With the implementation of VAT, financing operations, leasing, insurance, and reinsurance transactions became subject to VAT and are thus not exempted from VAT. They are therefore exempt from stamp tax. In addition, the VAT Code revoked stamp tax on customs and taxable persons covered by the general regime of the VAT, as well as those covered by the transitional regime, are exempt from 1% stamp tax on the receipts.

Both the operations on which the tax is levied and the applicable rate are listed in the table annex to the Stamp Duty Code. Tax rates vary from 0.1% to 1%. Certain items are taxed at a determined fixed amount. Some examples are: (i) Amounts collected by a company from its customers (1%). Entities covered by the standard and/or simplified VAT regime should be exempt from stamp duty on the receipts; (ii) Loans (0.1% to 0.5% on the principal amount of the loan depending on the period for which the loan is contracted); (iii) Acquisition of property (0.3% on the property amount); (iv) Notary acts (AOA 2,000). In the particular case of loans granted by foreign companies as well as in the case of interest charged by a foreign bank, the tax must be self-assessed (under the reverse charge mechanism) and paid by the borrower.

### INVESTMENT INCOME TAX

Investment Income Tax applies to investment income, such as interest, dividends, royalties and capital gains on the sale of shares and other securities. The tax rates vary from 5% (e.g. loan interest with maturity over 3 years and dividends from listed companies) to 10% (e.g. dividends, royalties, capital gains, bank deposits interest) or 15% (interest on loan agreements). In the case of non-remunerated loan contracts, the tax authorities may deem that the loans are remunerated at a 6% interest rate. Dividends paid between Angolan resident companies are exempt from taxation if a participation of 25% has been held for a 1 year period prior to the dividend distribution, if not a tax of 10% must be withheld.

### PROPERTY TAX

A new Property Tax Code was approved that entered into force on 9th August 2020 and replaces the Urban Property Tax Code. Under the new Property Tax Code, property tax is levied as follows:

- Urban property that is not rented is subject to property tax at the following rates based on the registered property value:
  - o up to AOA 5,000,000 - 0.1%
  - o AOA 5,000,001 to 6,000,000 - AOA 5,000
  - o AOA 6,000,001 and over - 0.5% on the registered value above AOA 5,000,000.
- Rented property is subject to property tax at a rate of 25% on the taxable rental income, which is 60% of the gross rental income (i.e., 15% rate on gross rental income), although this may not be lower than property tax due based on registered value;
- Rural property is subject to property tax corresponding to a registered value of AOA 10,397 per hectare;
- The transfer of property is subject to property tax at a rate of 2%.

Property tax may be increased by 50% in cases where buildings are left vacant for more than one year or land for construction is not effectively utilised for more than three consecutive years.

## B. DETERMINATION OF TAXABLE INCOME

### GENERAL AND SIMPLIFIED REGIME

Taxable income for a taxpayer under the general regime is generally the gross income less deductible expenses and less losses attributable to the fiscal year and adjustments according to the CIT Code.

Taxable income for a taxpayer under the simplified regime that has organised accounting is determined on the same basis as for general regime taxpayers. However, when simplified regime taxpayers do not have organised accounting, the taxable income is determined by its simplified accounting model or the purchase and sale registration book and services provided, according to the provisions of the CIT Code.

### EXPENSES DOCUMENTATION

Business expenses that are not properly documented will not be accepted as tax deductible. Furthermore, they will give rise to an additional adjustment in computing the corporate taxable income, as follows: (i) in case of unproperly documented expenses (expense supported by document that does not contain all relevant elements an invoice must contain): an additional amount of 2% of the expense must be adjusted in computing the corporate taxable income; (ii) in case of undocumented expenses (expenses not supported by a valid document, but where it is possible to verify the effectiveness of the expense): an additional amount of 4% of the expense must be adjusted in computing the corporate taxable income; (iii) in case of confidential expenses: an additional amount of 30% of the expense must be adjusted in computing the corporate taxable income (50% in the case of exempt taxpayers).

### DEPRECIATION OF FIXED ASSETS

Fixed assets can be depreciated for tax purposes over the useful life of the asset. The depreciation rates are set by specific legislation and the normal method of calculation is the straight-line method. Any other method must be approved by the tax authorities.

### STOCK / INVENTORY

Inventory must normally be valued at the effective acquisition or production cost (historical cost). Any other method needs to be approved by the tax authorities.

### DIVIDENDS

When subject to Investment Income Tax dividends are excluded from the tax basis for CIT proposes. Same principle applies to other income subject to Investment Income Tax, such as capital gains on the sale of shares.

### INTEREST DEDUCTION

Interest charges arising from shareholder loans are tax deductible for corporate income tax purposes up to the limit resulting from the annual average interest rate defined by the Angolan Central Bank. Interest on loans contracted with other parties are eligible for deductibility.

### NET OPERATING LOSSES

Net operating losses incurred by resident companies or by a branch of a non-resident company may be carried forward and offset against taxable profits for the following 5 years (effective 19th August 2020, previously 3 years).

### FOREIGN EXCHANGE GAINS/LOSSES

Foreign exchange gains and/or losses arising from fixed assets and liabilities are accepted for tax purposes up to a limit of 7% of the amount of gains/losses for the year in question.

### ADDITIONAL TAXATION

Confidential expenses are subject to additional taxation (“Tributação Autónoma”) at rates of 30% and 50%. Donations granted over the limit and scope of the applicable Law are also subject to additional taxation at a rate of 15%. The amount of additional taxation should be added to the taxable income, and in case of losses has to be paid autonomously.

### FOREIGN SOURCED INCOME

Angolan companies are taxed on their worldwide income, including any foreign branch income.

### INCENTIVES

Private investment projects in Angola may benefit from tax incentives concerning CIT, SISA, IPU, Investment Income Tax, and Stamp Duty. These benefits are granted under a reduction of CIT rate by 20% for a period of two years and the reduction of the Investment Income Tax rate applicable to dividends by 25% over a two-year period.

With respect to this special regime, tax benefits are granted in case of private investments made in national priority sectors (e.g., education, agriculture, health, tourism, telecommunications, energy, among others) and vary according to the zone where the investment is made.

## C. FOREIGN TAX RELIEF

Foreign tax credits can generally not be deducted from domestic tax items. However, foreign tax credits may be granted according to the provisions of double tax treaties.

## D. CORPORATE GROUPS

Companies included in an economic group may opt to be taxed on the aggregate amount resulting from the sum of the taxable profits and losses computed within the referred economic group. This regime is only available when: (i) company is considered a Major Taxpayer; and (ii) parent company holds at least 90% of subsidiaries’ share capital, and the majority of voting rights.

## E. RELATED PARTY TRANSACTIONS

There is a general transfer pricing provision that allows the tax authorities to adjust the taxable income of any taxpayer as a result of non-arm’s length transfer pricing practices. A company listed as Major Taxpayer is required to prepare transfer pricing documentation.

## F. WITHHOLDING TAX

- Dividends paid to non-resident corporate shareholders are subject to a 10% investment income withholding tax on the gross dividends;

- Interest payments to non-resident companies are subject to a 15% investment income withholding tax on the gross amount paid.
- Royalty payments to non-residents are subject to a 10% investment income final withholding tax on the gross amount.
- Effective 19th August 2020, the withholding tax rate on services provided by non-resident entities is increased from 6.5% to 15%, which is a final withholding tax.
- Repatriation of profits attributable to a PE of a non-resident is subject to a 10% investment income withholding tax on the gross amount.

## G. EXCHANGE CONTROL

Foreign currency transfers in relation to the payment of technical assistance and management services are subject to a special contribution of 10% on the amount of the request of funds abroad. This rate has been announced as temporary and is aimed at facing the financial impact on the economy resulting from the reduction in oil prices.

## H. PERSONAL INCOME TAX

Individuals receiving employment income for work performed in Angola are subject to personal income tax. These taxpayers are divided into three groups: (i) Group A: Employment income (including salaries of board direction members); (ii) Group B: Independent professionals (listed in the annex to the Personal Income Tax Code); and (iii) Group C: Industrial and commercial activities.

### EMPLOYMENT INCOME (Group A)

Employment income is taxed by withholding tax (final) levied on the monthly remuneration paid, at the following progressive rates (effective 1st September 2020):

| Monthly taxable income (AOA) | Tax payable (AOA) and tax rates (%) |
|---|---|
| 0 – 70.000 | Exempt |
| 70,001 – 100,000 | 3,000 + 10% of the amount exceeding 70,000 |
| 100,001 – 150,000 | 6,000 + 13% of the amount exceeding 100,000 |
| 150,001 – 200,000 | 12,250 + 16% of the amount exceeding 150,000 |
| 200,001 – 300,000 | 31,250 + 18% of the amount exceeding 200,000 |
| 300,001 – 500,000 | 49,250 + 19% of the amount exceeding 300,000 |
| 500,001 – 1,000,000 | 87,250 + 20% of the amount exceeding 500,000 |
| 1,000,001 – 1,500,000 | 187,250 + 21% of the amount exceeding 1,000,000 |
| 1,500,001 – 2,000,000 | 292,250 + 22% of the amount exceeding 1,500,000 |
| 2,000,001 – 2,500,000 | 402,250 + 23% of the amount exceeding 2,000,000 |
| 2,500,001 – 5,000,000 | 517,250 + 24% of the amount exceeding 2,500,000 |
| 5,0000,001 – 10,000,000 | 1,117,250 + 24.5% of the amount exceeding 5,000,000 |
| Above 10,000,000 | 2,342,250 + 25% of the amount exceeding 10,000,000 |

### INDEPENDENT PROFESSIONALS

Self-employment income of Groups B and C is now subject to a withholding tax rate of 6.5% on the amount of the service provided (in line with the Corporate Income Tax rules foreseen for the payment of services). Similarly, random services acquired from non-residents are subject to withholding tax at the rate of 15%. Fees paid to independent professionals are subject to a (final) withholding tax at a flat rate of 15% on 70% of their gross fees (being an effective tax rate of 10.5%).

### INDUSTRIALS AND COMMERCIALS ACTIVITIES (Group C)

Income derived from industrial and commercial activities is subject to a rate of 30% determined according to the Minimum Profits Table or to a rate of 6.5% in other situations.

### MINIMUM WAGE

Minimum wage is determined according to the economic sector in which the employee works:

- Commerce and extractive industry: AOA 32,181.15;
- Transports, services and processing industry: AOA 26,817.63;
- Agriculture: AOA 21,454.10.

### SOCIAL SECURITY CONTRIBUTIONS

Social security contributions are due on the gross income of employees at the following rates:

- 8% for the employer; and,
- 3% for the employee (to be withheld by the employer).

These contributions are intended to cover family, pension, and unemployment protection.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Angola has a double tax treaty in place with Portugal (effective date: 1st January 2020). The withholding tax rates are as follows:

- Dividends - 8% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate

reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend); in all other cases 15%;
- Interest – 10% (a reduced 0% rate applies if interest is paid by, or beneficially owned by the other Contracting State, a political or administrative subdivision or a local authority thereof, or the Central Bank of a Contracting State);
- Royalties – 8%;
- Fees for technical services (managerial, technical, or consultancy) – 5%.

Angola also has a double tax treaty in place with the United Arab Emirates, which entered into force on 28th March 2020 (effective date: 1st January 2021). The withholding tax rates are as follows:
- Dividends - 8%;
- Interest - 8%;
- Royalties - 8%;
- Fees for technical services (managerial, technical, or consultancy) - 5%.

# ANTIGUA AND BARBUDA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| St. John's | PKF Antigua | +1 268 462 0828<br>pannellf@candw.ag |

## BASIC FACTS

| | |
|---|---|
| Full name: | Antigua and Barbuda |
| Capital: | St. John's |
| Main languages: | English |
| Population: | 97,928 (2022 estimate) |
| Monetary unit: | East Caribbean Dollar (XCD) |
| Internet domain: | .ag |
| Int. dialling code: | +1 |

## KEY TAX POINTS

- Corporate income tax is levied at 25% on resident companies and branches held by non-resident companies.
- Capital gains are generally not taxable. If capital gains occur regularly and frequently, they are considered income from trade or business.
- The standard rate of Antigua and Barbuda sales tax (ABST) is 15% (similar to VAT).
- There is no withholding tax on payments to resident companies. Dividends, interest, royalties, rentals, technical services fees and management fees paid by a resident company to a non-resident company are subject to a 25% final withholding tax unless a tax treaty applies.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

### COMPANY (CORPORATION) TAX

A resident company is taxed on its worldwide income. A non-resident company is taxed on Antigua and Barbuda-sourced income only. A company is deemed to be resident if:
- it is incorporated or registered in Antigua and Barbuda;
- it is centrally managed and controlled in Antigua and Barbuda.

Corporate income tax is currently imposed at a rate of 25%. However, international business corporations (IBC) are taxed on profits at a 1% to 2.5% rate and a reduced rate of 22.5% applies to banks that offer mortgages provided they maintain an interest rate throughout the year of maximum 7%. The tax return must be filed within three months after the end of the tax year, along with the financial statements failing to which a penalty of 10% applies.

### CAPITAL GAINS TAX

Capital gains are generally not taxable. If capital gains occur regularly and frequently, they are considered income from trade or business.

### BRANCH PROFITS TAX

Branch income is taxed on the same basis and at the same rate (25%) as that of corporations.

### SALES TAX / VALUE ADDED TAX (VAT)

Antigua and Barbuda sales tax (ABST) is a value added type tax introduced in Antigua in 2007. ABST is levied on local consumption and is borne by the consumer. Taxable activities are sales of goods and supplies of services within Antigua and Barbuda and the import of goods into Antigua and Barbuda.

The standard rate of ABST is 15%. Also, a 12.5% reduced rate plus 1.5% Tourism Advertising (total 14%) applies to hotel or holiday accommodation, along with supplies that are ancillary or incidental to the supply of hotel or holiday accommodation while certain goods and services may also be zero-rated (international transportation, export, basic food items, water, electricity for residential use, sale of new residential property and fuel) and exempt (financial services, local transportation, education, services related to long-term accommodation (over 45 days), medical and veterinary services) from ABST.

The registration threshold for ABST is a total value of supplies exceeding XCD 300,000 in a continuous period of 12 calendar months.

## OTHER TAXES

### REAL ESTATE WITHHOLDING TAX

Property is subject to tax yearly at the level of the owner and is assessed by the Property Valuation Department on the market value of real property with rates ranging from 0.1% (agricultural land) to 0.5% (commercial buildings), depending on the use.

### SOCIAL SECURITY

Employers are subject to 8.5% social security contributions on a maximum ceiling of XCD 6,500 per month and 3.5% medical benefits scheme contributions of the employee's salary or wages.

### STAMP DUTY

Stamp duty on the sale of real property is 7.5% for the vendor and 2.5% for the purchaser. Non-resident sellers are subject to a 5% stamp tax on the appreciation value of the real property. Non-resident purchasers must obtain an alien land holding licence at 5% of the property value and pay a stamp duty of 2.5%. Transfer stamp tax is levied on the market value of the shares or book value of the shares, whichever is higher. Vendors pay stamp tax at a rate of 5%, purchasers pay stamp tax at a rate of 2.5%.

### CUSTOMS AND EXCISE DUTIES

Customs duties are imposed under the CARICOM Common External Tariff. There is a general exemption from duties with respect to goods imported from other CARICOM member states. Customs import duties range from 0% to 70%. Most basic food and drink items (juices and sodas) and baby-related items are subject to a 20% duty while guns and ammunitions are subject to a 70% duty. An excise duty is imposed on all spirits at varying rates.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is calculated as net profit before tax, adjusted for non-deductible expenses and allowable deductions.

### DEPRECIATION

Depreciation allowed for tax purposes is computed by way of the reducing balance method at prescribed rates. Initial allowances are granted on industrial buildings and on capital expenditures incurred on plant and machinery by a person carrying on a trade or undertaking. In addition, an annual allowance of 2% is granted on all buildings.

| Assets | Depreciation rate (%) |
|---|---|
| Buildings, roads, fencing and pavements | 2 |
| Leasehold improvements | 4 |
| Furniture, fixture, fittings and equipment | 7.5 |
| Plant and machinery and office equipment | 10 |
| Motor vehicles, golf carts, boats and aircrafts | 20 |
| Motor trucks and lorries | 22.5 |
| computer hardware and software | 33.33 |

There are no provisions regarding depreciation or amortisation of expenditure on intangible property such as patents or goodwill, or pre-incorporation and similar expenses.

### STOCK / INVENTORY

Inventory is generally stated at the lower of cost or net realisable value. The first in first out (FIFO) and average cost methods of valuation are generally used. However, the tax authorities will generally accept a method of valuation that conforms to standard accounting practice in the trade concerned. The last in first out (LIFO) method is not allowed.

### CAPITAL GAINS AND LOSSES

Capital gains are generally not taxable while capital losses are not deductible. However, capital gains that occur regularly and frequently are considered ordinary business income.

### DIVIDENDS

Dividends received by a company resident in Antigua and Barbuda from another company resident in Antigua and Barbuda are taxed at the corporate income tax rate of 25%. Credit is given to the recipient for the tax already paid on the dividend in computing the tax liability.

### INTEREST DEDUCTIONS

All outgoings and expenses wholly and exclusively incurred in the production of taxable income are deductible and thus are paid interest and royalties. There are no thin capitalisation rules.

## LOSSES

Losses can be carried forward for up to 6 years while losses cannot be carried back. Losses may only offset 50% of chargeable income in an income year. Loss carry-back is not permitted.

## FOREIGN SOURCE INCOME

Resident companies are subject to tax on their worldwide income. Foreign income is subject to the general rules of income tax and foreign business income is calculated similar to domestic business income while capital gains on foreign assets are not taxable. Foreign dividends, interest and royalties received by resident companies are included in chargeable income for their gross amount, less related outgoings and expenses.

## TAX INCENTIVES (IBT Act No. 28th Of 1982 As Amended)

**International Business Corporations Act**

Effective 1st September 2016, the International Banking Act, 2016 requires that all Corporations, which are registered as International Business Corporations, and are engaged in the International Financial Services, are subject to the Offshore Banking Tax, payable to the Commissioner of Inland Revenue, in lieu of Income tax, at the following rates:

- 2.5% on all profits and gains up to $10,000,000
- 2% on all profits and gains from $10,000,001 up to $20,000,000
- 1.5% on all profits and gains from $20,000,001 up to $30,000,000
- 1% on all profits and gains from $30,000,001

**Investment Authority Act 2006**

The 2006 Act sets the framework for the promotion of investment opportunities in Antigua and Barbuda by introducing a system of registration of businesses, an investment code and a range of incentives which are available for both local and foreign investors, like exemption from income tax, withholding tax and customs duties and reduction of stamp duty and property tax.

## C. FOREIGN TAX RELIEF

In the absence of a double tax treaty, unilateral relief of double taxation is restricted to relief for British Commonwealth taxes. In case of income taxed both in the Commonwealth country and in Antigua and Barbuda, limited relief is available for resident companies against Antigua and Barbuda income tax for the income taxes of British Commonwealth countries assessed on or deducted at source.

Unilateral relief for an eligible Commonwealth income tax is half the Antigua rate (12.5%). However, Antigua and Barbuda will only grant the unilateral relief if the source country grants similar relief to its residents for Antigua and Barbuda taxes. Unilateral relief is granted on a per-country basis and no further credit is granted for underlying tax. Foreign taxes of non-Commonwealth countries are considered to be an expense and therefore deductible.

## D. CORPORATE GROUPS

Group taxation is not permitted in Antigua and Barbuda.

## E. RELATED PARTY TRANSACTIONS

There are no transfer pricing regulations as such, nor are there rules on Controlled Foreign Companies (CFC).

## F. WITHHOLDING TAX

There is no withholding tax on payments to resident companies. Interest, royalties, rentals, technical services fees and management fees paid by a resident company to a non-resident company are subject to a 25% final withholding tax unless a tax treaty applies.

## G. EXCHANGE CONTROL

There are no limits on foreign exchange transactions.

## H. PERSONAL TAX

There is no personal income tax in Antigua and Barbuda.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 25 | 25 | 25 | 25 |
| Individuals | 25 | -- | 0/25 | 25 |
| **Treaty countries**[5] | | | | |
| Caricom[1] | 0/15[2] | 0/15[2] | 15 | 15 |
| Switzerland[6] | --[3] | --[3] | --[3] | 0 |
| United Kingdom | 0 | 0 | --[4] | 0 |

1. Multilateral treaty ratified by Antigua, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago.

2. The higher rate applies to dividends distributed from preference shares.
3. Dividends and interest are not covered under the treaty, thus the domestic rates apply.
4. Interest is not covered under the treaty, thus the domestic rate applies.
5. IBCs (International Business Corporations, see higher) do not have access to the tax treaties.
6. 1954 Treaty originally concluded between the UK and Switzerland and subsequently extended to Antigua.

# ARGENTINA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Buenos Aires | Julián Laski | +5411 5235 6393<br>julianlaski@pkfargentina.com.ar |

## BASIC FACTS

| | |
|---|---|
| Full name: | Argentine Republic |
| Capital: | Buenos Aires |
| Main languages: | Spanish |
| Population: | 45.92 million (2022 estimate) |
| Monetary unit: | Argentine Peso (ARS) |
| Internet domain: | .ar |
| Int. dialling code: | +54 |

## KEY TAX POINTS

- Companies domiciled in Argentina are subject to income tax on their worldwide income. Non-resident companies are subject to tax on Argentina-sourced income.
- There is no separate capital gains tax levied on capital gains of companies as they fall under the scope of corporate income tax.
- VAT is applied at all stages of the production and selling processes (output tax). Tax suffered in the immediately preceding stage is deductible (input tax).
- Any foreign taxes paid on foreign-accrued income may be credited against Argentine income tax up to the limit of the Argentine tax on the same income.
- Transactions between Argentine companies and related parties are deemed to take place at arm's length rates for tax purposes. For income tax assessment purposes, Argentine Law provides for the traditional methods generally used for transfer pricing (comparable uncontrolled price, resale price, cost plus, profit split, transaction net margin) to demonstrate that an arm's length price has been used.
- Argentine-sourced income paid to foreign recipients not having a permanent establishment in Argentina is subject to 35% withholding tax. However, for each activity, the law establishes a percentage of presumptive net income on which 35% withholding tax is applicable, thereby reducing the effective tax rate.
- Income tax is levied on income earned by resident individuals in Argentina and abroad.
- Personal assets tax (wealth tax) is levied on all assets, wherever situated, of Argentine domiciled persons, on Argentine assets of non-domiciled persons and on shares issued by an Argentine company (the company pays the tax on behalf of the shareholders). In the case of trusts (excluding financial trusts), the trustee pays the tax on behalf of the beneficiaries.

## A. TAXES PAYABLE

## COMPANY TAX

Companies domiciled in Argentina are subject to income tax on all their income, whether sourced in Argentina or in a foreign country. Non-resident companies are subject to tax on Argentine-sourced income. Income from the export of goods situated in Argentina is deemed to be fully taxable and, for other specific international activities (e.g. news agencies, insurance, commercial use of films produced abroad, international transport etc.), the tax law sets a certain percentage as presumed income.

**Tax rate for corporations:**

Corporations *(Sociedades Anónimas, Sociedad de Responsabilidad Limitada - Limited Liability Corporation - en Comandita)* and branches of foreign companies (permanent establishments) domiciled in Argentina are liable to tax on the basis of a progressive tax rate ranging from 25% to 35% of annual taxable net income (effective from 1st January 2021).

| Taxable income (ARS) | Tax due on lower limit (ARS) | Marginal rate on the excess (%) |
|---|---|---|
| Up to 5,000,000 | 0 | 25 |
| 5,000,001 – 50,000,000 | 1,250,000 | 30 |
| Over 50,000,000 | 14,750,000 | 35 |

For partnerships, the tax is charged to each partner according to a progressive tax rate scale ranging from 5% to 35% depending on the amount of the taxable income.

Foreign recipients not qualifying as a permanent establishment in Argentina are subject to withholding tax at source. The rate is 35% on the applicable presumptive net income percentage, depending on the type of payment made (i.e. interest, fees, royalties, rentals, etc.). For companies organised or incorporated in Argentina, any income tax (or similar tax) paid abroad on a foreign source income is creditable against Argentine income tax, up to a certain limit.

Corporate income is taxed on an accrued basis during the company's business year. The tax is assessed annually within five months after the fiscal year end. Advanced payments must be made monthly on the basis of the tax amount paid the previous year. Moreover, the AFIP (Tax Authority) has enforced several withholding tax rulings that involve almost every type of activities. The income tax withheld during the fiscal year is creditable against the income tax assessed, as well as the advanced payments. The balance must be paid at due date. Taxpayers can submit an instalment plan (up to three instalments) accruing interest at a monthly 3.50% rate (on average, may change subject to inflation).

## CAPITAL GAINS TAX

There is no separate tax levied on capital gains for companies organised in the country or for branches as they fall under the scope of income tax. For foreign corporations, capital gains are also included under a withholding at source income tax regime at the time the payment is made.

For foreign resident companies and individuals, capital gains derived from the sale of shares, stocks, bonds and other securities (whether listed or unlisted on the Stock Exchange) are levied on income tax at a rate of 15%. Foreign resident taxpayers can elect to be taxed on the gross sales price. In this case, 90% on the gross sales price will be deemed to be the amount of capital gains that will be subject to a rate of 15%. Therefore, the effective tax rate on the gross sales price will be 13.50%.

## VALUE ADDED TAX (VAT)

This tax is applied to all stages of the production and sales processes (output tax) and the tax amount of the immediately preceding stage is deductible (input tax). The tax is imposed on the following transactions:

- Sale of personal property situated in Argentina;
- Leases and services, including financial and insurance services;
- Real estate leases;
- Work performed on third-party real property;
- Work performed on owned real property, in the case of constructors;
- Production of personal property commissioned by a third party;
- Procurement of natural goods commissioned by a third party;
- Permanent import of personal property;
- Services provided from abroad and used in Argentina (including interest). In this case, input tax must be paid by the local company and it automatically becomes 'input tax' for VAT purposes in the following month;
- Digital services provided from abroad whose use or exploitation takes place in Argentina. The definition of "digital services" includes, among others, the following: the supply and hosting of computer sites and web pages, maintenance, online technical support, the provision of digitized products in general (computer programs, digital books, designs, reports, etc.), memory services and online advertising, software, cloud-based downloads (images, text, information, video, music, games (including casinos), movies, or any digital content), online clubs, blogs, magazines, newspapers, learning , online market services and online auctions, etc.

VAT is assessed on a monthly basis. The inception of the taxable event is to issue the invoice, deliver the goods and render the service or the receipt, whichever is the earliest. The standard tax rate, currently 21%, is charged on the net price of the transaction. There are some leases and services levied at 27% (electricity, telecommunications, etc.). Some goods and services are levied at 10.50% (bovine meat, fresh vegetables, lodgings, interests on loans received from Argentine financial institutions, certain property plant and equipment, newspapers and magazines, transportation for individuals, etc.).

Exports are subject to a zero rate (destination country method). Exporters can apply input tax (incurred in making exports) against output tax arising from other taxable transactions. In case of a net input tax (internal charge), exporters are entitled to a refund (under a special procedure established by the tax authorities).

Input tax arising from the purchase of fixed assets is eligible for a refund if not used to offset output tax after 6 months. Foreign tourists are also entitled to a VAT refund (cash or in credit card account) included in personal property purchases and lodging services in some tourist areas. There are several withholding and 'collection at source' regimes in force. The VAT withheld or collected at source is creditable against the internal charge. In case of a reminding tax credit, it can be offset against any other federal tax liability.

## FRINGE BENEFITS

No tax is levied specifically on fringe benefits, since they are taxed along with income tax and social security contributions.

## MINIMUM PRESUMPTIVE INCOME TAX (MPLT)

This tax has been repealed as from fiscal year 31st December 2019.

## PERSONAL ASSETS TAX PAID ON BEHALF OF SHAREHOLDERS

Companies residing in Argentina are levied on Personal Assets Tax on behalf of their shareholders (see section "H. Personal Assets Tax (Wealth Tax)" below).

## SINGLE SIMPLIFIED TAX

Single simplified tax is a volunteer tax applicable to individuals and small partnerships that perform little activity and where the income does not exceed a threshold set by the Act. The taxpayer can choose whether to pay income tax and VAT or substitute both by paying a monthly single simplified tax. The tax is determined taking into account an income scale.

## LOCAL TAXES

The different provinces and jurisdictions within the territory of Argentina apply local taxes. A brief description is provided as follows:

### TURNOVER TAX

This is a provincial tax levied on the various stages of production and selling processes but no input tax is deductible from the tax amount of the immediately preceding stage (waterfall effect). In general, it applies to gross revenues accrued during each fiscal period (month). The tax rate is approximately 3% to 5% for commercial activities, 1.5% to 4% for industrial activities, and 1% to 3% for primary activities, according to the taxpayer's turnover and other regulations enforced by each provincial Tax Act.

Under an agreement signed between the National Administration and the Provincial Administrations, several exemptions to some productive activities have been established and the tax scheme will be gradually reshaped until this tax becomes ineffective and replaced by a 'neutral' tax. In general, small industrial activities are not liable for this tax in the jurisdiction where the factory is located.

### STAMP DUTY

The duty is levied in each of the country's jurisdictions (Provinces) on juristic acts and instruments entailing a flow of wealth between the parties involved in the legal relationship. Thus, Stamp Duty is applicable *inter alia* to acts whereby for profit transactions on real estate, personal property, services rendered and civil, commercial or financial obligations are documented. Rates vary according to the jurisdiction and the type of instrument involved, the most common one being 1% of the contract value. Under the aforesaid fiscal agreement, Stamp Duty is also to be phased out in the future but currently it is still in effect.

### LAND AND CAR TAXES

These taxes, typically 'ad valorem', are levied on land and automobiles located or registered within any of the country's 24 provinces. The fiscal assessment value of the assets and the applicable tax rate varies according to each jurisdiction.

### MUNICIPAL LEVIES

These are municipal levies applied on a range of taxable bases in the various jurisdictions, in consideration of services provided by each township. The taxable event is the performance of an activity for profit in a town. The tax rate, set by each Municipal Act, is applicable to turnover and depends on the activity performed.

## OTHER TAXES

### EXCISE TAX

This is a federal tax on specific goods and services, levied on a variety of items such as cigarettes, tobacco, alcoholic beverages (whisky, other spirits, liquor, etc.), soft drinks, beer, automobiles, ships and aircrafts, mobile phone services, insurance premiums, luxury items (jewellery, stones, pearls, furs, etc.), some electronic products (microwave oven, television set, radio, several home appliances, etc.). Excise tax is levied on the sales price. The tax rate varies depending on the item. This tax is generally levied at the production or importing stage (first stage). Furthermore, a fuel and gas tax is levied on the sale of some of these products.

### SOCIAL SECURITY CONTRIBUTIONS

These are federal taxes levied on both employers and employees. The taxable base is the salary. An employer files the tax return with the official authority under self-assessment and pays the tax withheld from the employee together with his/her liability. Employee contributions on salaries (withholding) are 17% of salary (including health care).

Employers' contributions are assessed deducting a non-taxable minimum, applying the following tax rates:

| Employer | Social Security Contribution | Health Care | Total |
|---|---|---|---|
| Non-taxable minimum | ARS 7,003 | 0% | |
| Small and medium-sized employer (including health care) | 18% | 6% | 24% |
| Large-sized employer (including health care) | 20.40% | 6% | 26.40% |

Employers' social security contributions can be partially considered as input tax for VAT purposes in some provinces. The amount that can be offset depends on the employer's location, ranging from nil in Buenos Aires up to 8.85% in some other areas.

### TAX ON CHECKING ACCOUNT DEBITS AND CREDITS

This tax is levied on financial transactions. The taxable event is not only each debit and credit in a checking account but also a large variety of financial transactions (money remittances, money orders, cheque deposit on saving accounts, etc.). The law sets out several exceptions (i.e. saving accounts, stock exchange agents, non-profitable associations, etc.), and provides for reduced rates for certain transactions such as time deposits.

To prevent tax avoidance, any amount over ARS 1,000 must be paid by cheque as a binding procedure. The tax rate applicable is 0.60% on each debit and 0.60% on each credit on checking account. Thus the whole transaction is liable for tax at a 1.2% rate. For specific activities performed by some taxpayers (who might use checking accounts to make payments on behalf of a third party) a 0.075% rate is applicable.

33% of the tax amount paid each month is creditable against income tax. The remaining 67% of the tax is a non-recoverable expense. The idea is that Financial Institutions act as withholding agents in order to ensure the revenue of the most important taxes.

Small and Medium-Sized Businesses (SMSB) that qualify and are duly registered as an SMSB can consider 100% of this tax creditable against income tax subject to certain specific conditions.

## B. DETERMINATION OF TAXABLE INCOME

Deductions for income tax assessment purposes include expenses incurred necessarily to obtain, maintain and preserve such income. The Income Tax Act lists specific regulations for dealing with the cost of products, fixed assets, real estate, or securities sold, as well as deductible bad debts, and property plant and equipment depreciation.

## INVESTMENT ALLOWANCE

At present, for general business, there is no income tax incentive scheme in force allowing additional deductions, in whole or in part, for investment in facilities and equipment.

Small and Medium Size Business (SMSB) that qualify and are duly registered as SMSB can deduct 100% depreciation of some property plant and equipment in one year subject to certain specific conditions.

## DEPRECIATION OF FIXED ASSETS

For real estate, the law sets a depreciation rate of 2% annually on the portion attributable to the building. The Tax Act indicates that fixed assets may be depreciated over their estimated useful life on a straight-line basis. Assets subject to depletion (mines, quarries etc.), may be depreciated, not under the straight-line method, but proportionally to the units extracted in each period.

## STOCK / INVENTORY

In the case of resale goods and raw materials, inventories should be valued for tax purposes at the end of each business year at their acquisition cost (last purchase value). For self-manufactured items, the inventory value is determined on the basis of the sales price at the end of the fiscal year after deducting any direct expenses associated with the sale and the net profit margin. In special cases, where cost accounting systems are maintained, own-production goods can be valued at their production cost.

## CAPITAL GAINS AND LOSSES

Capital losses are deductible, subject to the limitations noted in the paragraph under 'Losses' below.

## DIVIDENDS

- Earnings arising from fiscal years beginning as from 1st January 2018:

  Dividends and profit distributions are subject to tax at a 7% rate.
- Earnings arising from fiscal years ending up to 31st December 2017 (distributed anytime in future):

  Dividends and profit distributions are not subject to tax.

  Equalization tax applies to dividends paid to residents and non-residents when commercial profits (i.e. the profits before tax as reported in the company's financial statements) exceed taxable profits.

  If the distributed dividend does not exceed the taxable profit, equalization tax is not levied, whomever its recipients are, provided that the dividend is distributed on nominative (registered) shares. If the dividend exceeds taxable profit, a 35% withholding tax is due on the difference (equalization tax). No tax credit is derived from the tax withheld because dividends are not levied as income for the recipient (the whole tax was withheld).

## INTEREST DEDUCTION

Interest is generally deductible provided that it is incurred on loans taken out for business purposes. Otherwise the deduction is denied. Notwithstanding this, there is a threshold set on deductible interest.

Interest on financial debts (excluding commercial debts) arising from indebtedness with related parties (domiciled in Argentina or abroad), will be deductible up to the limit of 30% of the net profit before deducting such interest and depreciations. The threshold not applied can be deferred for 3 years and the non-deductible interest can be deducted in the following 5 years up to the limit applicable to each year. This rule is not applicable in some situations (financial entities, among others).

Furthermore, interest on debts arising from indebtedness with related parties domiciled abroad or any party domiciled in "non-cooperative countries" will be deductible only when paid (not when accrued).

## LOSSES

Income tax losses made in a given fiscal year may be carried forward for five years but taxpayers may only offset losses against the same type of income. Thus, stocks, bonds and foreign-sourced losses may only be offset against income of the same type.

## FOREIGN CAPITAL INFLOWS

No special regulations exist to control incoming funds disclosed as capital contributions, as the current policy is designed to encourage inflows of foreign capital. However, foreign companies should pay personal assets tax (see below) because Argentine law deems that the stock belongs to a resident individual. On the other hand, there are specific regulations in force to control outgoing funds set by the Central Bank (general anti-money laundering procedures apply).

## INCENTIVES

Promotional tax schemes are currently not available for new investment projects.

## CORPORATE MERGERS

Corporate reorganisations (de-mergers and mergers/consolidations) are to be considered 'tax-free' provided that certain legal requirements and proceedings are met. These relate, in particular, to maintenance of the shareholders' interest and continuance of the business activity carried out (two years before and after the reorganisation process). In such cases, any outstanding tax loss may be carried forward and other existing allowances and liabilities may be passed on to the successor companies.

## SHARES AND BONDS

For corporations domiciled in Argentina, the income produced by shareholding is liable for tax when share alienation takes place (not just because of holding shares). On the other hand, bonds must be valued at their current value. Therefore, the income produced by bond holding is liable for tax whether they are sold or not. For foreign residents domiciled abroad, the disposal of shares (issued by an Argentine Company) is liable to Income Tax (see paragraph A – Capital Gains Tax).

## C. FOREIGN TAX RELIEF

Any overseas income taxes paid on foreign-sourced income may be creditable against Argentine income tax up to the limit of the increase in the tax liability resulting from aggregating the foreign-sourced income.

## D. CORPORATE GROUPS

Companies belonging to the same group or holding, but having separate legal status, should pay their taxes separately and the transfer of losses from lossmaking to profit-making members of the same group of companies is not permitted. Nevertheless, payment is waived in the case of taxes arising from corporate reorganisations (de-mergers and mergers/consolidations) which comply with established legal requirement's (particularly, maintenance of the shareholders' interest and continuance of the business activity carried out) for two years before and after the reorganisation process.

## E. TRANSFER PRICING AND RELATED PARTY TRANSACTIONS

Under Argentine law, transactions between Argentine companies and related parties domiciled abroad are deemed to take place at arm's-length conditions for tax purposes. When the pricing used corresponds to normal market practices as between non-related entities, no adjustment is required for tax purposes.

For income tax assessment purposes, Argentine law provides for the traditional methods generally used for transfer pricing (comparable uncontrolled price, resale price, cost plus, profit split, transaction net margin) to demonstrate that an arm's length price has been used in transactions performed with related parties residing abroad, or any parties residing in 'non-cooperative countries'. Income tax rulings provide a positive list of 'cooperative countries' available at http://www.afip.gob.ar/jurisdiccionesCooperantes/#ver.

The related parties test is broad and not only includes transactions between a local subsidiary and its parent company but also other relationships, (e.g. local company and foreign subsidiary, local permanent establishment and foreign head office, local company and foreign permanent establishment, local company and related or non-related party residing in 'non-cooperative countries', among others).

## F. WITHHOLDING INCOME TAX FOR FOREIGN TRANSACTIONS

When Argentine-sourced income is paid to foreign recipients who do not have a permanent establishment - branch, office, etc. - in Argentina, such income is subject to a 35% withholding tax rate.

For each activity, the law sets a percentage of presumptive net income on which 35% withholding tax is applicable, thereby reducing the effective tax rate. The following chart shows the presumptive net income percentages:

| Income | Presumptive net income % A | Effective withholding tax rate % 35% x A |
|---|---|---|
| Interest on loans granted by overseas financial institutions only on the condition that the lender:<br>a) Is domiciled in a jurisdiction not considered a "jurisdiction of low or nil tax", and,<br>b) Has supervision on financial activity provided by the Central Bank (Federal Reserve). Offshore banks domiciled in any territory are not included in this category | 43% | 15.05% |
| Interest on debt arising from the import of property plant and equipment subject to depreciation (except cars) provided that the exporter is the creditor | 43% | 15.05% |
| Interest on time deposits made by foreign residents (either companies or individuals) in financial institutions located in Argentina, provided the interest is not subject to income tax in the country of residence | 43% | 15.05% |
| Other interest. This category includes (among others):<br>a) Interest on loans granted by overseas corporations or individuals;<br>b) Interest on loans granted by offshore banks domiciled in any territory considered a "jurisdiction of low or nil tax" or who's Central Bank (Federal Reserve) does not apply supervision on financial activity | 100% | 35.00% |
| Royalties arising from technical assistance or consulting not available in Argentina under specific regulations (the contract must be duly registered with the official authority) | 60% - 80% | 21% - 28% |
| Copyright (must be registered with the National Copyright Bureau) | 35% | 12.25% |
| Other royalties | 90% | 31.50% |
| Salaries of technicians, professionals, sportsmen, and artists for temporary work in Argentina (individuals only - not applicable when the provider is a corporation) | 70% | 24.50% |
| Personal property leases | 40% | 14.00% |
| Real Estate property leases | 60% | 21.00% |
| Disposal of assets situated in Argentina | 50% | 17.50% |
| Dividends and profit distributions | See paragraph B. Dividends | See paragraph B. Dividends |
| Sale of shares, stocks, bonds and other securities, applicable on the gross sales price. (In this case, the taxpayer can elect to be taxed on the capital gain at a 15% rate) | 90% x 15% tax rate | 13.50% |
| Other income | 90% | 31.50% |

## G. EXCHANGE CONTROL

Exchange controls are currently in effect, basically following anti-money laundering procedures. Foreign currency can be transferred into Argentina provided that the recipient files a disclosure with the official authority. To transfer outbound, the reason must be proved by filing forms with the Central Bank (i.e. dividends, loans, etc.).

## TAX ON FOREIGN CURRENCY PURCHASES

The tax is levied on the purchase of foreign currency without a specific destination (for hoarding, paying credit card balance in foreign currency, paying international services such as transportation, hotels, etc., among others). The purchase of foreign currency to pay for imports, invoices, loans or dividends is not subject to the tax.

The taxable base is the amount of foreign currency while the tax rate is 30%.

## H. PERSONAL TAX

Two taxes are currently levied on individuals:

- Income tax; and,
- Personal assets tax (wealth tax).

## INCOME TAX

The tax is levied on income earned in Argentina and abroad by individuals residing in Argentina. It is payable on an annual basis with five advanced payments (every two months). Any expenses incurred in generating such income may be deducted from gross income. The law sets fixed deductions: non-taxable minimum, special tax-free amount, allowance for dependents, etc.

Resident individuals are liable to tax on the basis of a progressive tax rate scale ranging from 5% to 35% of annual taxable net income. Employees are subject to withholding tax at source, for which the employer is responsible (withholding agent).

Capital gains not related to an income-generating activity are generally not subject to tax.

Financial investment profits are subject to Income Tax:

- Income (interest and others) for the placement of capital, which generates Argentinean sourced income;
- Income arising from the alienation (purchase - sale) of shares, securities, stock, bonds and other securities, which generates Argentinean sourced income.

(Taxable earnings exclude bank deposits, time deposit in financial entities, securities, mutual funds, among others (when quoted on a Local Stock Exchange).

In both cases the income is taxed at a 5% rate when capital is in ARS; or 15% for investments made in foreign currency. Income arising from the alienation of shares is subject to a 15% rate on the net value (sales price less costs).

Under the Income Tax Act, some exemptions are provided for the financial and capital markets, whereby income from shares that are quoted on the Local Stock Exchange is not subject to tax.

In the case of the disposal of real property not assigned to such an activity, the following tax is applicable:

- Real Estate purchased before 1st January 2018: a 1.50% real estate sales tax is charged on the sales value of the property, regardless of whether or not a loss or a profit is made.
- Real Estate purchased as from 1st January 2018: a 15% Income Tax is levied on the net income (sales price minus acquisition cost).

## PERSONAL ASSETS TAX (WEALTH TAX)

This tax is levied on:

- All assets located in Argentina or in foreign countries that belong to individuals resident in Argentina;
- All assets located in Argentina that belong to individuals resident in foreign countries;
- Shares issued by Argentine companies. In this case, the company pays the tax on behalf of the shareholders;
- Trusts (excluding financial trusts). In this case, the trustee pays the tax on behalf of the beneficiaries.

### Individuals Residing in Argentina

This tax is levied on all assets located in Argentina and in foreign countries. Similar tax paid overseas in respect of assets located in foreign countries is creditable against personal assets tax. The only deduction allowed is the amount of liabilities arising from the purchase or construction of the taxpayer’s home. Investments in shares issued by an Argentine company are not to be included in the taxable base because the company pays this tax on behalf of the shareholders (a situation that does not mean shares are exempted).

The tax is assessed on the value of property that exceeds the tax free amount (ARS 6,000,000 from the year 2021 onwards and ARS 30,000,000 only for real estate that serves as the taxpayer’s home). If the taxable base is higher than the tax free amount, the tax is assessed on the net amount. A progressive tax rate scale is applicable, ranging from 0.50% to 1.75% on the value of the property located in Argentina, and ranging from 0.70% to 2.25% on the value of the property located in foreign countries.

### Individuals and Companies Residing in a Foreign Country

The tax is also charged on assets located in Argentina and owned by individual non-residents at a 0.50% rate. Neither deductions nor a taxable minimum are allowed. In the case of certain assets (i.e. securities, non-exploited real estate property, etc.) located in Argentina and owned by foreign companies, these are deemed to belong to individuals and are subject to personal assets tax at a 1% rate.

Shareholders of an Argentine company who reside in foreign countries are liable for personal assets tax. The tax liability is not assessed directly but is paid by the company on behalf of its shareholders (see the next paragraph).

### Shares Issued by Argentine Companies or Trusts

Shares whose holders are non-resident companies or individuals are deemed to belong to non-resident individuals and the tax is levied on those shares. The taxable base is the Argentine company's equity value assessed on the company's last financial statements. The tax rate is 0.50%.

In all such cases, the tax is assessed and paid by the Argentine company on behalf of the shareholders. The tax paid is not deductible for income tax purposes because the company is allowed to claim the tax paid to the shareholders. A foreign company's branch (a permanent establishment in Argentina) will be subject to personal assets tax in respect of the capital assigned to the branch. In the case of trusts (excluding financial trusts), the trustee pays the tax on behalf of the beneficiaries. The taxable base is the amount of the assets.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends[10] (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-Treaty Countries** | 7 See paragraph B. Dividends | 15.05/35[9] | 12.25/28/31.50[6] |
| **Treaty Countries:** | | | |
| Australia | 10/15[1] | 12 | 10/15[5] |
| Belgium | 10/15[1] | 0/12[11] | 3/5/10/15[7] |
| Bolivia | --[8] | --[8] | --[8] |
| Brazil | --[8] | --[8] | --[8] |
| Canada | 10/15[1] | 0/12.50[12] | 3/5/10/15[7] |
| Chile | 10/15[1] | 4/12/15[13] | 3/10/15[7] |
| Denmark | 10/15[1] | 0/12[14] | 3/5/10/15[7] |
| Finland | 10/15[1] | 15[3] | 3/5/10/15[7] |
| France | 15[1] | 20[3] | 18 |
| Germany | 15[1] | 10/15[2] | 15[3] |
| Italy | 15[1] | 0/20[12] | 10/18[5] |
| Mexico | 10/15[1] | 0/12 | 10/15[5] |
| Netherlands | 10/15[1] | 0/12[12] | 3/5/10/15[7] |
| Norway | 10/15[1] | 0/12/12.50[12, 15] | 3/5/10/15[7] |
| Qatar[17] | 5/10/15 | 12 | 10 |
| Russia | 10/15[1] | 15 | 15 |
| Spain | 10/15[1] | 0/12[12] | 3/5/10/15[7] |
| Sweden | 10/15[1] | 0/12/12.50[12, 16] | 3/5/10/15[7] |
| Switzerland | 10/15[1] | 12 | 3/5/10/15[7] |
| United Arab Emirates | 5/10/15 | 12 | 10 |
| United Kingdom | 10/15[1] | 0/12[12] | 3/5/10/15[7] |
| Uruguay | --[4] | --[4] | --[4] |

NOTES:

1. This is the percentage ceiling set under the treaty. However, it is only applicable when the conditions set under paragraph B. 'Dividends' are met.
2. The lower 10% rate applies to sales on credit of industrial, commercial or scientific equipment, and loans granted by a bank or for the financing of public works.
3. This is the ceiling set by the treaty. However, when the effective rate for non-treaty countries is lower, the latter rate is applicable.
4. Under the treaty no ceilings were set but the jurisdiction where the tax should be levied was established. Therefore, applicable rates are those for non-treaty countries.
5. The 10% rate applies to copyright royalties.
6. The actual rate is 35%, but levied on 35%, 80% or 90% of the income, which results in an effective tax rate of 12.25%, 28% and 31.50%. See above under F.
7. A 3% rate applies to news-related royalties, a 5% rate applies to copyright royalties (other than royalties related to films or tapes), a 10% rate applies to trademarks, patents, certain lease-related royalties and technical assistance, and a 15% rate applies to other cases.
8. Under the treaty no ceilings were set but the jurisdiction where the tax should be levied was established. Therefore, applicable rates are those for non-treaty countries.
9. See withholding taxes description at (F) above.
10. The lower rate generally applies to participations of at least 25% of capital or voting power.
11. The 0% rate applies to, *inter alia*, (i) interest on commercial debt claims (including debt-claims represented by commercial paper) resulting from deferred payments for machinery or equipment supplied by an enterprise, except where such interest is paid between associated enterprises and (ii) interest on loans of any nature (not represented by bearer instruments) granted on preferential terms for a period of at least three years by a banking enterprise.
12. The 0% rate applies to, *inter alia*, interest paid by public bodies.
13. The general treaty rate is 15% while the 4% rate applies to interest from a sale on credit paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of the machinery and equipment and the 12% rate to interest derived from loans granted by banks and insurance companies and bonds or securities that are regularly and substantially traded on a recognized securities market.
14. The general treaty rate is 12% while a 0% rate applies to interest paid to (national) banks and financial institutions, subject to certain conditions.

15. The general treaty rate is 12.5%. However, under the application of a most favoured nation clause the rate is reduced to 12% (Argentina-Australia treaty).
16. The general treaty rate is 12.5%. However, under the application of a most favoured nation clause the rate is reduced to 12% (Argentina-Denmark treaty).
17. Effective date: 1st January 2022.

# ARMENIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Yerevan | Gor Davtyan | +374 115 775 44<br>auditservicellc@gmail.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Armenia |
| Capital: | Yerevan |
| Main languages: | Armenian |
| Population: | 2.96 million (2022 estimate) |
| Monetary unit: | AMD |
| Internet domain: | .am |
| Int. dialling code: | +374 |

## KEY TAX POINTS

There are general and special taxation systems in force in the Republic of Armenia.

**Special taxation system:**

- Under the turnover tax system, organisations are subject to turnover tax, to VAT and/or substitute profit tax while private entrepreneurs and notaries are subject to turnover tax, substitute profit tax, and VAT excluding patent tax.
- Under the patent tax system, on the activities considered as objects of taxation of patent tax, organisations are subject to patent tax substitute to VAT and/or profit tax while private entrepreneurs and notaries are subject to patent tax, substitute profit tax and VAT.
- A resident organisation of the Republic of Armenia shall be the organisation whose location is in the Republic of Armenia.
- Resident Individuals in the Republic of Armenia are those Individuals who have stayed 183 and more days during the tax year in the Republic of Armenia.
- Days of actual stay in the Republic of Armenia are also the days of arrival and departure from the Republic of Armenia, regardless of the number of hours actually spent by the individual during these days in the Republic of Armenia.
- Resident individuals are also:
  - Those individuals whose vital interests centre is located in the Republic of Armenia. The centre of vital interests is the place where the family or economic interests of an individual are focused. Particularly, it is considered that the center of vital interests of an individual is located in the Republic of Armenia if its home or other apartment, family, professional or other place of business is located in the Republic of Armenia.
  - Individuals who are temporarily outside of the territory of the Republic of Armenia, but who are in State service in the Republic of Armenia.
  - For the purposes of the Tax Code, if an individual is considered to be a resident at any date of the tax year, then that individual shall be deemed to be resident for the whole tax year.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

In Armenia, the following State taxes are applicable:

1. Value added tax (hereinafter also referred to as “VAT”)
2. Excise tax
3. Profit tax
4. Income tax
5. Environmental tax
6. Road tax
7. Turnover tax
8. Patent tax.

## COMPANY TAX

General and specific taxation systems are applicable in Armenia.

- Within the framework of the general taxation system, organisations, individual entrepreneurs and notaries are taxed, in particular, under VAT and/or profit tax.

- In specific taxation systems:
  - Within the framework of the system of turnover tax, organisations, individual entrepreneurs and notaries are taxed, in particular, under turnover tax replacing VAT and/or profit tax;
  - Within the framework of the system of patent tax, organisations and individual entrepreneurs are taxed, in particular, under patent tax replacing VAT and/or profit tax;
  - Within the framework of the system of family entrepreneurship, organisations and individual entrepreneurs are exempt, in particular, from taxation under VAT and/or profit tax, as well as under turnover tax.

## CAPITAL GAINS TAX

1. Profit taxpayers are:
   - Resident organisations, except for cases prescribed by part 2 of this Article;
   - The following entities registered in Armenia:
     - individual entrepreneurs;
     - notaries;
   - Contractual investment funds (except for pension funds and guarantee funds), which are registered in Armenia;
   - Non-resident organisations, as well as non-resident natural persons carrying out activities in Armenia through a permanent establishment and/or deriving Armenian-sourced income through a permanent establishment.
2. Subject to Profit tax are:
   - Regarding resident organisations, individual entrepreneurs registered in Armenia and notaries (hereinafter referred to as "resident profit taxpayers") — gross income derived or to be derived (hereinafter referred to as "derived" in this Section) from sources of and/or outside Armenia, except for personal income of individual entrepreneurs registered in Armenia and notaries;
   - Regarding investment funds (except for pension funds and guarantee funds) which are registered in Armenia, as well as for securitisation funds established under Armenian law "On asset securitisation and asset backed securities" — total net assets;
   - Regarding non-resident organisations, as well as non-resident natural persons carrying out activities in Armenia through a permanent establishment and/or deriving Armenian-sourced income through a permanent establishment (hereinafter referred to as "non-resident profit taxpayers") — Armenian-sourced gross income, except for Armenian-sourced personal income of non-resident natural persons carrying out activities in Armenia through a permanent establishment and/or deriving Armenian-sourced income through a permanent establishment.
3. Profit tax base constitutes:
   - Regarding resident profit taxpayers — taxable profit, which is determined as the positive difference between gross income and certain deductions;
   - Regarding investment funds (except for pension funds and guarantee funds) which are registered in Armenia, as well as for securitisation funds established under Armenian law "On asset securitisation and asset backed securities" — total net assets, which is determined in accordance with the procedure defined by the Armenian Central Bank and agreed upon with the tax authority. For the purpose of applying this paragraph, dividends or other amounts distributed in any similar way out of the assets of the investment fund to its participants shall not be deducted from the net assets of the investment fund;
   - Regarding non-resident organisations and non-resident natural persons carrying out activities in Armenia through a permanent establishment and/or deriving Armenian-sourced income through a permanent establishment (hereinafter referred to as "non-resident profit taxpayers carrying out activities in Armenia through a permanent establishment" in this Section) — taxable profit, which is determined as the positive difference between gross income and certain deductions;
   - Regarding non-resident organisations carrying out activities in Armenia without a permanent establishment and/or deriving Armenian-sourced income without a permanent establishment (hereinafter referred to as "non-resident profit taxpayers carrying out activities in the Republic of Armenia without a permanent establishment") — gross income.
   - Regarding activities not attributable to a permanent establishment and/or the income of non-resident organisations carrying out activities in Armenia through a permanent establishment — gross income.
4. Profit tax rates:
   - Profit tax is calculated at a rate of 20% on the tax base of a resident income taxpayer and a non-resident profit taxpayer operating in the Republic of Armenia through a permanent establishment.
   - Profit tax is calculated at the rate of 0.0% on the tax base of investment funds registered in the Republic of Armenia.
   - Profit tax taxable base on non-resident taxpayers is calculated at the following rates:
     a. 5% in respect of insurance premiums, reinsurance payments and revenues received for transportation;
     b. 10% in respect of passive income;
     c. 0% in respect of dividends received from the All-Armenian Bank;
     d. 0% in respect of the assets' value acquired from the alienation of securities;
     e. 20% in respect of other income received from Armenian sources.

## SALES TAX / VALUE ADDED TAX (VAT)

Value-added tax (VAT) is a federal tax payable to the state budget in accordance with the procedure established by Tax Code of the RA, for carrying out transactions and/or operations that are subject to taxation. The following operations and transactions are VAT taxable items:

- Supply of goods.
- Performance of work and/or rendering of services.

- Import of Goods to the Republic of Armenia by Customs Procedure "Skip for Internal Consumption".
- Import of goods to the Republic of Armenia, having the status of EEU products from the member states of the Eurasian Economic Union.
- The goods delivery operation is not VAT taxable subject if the place of supply of goods is not considered to be in the Republic of Armenia.
- The transport service contract of cargo, post and/or passenger transportation by any type is not considered VAT taxable unless it starts and ends outside the Republic of Armenia.
- VAT is calculated at a rate of 20% and 16.67% for the taxable base of transactions and operations, which are subject to VAT according to the Tax Code.
- The amount of compensation included in the VAT amount for the supply, performance or service provision the amount of VAT is determined by the calculated value of the rate of 16.67%, if:
  a. organisation, individual entrepreneur or notary did not consider itself a VAT payer contrary to the Tax Code requirements;
  b. VAT payer organisation, individual entrepreneur or a notary in the settlement document drawn up for transactions considered to be taxable subject to 20% VAT rate, has not specified the VAT rate and amount on a separate line;
  c. VAT payer organisation, individual entrepreneur or a notary has not issued a settlement document on VAT taxable object transactions subject to 20% VAT taxation;
  d. VAT payer organisation, individual entrepreneur or a notary has provided only Control Cash machine ticket to buyer for transactions and/or operations considered VAT taxable.

## LOCAL TAXES

1. Property tax
2. Vehicle property tax.

## OTHER TAXES

### Excise Tax

Goods subject to Excise taxation are the following:

- ethyl alcohol (excluding cognac alcohol);
- alcoholic drinks;
- beer;
- wine;
- tobacco products (including tobacco substitutes, cigars, cigarels);
- lubricating oil;
- petrol;
- diesel fuel;
- crude oil;
- petroleum products;
- petroleum gases;
- other carbohydrates (excluding compressed natural gas);
- compressed natural gas.

### Environmental Tax

The environmental tax is a tax payable to the state budget for the purpose of implementing environmental measures in order to create the necessary funds.

Subject to environmental taxation are:

- emissions of atmospheric air pollutants;
- outflow of harmful substances and/or compounds to water resource;
- the utilisation, production and/or consumption of entrails in specially allocated places;
- goods, which cause damage to the environment:
  - o Importation into the territory of the Republic of Armenia,
  - o the alienation of import-seller and/or producers-sellers in the territory of the Republic of Armenia.

### Road Tax

Road tax is a tax payable to the state budget for the development of the road network of the Republic of Armenia, the creation of funds necessary for the construction, repair and maintenance of the state automobile roads of general use of the Republic of Armenia.

Subject to road taxation are:

1. Use of automobile roads of the Republic of Armenia by unregistered (off-road) motor vehicles in the Republic of Armenia;
2. Use of automobile roads of the Republic of Armenia by registered freight vehicles registered in the Republic of Armenia;
3. Placement of advertising on public roads of the Republic of Armenia;
4. The road tax is calculated for every 15 days of entry into the Republic of Armenia by non-registered trucks in the Republic of Armenia for the use of motor roads of the Republic of Armenia, according to the maximum permissible mass of the motor vehicle.

## Turnover Tax

Turnover tax is a state tax that replaces VAT and/or profit tax, paid to the state budget in accordance with the procedure, amount and timeframe established by the Tax Code for the types of activities that are subject to taxation.

Are subject to turnover taxation: supply of goods, performance of works and/or rendering of services. Transactions for which a lease or user fee, interest and/or royalty is received are also considered to be services.

Turnover tax is calculated at the following rates:

| Income type | Rate/percentage |
|---|---|
| Income from trade (purchase and sale) activities, except income from trade (purchase and sale) of secondary raw materials included in the Government's defined list and from real estate alienation | 5 |
| Income from trading (purchase and sale) of secondary raw materials included in the Government's defined list | 1.5 |
| Income from newspaper alienation | 1.5 |
| Income from production activities | 3.5 |
| Income from lease payment, interest, royalties, real estate | 10 |
| Income from notary activity | 10 |
| Income derived from organising lottery activities | 25 |
| Income from activities in the field of public catering | 8 |
| Income from other activities or disposal of other assets | 5 |

## Patent Tax

Patent tax is the state tax that replaces VAT and/or profit tax, paid to the state budget for the implementation of types of activities considered as taxable objects. For organisations the patent tax replaces the VAT and/or the profit tax. Under the patent tax the calculated tax rate for the profit tax is 40% and for VAT it is 60%. For individual entrepreneurs the patent tax replaces VAT.

The following types of activities carried out in the Republic of Armenia are subject to patent tax:

- Passenger transportation by light passenger cars;
- Passenger transportation by bus and/or minibus;
- Hairdressing services;
- Car maintenance stations activities;
- Parking activities;
- Organising billiards game;
- Organising table tennis game;
- Organisation of games through coins and (or) billboards, food trade, as well as coin-operated automatic gaming (except for gambling and casino activities);
- Dental activity;
- Dental technical activity;
- Organisation of the totalizer;
- Organisation of the Internet totalizer;
- Purchase and sale of precious metals, precious metals or precious stones by means of countertops or merchandise at trading places (in gold markets).

## REGISTRATION DUTY

In the Republic of Armenia, certain state fees are applied to:

- State duty;
- Utilisation fee;
- Social payment;
- Mandatory fee for the grant (renewal) of radio frequencies and the mandatory billing for use;
- Mandatory payment for public services:
- Pension payment.

In the Republic of Armenia, certain local fees are applied to:

- Local duty;
- Local fee.

## Real Estate Tax

Real estate tax is a local tax payable to community budgets of the Republic of Armenia for real estate which is a taxable item owned by taxpayers under ownership right which does not depend on the results of economic activity of taxpayers. Real estate tax is also paid to the state-owned land plots for permanent use, as well as for immovable property as taxable items. Real estate, land plots and/or their improvements are subject to real estate tax.

Real estate taxpayers are organisations and individuals, apart from state bodies, community managerial institutions and the Central Bank of the Republic of Armenia. For the state-owned land that is permanently used, the real estate tax shall be borne by the permanent owner of the state-owned land. If the taxable item is owned by more than one taxpayer by common joint ownership, they bear joint liability for the obligations with respect to immovable property, apart from the land plots belonging to different taxpayers, property units - buildings and / or constructions. If the taxable item is owned by more than one taxpayer by the right of common shared ownership, then they shall be liable for the obligations for the tax on immovable property in the amount of each part thereof.

Real estate tax is calculated at the following annual rates:

1. 15% for agricultural land;
2. 1% for other non-agricultural land;
3. Immovable property at the following rates:

| Taxable base | Tax rate |
|---|---|
| Up to 3 million AMD | 0% |
| More than 3 million AMD - up to 10 million AMD | AMD 100 plus 0.1% of the taxable base exceeding 3 million |
| More than 10 million AMD - up to 20 million AMD | AMD 7,100 plus 0.2% of the taxable base exceeding 10 million |
| More than 20 million AMD - up to 30 million AMD | AMD 27,100 plus 0.4% of the taxable base exceeding 20 million |
| More than 30 million AMD - up to 40 million AMD | AMD 67,100 plus 0.6% of the taxable base exceeding 30 million |
| More than 40 million AMD | AMD 127,100 plus 1% of the taxable base exceeding 40 million |

### Vehicle Property Tax

Vehicle Property tax is a local tax payable to community budgets of the Republic of Armenia for vehicles which are taxable item owned by taxpayers under ownership right which does not depend on the results of economic activity of taxpayers.

Vehicle property taxpayers are organisations and individuals, with the exception of public authorities, community managing institutions and the Central Bank of the Republic of Armenia.

The following vehicles are considered subject to Vehicle Property Taxation:

- Motor vehicles
- water transport (motor-driven)
- motorcycle
- Snowmobile
- Quadricot.

## B. DETERMINATION OF TAXABLE INCOME

- Subject to taxation is any transaction, income, property, type of activity (including action or function) or any other object, whether the existence of ownership rights or the performance of which generates a tax liability or payment obligation at the level of the taxpayers.
- For each tax a separate taxable item is established.
- The same subject of taxation shall be taxed only once at the level of the same taxpayer for the same period.
- The taxable base is the value, physical or other characteristic of the taxable object.
- For each tax a separate tax base and the procedure for its calculation is established.

### DEPRECIATION

In order to determine the tax base of resident profit taxpayers and non-resident profit taxpayers operating in the Republic of Armenia through a permanent establishment, the gross income is deducted from the amortisation expense of property, plant and equipment and intangible assets owned or leased by a resident or non-resident profit taxpayer.

Moreover, for each unit of fixed assets and intangible assets the amortisation charge is calculated during the taxable year, as the difference between the original cost of the fixed asset and the intangible asset and the intangible assets for individual groups and intangible assets.

On each unit of revalued fixed assets and intangible assets after revaluation, the depreciation charge is calculated based on the minimum taxation periods determined for the tax year as the carrying value of the intangible asset, individual groups of intangible assets and the calculated amortisation residual time ratio.

### STOCK / INVENTORY

The tax authority (tax inspector) is authorised to make measurements of inventories. During a tax control, the Tax Authority may require the taxpayer (tax agent) to inventory assets and liabilities exclusively within the scope of tax control objectives and matters.

### DIVIDENDS

In respect of dividends received by foreign citizens and stateless persons, the income tax is calculated at a rate of 10% while the income tax on dividends received by citizens of the Republic of Armenia is calculated at a rate of 5%.

### LOSSES

In order to determine the tax base of resident profit taxpayers and non-resident profit taxpayers operating in the Republic of Armenia through a permanent establishment, natural losses of property are deductible from gross income, as well as qualitative, casual, technological and (or) other losses caused by property documents.

Natural loss of property is deducted from gross income not exceeding the amount set by the Government during the tax year of the loss or disclosure of that loss. Natural loss of property is the reduction of the weight, size, volume and/or quantity of the property due to the physicochemical, mechanical or biological factors during the preservation or movement of the property. If the Government has not specified the amount of natural loss or the amount of natural loss exceeds the amount determined by the Government then the loss shall not be deducted from gross income loss.

Qualitative loss of property substantiated by documents is deducted from gross income at a rate not exceeding 1% of the gross amount of the income during the tax year when occurring or disclosing that loss. Property qualitative loss is the property, or the goods withdrawn from circulation as a result of the expiration of the conservation period of the product with the expiration date or of the depreciation and/or demolition of time due to the impairment or limitation of the consumer's property.

Property document-based accidental loss is deducted from gross income at the full extent for the loss during the tax year. Property accidental loss is destruction or damage caused by fire, flood, earthquake or other natural disaster, shipwreck, war, military action, armed attack, mass disorder, revolt or any other such extraordinary event.

Property document-based technological loss is deducted from gross income as an item of material cost. Property technological loss is:

- the portion of the cost of raw materials, parts and/or nodes which has lost its quality as a result of the technology used in the production process;
- the defective product at the rate set by the profit taxpayer;
- technological losses established by law or by the Government Authorised Body.

Property document-based other losses are deducted from gross income to the amount of that loss.

When no norm of property document-based technological loss is established or exceeded, the corresponding losses are deducted from gross income:

- in case of voluntary reimbursement of the loss by the party that inflicted the damage during the tax year of loss' complete or partial compensation;
- as a result of non-disclosure of the person who has suffered damage in the case of a decision to suspend or discontinue the criminal case by the preliminary investigation body, in the tax year of the decision;
- in case of adoption of a judicial act establishing guilt or innocence by the court in a tax year of the act coming into force.

The documentation procedure for losses is defined by the Government.

## TAX INCENTIVES

Except for the general procedure and/or terms of calculation and payment of taxes, fines, penalties and/or duties established by Tax Code of the RA, as a result of which there is no tax liability or decrease, or the amount of the taxable obligation is extinguished, or the dates of its calculation and/or execution are postponed.

The following types of tax benefits may be established by Tax Code of the Republic of Armenia:

- Tax exemption;
- Reduction of taxable object;
- Reduction of tax base;
- Reduction of tax rate;
- Tax reduction;
- Delay of tax payment;
- For violating the provisions of Tax Code: exemption from penalties and fines, reduction, delay of payment terms.

### Exemption from the Payment of Profit Tax

1. Profit taxpayers engaged in the production of agricultural products shall be exempt from paying profit tax for the tax years until 31st December 2024 included, for income derived from the sale of agricultural products, as well as for income derived from the sale of other assets or for other income, where the share of the income derived from the sale of other assets and of the other income in the gross income for the respective tax year does not exceed 10%. Where the share of income derived from the sale of other assets and of other income in the gross income for the respective tax year exceeds 10%, the benefit provided for by this part shall apply only with respect to the income derived from the sale of agricultural products. Within the meaning of this part:
   - agricultural products shall mean products produced for final or intermediate consumption, through biological processing of animals and plants, in particular:
     a. crops of cereal grains and cereal grain peas;
     b. technical crops;
     c. root and tuber, vegetable, melon and gourd crops and products of covered soil;
     d. forage crops of field cultivation;
     e. other products of forage production;
     f. products of gardens, vineyards, perennials plants and floriculture;
     g. seeds of trees and bushes, fruit seeds;
     h. seedlings of trees and bushes;
     i. plantings of trees and bushes;
     j. products of cattle breeding;
     k. products of swine breeding;
     l. products of sheep breeding and goat breeding;
     m. products of poultry breeding;
     n. products of horse breeding, donkey breeding and mule breeding;
     o. products of deer breeding and camel breeding;
     p. products of rabbit breeding, fur animal breeding and hunting economies;
     q. products of fish breeding, apiculture, silkworm cultivation, artificial insemination;
   - if it is impossible to make an accurate calculation of the income derived from agricultural products for the tax years until 31st

December 2024 included, it shall be calculated based on the estimated net income data calculated in accordance with the cadastral valuation procedure prescribed by Annex 2, which is a constituent part of Tax Code.

2. The Armenian Deposit Guarantee Fund prescribed by the Law of the Republic of Armenia “On guaranteeing compensation of bank deposits of individuals” shall be exempt from paying profit tax for the following types of income:
   - regular, lump sum and additional guarantee fees paid by commercial banks in accordance with the procedure prescribed by the Law of the Republic of Armenia “On guaranteeing compensation of bank deposits of individuals”;
   - amounts compensated to individuals by the Fund and received from banks based on claims acquired against the banks;
   - incomes derived from investments in the following assets:
     a. state securities of the Republic of Armenia;
     b. those invested as bank deposits and/or bank accounts in the Central Bank of the Republic of Armenia and top foreign banks with high ratings;
     c. securities of the Central Bank of the Republic of Armenia;
     d. standard gold bullions;
     e. securities of governments and/or Central Banks of countries with high ratings;
     f. other financial assets, by decision of the Board of Trustees of the Fund and upon the consent of the Board of the Central Bank of the Republic of Armenia.
3. The Bureau established on the basis of the Law of the Republic of Armenia “On compulsory motor vehicle liability insurance” shall be exempt from paying profit tax for all fees made to the Guarantee Fund (hereinafter referred to as “Guarantee Fund”) established within the Bureau pursuant to that Law, as well as for all other amounts generated for the Guarantee Fund, including those generated from income generated from investments made from the funds of the Guarantee Fund.
4. The Panarmenian Bank shall be exempt from paying profit tax.
5. Non-resident profit taxpayers shall be exempt from paying profit tax for income derived in the form of interests from foreign currency state bonds of the Republic of Armenia or in the form of a discount made at the time of repayment of said bonds, as well as for income derived from the alienation of said bonds, their exchange with other securities or other similar transactions.
6. Profit taxpayers engaged in the production of hand-made carpets shall be exempt from paying profit tax for the income derived from the sale of hand-made carpets.
7. Profit taxpayers deemed operators of a free economic zone shall be exempt from paying profit tax for the income derived from activities carried out in the free economic zone established in the territory of the Republic of Armenia.

## C. FOREIGN TAX RELIEF

- Profit taxable objects and income tax received or to be received outside the Republic of Armenia by resident organisations of the Republic of Armenia and resident individuals of the Republic of Armenia shall be included in the taxable object under the relevant tax type of these organisations and individuals and shall be subject to taxation in the Republic of Armenia as prescribed by the Tax Code, unless otherwise prescribed by Tax Code.
- For the purpose of taxation of resident organisations of the Republic of Armenia and resident individuals of the Republic of Armenia, the tax amounts calculated for taxable objects determined shall be reduced to the amount of the sums of the relevant taxes which have been collected in foreign states in accordance with the legislation of those states.
- Amounts of taxes shall be reduced by amounts not exceeding the amounts of the relevant taxes calculated for taxable objects formed in foreign states in the manner and at the rates prescribed by the Tax Code.
- Where the amount of the profit tax or the income tax subject to reduction exceeds the profit tax or the income tax liability respectively for the given reporting year, the amounts of taxes in excess shall be subject to reduction from the liabilities of the following reporting years of the organisation or the individual.

## D. CORPORATE GROUPS

There are no special rules for group taxation in Armenia.

## E. RELATED PARTY TRANSACTIONS

According to the Tax Code, organisations and/or individuals shall be considered to be related where:

- 20% and more of the equity shares (stock, share) of the authorised (share) capital of the resident commercial organisation belong to another resident commercial organisation, an individual entrepreneur or a notary;
- 20% and more of the equity shares (stock, share) of the authorised (share) capital of the resident commercial organisation belong to the individual who is not an individual entrepreneur and to whom also belongs 20% and more of the equity shares (stock, share) of the authorised (share) capital of another resident commercial organisation.
- Organisations and/or individuals shall be considered to be related where according to the information received from a third person (including from a state body) or obtained as a result of operational and intelligence activities, organisations and/or individuals — on grounds of acting in consent for common economic interests — are recognised as related upon the decision of the head of the tax authority as prescribed by the tax authority. When recognising taxpayers as related, the following circumstances, in particular, shall be taken into account:
  - o volume and frequency of transactions carried out between them;
  - o sale prices and trade mark-ups of the goods purchased from one another;
  - o Share in any commodity market.

## F. WITHHOLDING TAX

- Dividends paid to non-resident companies are subject to a % final withholding tax, unless a double tax treaty provides otherwise;
- A 10% final withholding tax applies to interest paid to non-resident companies, unless a double tax treaty provides otherwise;

- Royalties are subject to a 10% final withholding tax, unless a double tax treaty provides otherwise;
- Insurance fees and freight payments are subject to a 5% final withholding tax.
- Any other income from Armenian sources is generally subject to a 20% withholding tax.

## G. EXCHANGE CONTROL

- Within the scope of transactions and operations denominated in foreign currency, tax bases formed regarding transactions relating to the import or export of goods and original costs of goods shall be determined:
  - in case of operations relating to import of goods from states that are not members of the EAEU or export of goods to states that are not members of the EAEU, as of the date of the customs declaration for the import or export of goods respectively (irrespective of the fact of submitting afterwards the verified customs declaration for the import of goods or the verified customs declaration for the export of goods as prescribed by the EAEU uniform customs legislation with regard to these operations) based on the average market exchange rate announced by the Central Bank of the Republic of Armenia as of that day;
  - in case of operations relating to import of goods from the EAEU member states or export of goods to the EAEU member states, as of the date of the tax declaration for the import of goods or export of goods respectively (irrespective of the fact of submitting afterwards the verified customs declaration for the import of goods or the verified customs declaration for the export of goods with regard to these transactions) based on the average market exchange rate announced by the Central Bank of the Republic of Armenia as of that day;
- In case of transactions involving supply of goods, performance of work or rendering of services concluded between a resident organisation or a resident individual of the Republic of Armenia and a non-resident organisation or a non-resident individual of the Republic of Armenia (except for the permanent establishment record registered in the Republic of Armenia of a non-resident organisation or a non-resident individual) within the territory of the Republic of Armenia, as well as in cases where the obligation for calculating and paying VAT with regard to the transaction involving supply of goods, performance of work or rendering of services carried out by a non-resident organisation having no permanent establishment record-registered in the Republic of Armenia or by a non-resident individual having no permanent establishment record-registered in the Republic of Armenia shall be undertaken — in accordance with Section 4 of the Code — by a resident organisation or a resident individual of the Republic of Armenia or the permanent establishment record-registered in the Republic of Armenia of the non-resident organisation or the non-resident individual who is considered to be a party to the transaction, the formed tax bases and original costs shall be determined as of the date of issuance of the relevant settlement document based on the average market exchange rate announced by the Central Bank of the Republic of Armenia;
- Tax amount of the taxable income paid by a tax agent shall be calculated as of the date of payment of that income, based on the average market exchange rate announced by the Central Bank of the Republic of Armenia as of that day.

## H. PERSONAL TAX

- Resident and non-resident individuals shall be deemed to be income taxpayers;
- Individual entrepreneurs and notaries — as individuals — shall be deemed to be income taxpayers only in respect of their personal income.

The following shall be considered subject to income tax:

- Regarding resident individuals — the gross income derived from sources of and/or outside Armenia, except for entrepreneurial income of individual entrepreneur's record-registered in Armenia and notaries;
- Regarding non-resident individuals — the gross income derived from Armenian sources, except for income attributable to a permanent establishment of non-resident individuals carrying out activities in Armenia through a permanent establishment and/or deriving Armenian-sourced income through a permanent establishment, as well as income derived from foreign economic activity.

The following shall be considered to be the income tax base:

- Regarding resident individuals — taxable income, which is determined as the positive difference between gross income and deducted income;
- Regarding non-resident individuals — taxable income, which is determined as the positive difference between gross income and deducted income prescribed by the Tax Code.

Income tax rates:

- The income tax against the tax base is calculated at a flat rate of 23% starting from 1st January 2020 and will be gradually lowered to 20% as follows:
  - 22% starting from 1st January 2021;
  - 21% starting from 1st January 2022; and
  - 20% starting from 1st January 2023;
- The income tax on interest shall be calculated at a 10% rate, according to the withholdings prescribed by the Tax Code;
- The income tax on royalties shall be calculated at a 10% rate;
- The income tax on rentals shall be calculated at a 10% rate, whereas in case the total of the rentals received during the tax year exceeds AMD 58.35 million, an additional income tax at a 10% rate shall be calculated on the surplus;
- The income tax on dividends received by foreign nationals and stateless persons shall be calculated at a 5% rate, and the income tax on dividends received by citizens of the Republic of Armenia shall be carried out at a 5% rate;
- The income tax on the total income received from tax agents as a result of the alienation of property shall be calculated at a 10% rate;
- The income tax on income received from the alienation of a building, its apartments or other premises by a constructor shall be calculated at a 20% rate

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 10 | 10 | 0/10 | 10 |
| Individuals | 10 | N/A | 10 | 10 |
| **Treaty countries:** | | | | |
| Austria | 15 | 5 | 10 | 5 |
| Belarus | 15 | 10 | 10 | 10 |
| Belgium | 15 | 5 | 10 | 8 |
| Bulgaria | 10 | 5 | 5/10 | 5/10 |
| Canada | 15 | 5 | 10 | 10 |
| China | 10 | 5 | 10 | 10 |
| Croatia | 10 | 0 | 10 | 5 |
| Cyprus | 5 | 0 | 5 | 5 |
| Czech Republic | 10 | 10 | 5/10 | 5/10 |
| Denmark | 5/15 | 0/5 | 5/10 | 5/10 |
| Estonia | 15 | 5 | 10 | 10 |
| Finland | 15 | 5 | 5 | 5/10 |
| France | 15 | 5 | 10 | 5/10 |
| Georgia | 10 | 5 | 10 | 5 |
| Germany | 10/15 | 7/15 | 5 | 6 |
| Greece | 10 | 10 | 10 | 5 |
| Hungary | 10 | 5 | 5/10 | 5 |
| India | 10 | 10 | 10 | 10 |
| Indonesia | 15 | 10 | 10 | 10 |
| Iran | 15 | 10 | 10 | 5 |
| Ireland | 15 | 0/5 | 0/5/10 | 5 |
| Israel | 15 | 0/5/15 | 5 | 5/10 |
| Italy | 10 | 5 | 10 | 7 |
| Kazakhstan | 10 | 10 | 10 | 10 |
| Kuwait | 5 | 5 | 5 | 10 |
| Latvia | 15 | 5 | 10 | 10 |
| Lebanon | 10 | 5 | 8 | 5 |
| Lithuania | 15 | 5 | 10 | 10 |
| Luxembourg | 15 | 5 | 10 | 5 |
| Malta[1] | 10 | 5 | 5 | 5 |
| Moldova | 15 | 5 | 10 | 10 |
| Poland | 10 | 10 | 5 | 10 |
| Qatar | 10 | 5 | 5 | 5 |
| Romania | 10 | 5 | 10 | 10 |
| Russia | 10 | 5 | 10 | 0 |
| Serbia | 8 | 8 | 8 | 8 |
| Singapore[1] | 5 | 0 | 5 | 5 |
| Slovak Republic | 10 | 5 | 10 | 5 |
| Slovenia | 10 | 5 | 10 | 5 |
| Spain | 10 | 0 | 5 | 5/10 |
| Sweden | 15 | 0/5 | 5 | 5 |
| Switzerland | 15 | 5 | 10 | 5 |
| Syria | 10 | 10 | 10 | 12 |
| Thailand | 10 | 10 | –/10 | 15 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Turkmenistan | 15 | 5 | 10 | 10 |
| Ukraine | 15 | 5 | 10 | 0 |
| United Arab Emirates | 3 | 3 | 0 | 5 |
| United Kingdom | 10/15 | 0/5 | 5 | 5 |

Notes:

1. Effective date: 1st January 2022.

# AUSTRALIA

## MEMBER FIRM

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## BASIC FACTS

| | |
|---|---|
| Full name: | Commonwealth of Australia |
| Capital: | Canberra |
| Main languages: | English |
| Population: | 25.97 million (2022 estimate) |
| Monetary unit: | Australian Dollar (AUD) |
| Internet domain: | .au |
| Int. dialling code: | +61 |

## KEY TAX POINTS

- Australian resident companies are subject to company income tax on income derived from all sources. Non-resident companies are required to pay income tax only on Australian-sourced income.
- There is no branch profits tax in Australia. However, Australian branches of foreign companies will generally only be taxed on Australian-sourced income at the prevailing company tax rate.
- All entities that carry on an enterprise in Australia are required to register for the goods and services tax (GST) if their annual turnover meets the registration turnover threshold.
- Australia has a CFC regime which is designed to ensure certain types of passive and associated party income of a CFC is included in the controlling Australian resident's taxable income each financial year.
- Where foreign sourced income is included in assessable income, tax credits are available equal to the lesser of the foreign tax paid and the Australian tax payable. Credits are also available to Australian companies for foreign tax paid under the CFC regime on attributed income.
- Wholly-owned groups of Australian companies and, in some circumstances, unit trusts can elect to have their income tax liability calculated on a consolidated basis.
- Non-arm's-length international profit-shifting arrangements and other international transactions between related parties are governed by transfer pricing rules which give the Commissioner of Taxation the power to calculate the income tax payable based on arms-length prices.
- Withholding tax must be deducted from interest, royalties and dividends (to the extent they are not franked) paid to non-residents.
- Income tax is payable by Australian resident individuals on non-exempt income derived from worldwide sources. Non-resident individuals are only required to pay tax on Australian-sourced income.
- There is no separate capital gains tax, but capital gains are included in taxable income. The tax treatment of capital gains and losses is generally the same for individuals and trustees as for companies, but there are some differences (e.g. Australian resident individuals and trustees, unlike companies, can claim a 50% discount of capital gains on assets held for more than one year). Small business CGT concessions may also reduce capital gains where certain conditions are met.
- There is no net wealth tax, real estate tax or inheritance or gift tax.

## A. TAXES PAYABLE

### COMPANY TAX

Australian resident companies are subject to company income tax on their income derived from all sources. Non-resident companies are required to pay income tax only on Australian-sourced income. Resident companies are those that are incorporated in Australia or those that carry on business in Australia and either have their central management and control in Australia or their voting power controlled by shareholders who are Australian residents.

The tax year runs from 1 July to 30 June. Companies' financial years usually coincide with the tax year. A taxpayer can choose to have an accounting period different to the tax year if they wish but this will require additional costs of preparing another set of accounts based on the tax year. Alternatively, if a taxpayer has a good reason for having a financial year other than 1 July to 30 June they can apply to the Australian Tax Office to have a substituted accounting period (SAP) and align the tax year with their financial year. The Australian Tax Office will generally accept applications for an SAP where an Australian subsidiary wants to align its tax year with its foreign parent company's financial year. The company tax rates applied to the company's taxable income are:

- 25% for companies with aggregate annual turnover of less than AUD 50 million for the 2021/22 income year); and
- 30% for all other companies.

Note, the reduced rate of company tax does not apply to entities which derive more than 80% of revenue from passive income.

A company is generally required to 'self-assess' its likely tax liability in a financial year and pay tax by quarterly or monthly instalments with the final tax liability being reconciled in an annual tax return. 'Likely tax' is the latest estimate of tax payable made by the company in a current financial year. If no estimate is made, 'likely tax' is the tax assessed in the preceding year. Company tax is payable on a quarterly basis (except for companies with a turnover of greater than AUD 20 million which are required to remit instalments monthly). Companies that are not required to report their goods and services tax (GST) on a monthly basis and with income tax payable of less than AUD 8,000 for the most recent income year can elect to pay an annual instalment of tax rather than quarterly instalments. Generally, the annual payment date is 21 October when the income year ends on 30 June.

Monthly or quarterly company tax instalments are payable within 21 days after the end of each month/quarter of the financial year. However, where taxpayers are eligible to pay other quarterly obligations on a deferred basis (namely those entities that are required to pay GST on a quarterly basis); the due date is the 28th day after the end of the quarter (except for the December quarter in which case payment date is 28 February). There are two methods of working out the instalment payment amount as follows:

- Instalment Income Option: the payment amount is the amount of gross assessable income earned for that month or quarter (less capital gains) multiplied by the instalment rate. The instalment rate is advised by the Tax Office and is based on the company tax paid on the most recent tax assessment divided by the company's turnover (less capital gains). This method is available to all taxpayers.
- GDP adjustment notional tax option: the payment income amount is based on the assessable income figure from the most recent tax return multiplied by a GDP factor. The income amount is advised by the Tax Office. This method is available for individual taxpayers or other entities where their most recent assessed taxable income was under AUD 2 million. Certain categories of taxpayers such as farmers, sports people and artists may meet their liability for these four instalments by making two payments per year.

### BRANCH PROFITS TAX

There is no branch profits tax in Australia. However, Australian branches of foreign companies will generally only be taxed on Australian-sourced income at the prevailing company tax rate.

## GOODS AND SERVICES TAX (GST)

All entities that carry on an enterprise in Australia are required to register for the goods and services tax (GST) if their annual turnover meets the registration turnover threshold of AUD 75,000 or AUD 150,000 for not-for-profit organisations. Once registered, entities are required to charge 10% GST on all goods and services that they supply within Australia, unless the supplies are specifically excluded, such as education, health, childcare services and certain types of food.

Registered entities are entitled to claim an ‘input tax credit’ equal to the amount of GST paid on purchases, provided that those purchases were used for a ‘creditable purpose’ in carrying on their enterprise. This means that the cost of the GST is effectively borne solely by the end user. However, there are two exceptions to the general rule:

(1) GST-free supplies (zero rated supplies): These supplies are provided by enterprises to their customers free of GST, and the enterprise is also allowed to claim input tax credits on its creditable business acquisitions. Examples include education and health providers and certain types of food.

(2) Input taxed supplies: These supplies are provided by enterprises to their customers free of GST, but the enterprise is not allowed to claim any input tax credits on its creditable business acquisitions, effectively treating the supplier as an end user. Examples include financial services providers and residential accommodation supplies.

The GST collected from customers is remitted to the Federal Government on a quarterly or monthly basis, depending on the size of the entity’s annual turnover.

There are new rules regarding the supply of goods and services by non-residents to Australian consumers which should be considered particularly digital services such as software.

## FRINGE BENEFITS TAX (FBT)

Fringe benefits tax is a federal tax that is payable by resident and non-resident employers (with sufficient connection with Australia) on certain benefits that are provided to their employees. The tax is levied at a rate of 47% for the FBT year ending 31 March 2022 on the ‘grossed-up taxable value’ of each benefit that is provided to employees. FBT is separate from income tax.

In calculating the ‘grossed-up taxable value’ of a fringe benefit, the provider must first determine whether they are entitled to a GST input tax credit on that benefit. If so entitled, the value of the benefit must be ‘grossed up’ using a rate of 2.0802 for the 2022 FBT year. In all other cases, the value of the benefit is grossed up using a rate of 1.8868.

The grossing up methodology effectively levies tax on the benefit at the rate of tax that an employee on the highest marginal tax rate would pay on the cash salary required for them to pay for the benefit out of after tax salary and taking into account any GST input tax credit the employer can claim on providing the benefit. Employees can make non-tax deductible contributions towards the private use component of a benefit to reduce the taxable value, thereby reducing the FBT payable.

The FBT year runs from 1 April to 31 March. If the prior year’s FBT liability is AUD 3,000 or more, it is payable on a quarterly basis on the same payments dates as quarterly company tax (see above). If the total FBT liability is less than AUD 3,000, an annual payment is required. The annual FBT return is due for lodgement by 21 May of each year. Any FBT paid in Australia by an employer is generally deductible for Australian income tax purposes.

## SUPERANNUATION CONTRIBUTIONS

Employers are required to make superannuation contributions on behalf of their employees at a rate of 10% (from 1 July 2021) of the employee’s salary and wages. The rate will increase gradually until it reaches 12% on 1 July 2025. Contributions are required on a quarterly basis.

If insufficient contributions are made, employers are liable for a Superannuation Guarantee Charge. The ‘charge’ includes the shortfall in the contributions together with an interest component and an administration fee. Employers who have a superannuation guarantee shortfall are required to lodge a Superannuation Guarantee Statement together with the ‘charge’ on the 28th day of the second month following the end of the quarter.

Superannuation contributions made by employers for their employees are generally income tax deductible and subject to 15% contributions tax payable by the superannuation fund. Where the employee’s aggregate taxable income and concessional superannuation contributions exceed AUD 250,000 additional tax of 15% of the excess contributions is payable. Employees can make superannuation contributions on a “salary sacrifice” basis which effectively means these contributions are also tax deductible. There is a cap on the annual deductible aggregate superannuation contributions of AUD 27,500 for employees of all ages applying from 1 July 2021. Where concessional contributions exceed the cap, the excess amount is included in the individual’s assessable income and taxed at their marginal tax rate. From 1 July 2018, individuals with superannuation balances of less than AUD 500,000 will have the ability to carry forward unused concessional contributions from up to the five previous financial years, and use the amounts to make additional concessional contributions during a particular financial year.

## OTHER TAXES

Other Federal taxes include:

(1) Customs & Excise duties on certain imported items.

(2) The Petroleum Resource Rent Tax (PRRT) regime applies to onshore petroleum projects - including coal seam gas, tight gas and shale oil projects - as well as the offshore North West Shelf project. The PRRT is payable on the taxable profit of a person in relation to a petroleum project. If a person has an entitlement to assessable petroleum receipts from a production licence they will have a petroleum project.

(3) Minerals resource rent tax: this tax was repealed effective September 2014.

(4) Excise on fuel, tobacco and alcohol.

(5) Luxury Car Tax of 33% is payable on the value of certain vehicles that exceed the luxury car threshold of AUD 69,152 for the 2021/2022 year.

(6) Wine Equalisation Tax is a tax of 29% of the wholesale value of wine imported into Australia or sold by wholesale.

## LOCAL TAXES

The States and Territories of Australia impose the following taxes:

(1) Stamp Duty: payable on specified transactions, including certain transfers of property.

(2) Payroll tax: payable by employers who have total payrolls exceeding specified thresholds which vary from State to State. Payroll tax rates between each State and Territory varies from 4.75% - 6.85%.

(3) Land and property taxes.

(4) Workcare / workers compensation levies or premiums.

(5) Insurance Duty: payable on certain insurance premiums.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income equals assessable income less allowable deductions. Assessable income includes ordinary income under common law and statutory income but does not include specifically exempt or non-assessable income. Generally, to be deductible, losses and outgoings must relate to the gaining or producing of assessable income. Some items are specifically non-deductible, such as penalties and fines. Capital expenses are generally non-deductible but may be deducted over time as a capital allowance or included in the capital gains tax (CGT) cost base. Expenses incurred in producing exempt income are also non-deductible. It is possible to claim a portion of expense items that have dual purposes. Special rules apply in respect of the categories listed below.

## CAPITAL ALLOWANCES

Plant, equipment and other depreciable items are generally written off over their effective life. There are alternative rules for small business taxpayers with average turnover less than AUD 10 million. Taxpayers may self-determine the effective life of plant to calculate the tax depreciation rate or instead may rely on tax rates published by the Commissioner of Taxation. Either the straight-line or diminishing-value methods of depreciation can be used for each item of plant and is determined as follows:

(1) Straight-line method: 100% divided by the Asset's effective life.

(2) Diminishing-value method: 200% divided by the Asset's effective life.

Motor vehicles are subject to an indexed depreciation cost limit. The limit for the 2021/2022 financial year is AUD 60,733. A small business can pool depreciable assets in a general small business pool to be written off at one rate. The deduction for an asset acquired during an income year and allocated to the general small business pool is 15% of the taxable purpose proportion of its adjustable value. The general small business pool is written off at 30% per income year thereafter.

There are numerous changes to capital allowance deductions which were introduced as part of the Australian Government's stimulus response to the impact of COVID-19. These are intended to be temporary measures, generally lasting until 30 June 2023. For the majority of businesses, this should mean that an immediate write-off can be claimed for the cost of acquiring fixed assets.

## STOCK / INVENTORY

All trading stock on hand at the beginning of the year of income and all trading stock on hand at the end of that income year must be taken into account in determining taxable income.

Each item of inventory must be valued at the end of each financial year at:

- Cost price valued at full absorption cost;
- Market selling value (the current selling value in the taxpayer's trading market); or,
- Replacement cost.

The closing value adopted becomes the opening value at the beginning of the following income year. Acceptable valuation methods include FIFO, average cost, standard costing and retail inventory method. Non-acceptable valuation methods include LIFO and the base stock method. Certain small business taxpayers who have an annual turnover of less than AUD 10 million are only required to make such valuations where the value of their stock changed by more than AUD 5,000.

## CAPITAL GAINS AND LOSSES

Net capital gains are generally included in the determination of assessable income. Capital losses cannot be deducted from assessable income, and can only be offset against capital gains. Capital losses can be carried forward indefinitely to offset against future capital gains. Net capital gains are determined by deducting the cost base of an asset from the proceeds received on disposal of that asset. The purchase price of an asset purchased prior to 21 September 1999 can be adjusted for inflation indexation to the quarter ending 30 September 1999. Indexation is not available for assets purchased after 21 September 1999. In lieu of indexation, individuals and trustees may be eligible for a 50% reduction in their assessable capital gain if certain conditions are met. Complying superannuation funds are eligible for a 33.33% discount. This reduction is not available for companies.

Small business taxpayers which meet the eligibility conditions may access the small business CGT concessions which contain CGT exemptions and reduction concessions. These may allow the taxpayer to disregard or defer some or all of a capital gain arising from an active asset utilised in a small business. Other exemptions from capital gains tax may also be available, such as the main residence exemption, gains from foreign branches or small business exemptions for businesses that satisfy certain criteria. Foreign residents are exempt from Australian CGT except on Australian real property; business assets used in an Australian permanent establishment (PE); or equity interests in Australian or foreign companies or trusts with substantial interests in Australian real property either directly or indirectly through interposed entities. Australian real property includes Australian land and mining, quarrying and prospecting rights over Australian land.

The 50% CGT discount for non-residents was removed on capital gains accrued after 8 May 2012 on Taxable Australian Property such as real estate and mining assets. However, non-residents will still be entitled to the 50% discount on capital gains accrued prior to this date (after offsetting any capital losses) provided they obtain a market valuation of assets as at 8 May 2012. Please also note that non-residents are no longer entitled to the main residence exemption.

Australia has also recently introduced a 12.5% foreign resident capital gains withholding tax applicable on disposal of certain taxable Australian property (e.g. real property with a disposal price of AUD 750,000 or greater). There are a number of exemptions to this requirement and in other circumstances (e.g. the sale of shares) it is necessary to obtain clearance certificates or vendor declarations to avoid the requirement to withhold this tax. Please note that this withholding tax can also apply to indirect sales of Australian property (e.g. the sale of a non-resident company which owns shares in an Australian company).

## DIVIDENDS

In general, dividends received by resident shareholders from resident companies are taxable but grossed up for any franking credits attached. The franking credits are equivalent to the tax paid by the company on its profits out of which the dividend was paid. However, resident shareholders are allowed a tax offset of tax equal to the amount of any franking credits on the dividend. Dividends received from non-resident companies do not qualify for this tax offset, but may be entitled to a foreign tax credit (see foreign tax relief below). Alternatively, the dividend may be tax-exempt if the recipient is an Australian company that has a 10% or greater interest in the foreign company.

Dividends paid by non-resident companies in certain foreign countries are also exempt to the extent that they represent profits already taxed in Australia under Australia's Controlled Foreign Corporation (CFC) rules. Dividends paid by resident companies to non-resident shareholders are not subject to income tax but may be subject to withholding tax to the extent that the dividends are not franked (i.e. have been paid out of Australian-taxed profits) or are not paid out as conduit foreign income (i.e. a flow-through of non-taxable foreign income such as dividends from foreign subsidiaries). Payments of dividends are not generally tax deductible.

## INTEREST DEDUCTIONS

Interest is generally deductible to the extent it relates to funds borrowed for income-producing purposes. Interest deductions may be restricted by the thin capitalisation provisions. The thin capitalisation rules seek to deny deductions for interest payments if the taxpayer's debt exceeds 60% of the value of its assets. The interest attributable to this excess is denied deductibility. An exception to this rule is where the taxpayer can satisfy an 'arm's length test', which focuses on the taxpayer's likely borrowings if it had acted at arm's length and what independent lenders would lend to the taxpayer on arm's length terms. Taxpayers can also access a 'worldwide gearing test' which broadly allows a proportion of debt levels in Australia which matches that of the worldwide group.

The thin capitalisation provisions apply to foreign controlled Australian entities and the inward investments of foreign nationals and Australian-based entities with foreign investments. A de minimis rule ensures that all corporate entities and their associates (regardless of their nature or business) that claim no more than AUD 2 million for the financial year in debt deductions per income year will not be subject to the thin capitalisation rules.

## MANAGED INVESTMENTS

There are complex rules relating to Managed Investment Trusts (MIT) that can reduce the withholding rates applicable to payments made to foreign residents. These rules should be carefully considered if applicable as they are complex.

## LOSSES

A tax loss is the excess of allowable deductions over assessable income (not including exempt income) and can be carried forward indefinitely to offset against future taxable income. For companies and trusts the deductibility of losses is restricted by a 'continuity of ownership' test (more than 50% of voting, dividend and capital rights). Alternatively, the loss is deductible if the company passes a 'same business' or 'similar business' test.

A limited loss carry-back regime was also introduced as part of the Australian Government's COVID-19 response. In some circumstances, a company will be eligible to carry back losses incurred in the 2020, 2021, 2022 or 2023 income years against profits arising in the 2019, 2020, 2021 or 2022 income years. There are strict eligibility criteria to be satisfied in order to claim this benefit.

## FOREIGN SOURCED INCOME

(i) Controlled Foreign Corporations (CFCs): Australia has a CFC regime which is designed to ensure certain types of passive and associated party income of a CFC is included in the controlling Australian resident's taxable income each financial year. In general, a foreign company will be regarded as a CFC where:

- Five or fewer Australian residents hold an associate inclusive 50% interest in the foreign corporation or have de facto control of the foreign entity;
- An Australian entity (and its associates) has 40% or greater control in the foreign corporation, unless they can prove that their interest is not a controlling interest; or,
- Irrespective of the interests in a foreign company, a group of five or fewer Australian entities (either alone or together with associates) has actual control of the company.

CFCs in seven listed countries (USA, UK, France, Germany, Japan, Canada and New Zealand) are largely exempted from the CFC rules. There are several exemptions to the CFC rules including an active business exemption. The Government is currently reviewing the CFC provisions with a view to simplifying the rules.

(ii) Most foreign branch profits and capital gains of a resident company are generally not taxed when the income or gain is derived in carrying on a business through a permanent establishment in the following listed countries: UK, US, Canada, France, Germany, Japan and New Zealand. Losses from branches in the countries listed above cannot be claimed. Foreign branches of resident companies in other countries (unlisted countries) are generally not subject to tax on profits or gains where the income is from an 'active business' and for capital gains where the company used the asset wholly or mainly in an active business. Associated losses are also not deductible against the Australian source income of the entity.

## CONDUIT FOREIGN INCOME

The conduit foreign income rules allow foreign income and certain foreign capital gains to flow through Australian companies and other interposed entities to foreign residents without being taxed in Australia.

## ANTI-HYBRID RULES

Australia has recently introduced hybrid mismatch rules, applicable to income years commencing on or after 1 January 2019. These rules are intended to prevent Australian taxable entities from being able to avoid income tax, or obtain a double non-taxation benefit, by exploiting differences between the tax treatment of entities and instruments across different countries.

These rules are complex and far-reaching. As well as targeting actual hybrid mismatch arrangements (i.e. when there is a difference in international tax treatment between instruments or entities that leads to effective double deductions or deductions without income inclusion) the rules also apply to financing arrangements such as ordinary loans from foreign related parties where the lender is taxed at 10% or less.

These rules do not contain a de minimis threshold nor a grandfathering exclusion. Importantly, they do not require a tax avoidance motive to be applicable. There are, however, a number of carve-outs to consider.

The hybrid mismatch rules target payments which give rise to:

a) a tax deduction in two or more countries (deduction/deduction (DD) outcome);
b) a tax deduction in one country and no assessable income in any other country (deduction/non-inclusion (DNI) outcome);
c) interest payments made to foreign related parties where the lender is taxed at 10% or less (in some circumstances); or
d) certain distributions which give rise to a tax deduction in a foreign country.

These rules can apply where there is a direct Australian group member participant but also if there is no direct Australian participant but the arrangement can be traced under the rules to the Australian entity.

The effect of the hybrid rules is to deny an Australian tax deduction or increasing Australian assessable income.

### INCENTIVES

Specific write-offs are provided for the mining and primary production industries.

Special taxation treatment is also afforded to investment in innovative Australian companies through a 'venture capital tax concession'.

The Research & Development (R&D) tax incentive provides a tax offset for eligible R & D activities targeting R&D activities that benefit Australia. The two core components of the incentive include:

- Refundable tax offset for certain eligible entities whose aggregated turnover is less than AUD 20 million;
- A non- refundable tax offset for all other eligible entities.

### OTHER

(i) Debt Forgiveness: Where a commercial debt is forgiven, special provisions operate in some circumstances to effectively tax the borrower on the benefit received as a result of the forgiveness of the debt. The 'net forgiven amount' is not included directly in the borrower's assessable income but is applied against the borrower's tax attributes in the following order:
   (1) Reduction of revenue losses.
   (2) Reduction of net capital losses.
   (3) Reduction of deductions for particular expenditure.
   (4) Reduction of the cost base of certain assets.

(ii) Debt/Equity Rules: The debt equity rules determine the nature of an instrument for taxation purposes. Broadly speaking, the rules are based on the substance of the arrangement rather than its legal form. The rules determine whether a return on a debt or equity interest in an entity may be frankable and non-deductible (like a dividend) or may be deductible to the entity and not frankable (like interest).

(iii) Taxation of Foreign Exchange (forex) Gains or Loss: Special rules tax forex gains and allow tax deductions for forex losses. The rules apply to transactions where there is a disposal of foreign currency or a disposal of a right to foreign currency, a ceasing of a right or obligation to receive foreign currency, or a ceasing of a right or obligation to pay foreign currency. These provisions will not apply where the taxpayer has made certain elections.

(iv) Taxation of Financial Arrangements (TOFA): Broadly, the TOFA regime defines what constitutes a financial arrangement and provides a framework for calculating gains and losses on financial arrangements through default and elective tax timing methods. In broad terms, it is directed to entities that have:
   - Aggregated turnover of greater than AUD 100 million; or,
   - Assets of greater than AUD 300 million

   However, certain exceptions apply.

## C. FOREIGN TAX RELIEF

Where foreign sourced income is included in a taxpayer's assessable income, foreign income tax offsets are available at the lesser of the foreign tax paid or the Australian tax payable. Any withholding tax paid on an assessable dividend from a foreign company will generally be allowed as a foreign income tax offset.

## D. CONSOLIDATED CORPORATE GROUPS

Wholly-owned groups of Australian companies and trusts in some circumstances can elect to have their income tax liability calculated on a consolidated basis. This means that the entire group is treated, and taxed, as a single corporate taxpayer. Where the parent of Australian subsidiary entities is a foreign entity, the consolidation regime allows for the Australian subsidiary entities to be grouped under the consolidation regime where certain conditions are met.

## E. RELATED PARTY TRANSACTIONS

Non-arm's-length international profit-shifting arrangements and other international transactions between related parties are governed by transfer pricing rules which give the Commissioner of Taxation the power to calculate the income tax payable based on arm's length prices.

Documentation requirements and arm's-length conditions aim to align Australian requirements with OECD Guidance material. Contemporaneous documentation should be prepared prior to lodgement of the entity's income tax return and records should be made readily available to avoid failing to demonstrate a reasonably arguable position in the event of a transfer pricing adjustment.

The Australian Government has adopted a number of the recommendations of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Action Plan. Australia has agreed to facilitate the exchange of Country-by-Country (CbC) reports between tax authorities in different jurisdictions to better assess transfer pricing risks. The measure takes effect from income years commencing on, or after, 1 January 2016. It requires multinational entities with an annual global income of AUD 1 billion or more to provide the ATO with reporting statements within 12 months after the end of their income tax year.

It is also necessary for all Australian entities who are part of a consolidated accounting group where revenue exceeds AUD 1 billion to annually lodge a Master File and Local File with the ATO. These entities must also to lodge a Country-by-Country report or notify the ATO if a group entity has lodged this overseas.

## F. WITHHOLDING TAXES

Withholding tax must be deducted from interest, royalties and dividends (to the extent they are not franked) paid to non-residents. Liability for the remittance of withholding taxes rests with the payer of such amounts. Withholding tax is collected through the PAYG system and is determined according to the payer's PAYG withholding status. The payer is also required to lodge an annual report with the Commissioner of Taxation where such amounts have been withheld during the financial year. The relevant withholding tax rates are:

| Type of income | Rate |
|---|---|
| 1. Dividends - franked | 0% |
| 2. Dividends – unfranked[1] | 0 - 15% (treaty countries); 30% (non-treaty countries) |
| 3. Interest | 10% (NIL for financial institutions under certain treaties) |
| 4. Royalties | 5% - 15% (treaty countries); 30% (non-treaty countries) |

Note:

1. Australia does not impose withholding tax on dividends to the extent they are franked. To the extent dividends are unfranked, i.e. when paid out of profits of a company that have not borne Australian tax, the rate can be as low as 0% or 5%, if the beneficial owner of the dividends is a company that holds at least 80% or 10%, respectively, of the voting power in the payer. In all other cases, the rate is generally 15%.

## G. EXCHANGE CONTROL

Where more than AUD 10,000 of Australian currency is physically taken out of Australia, the departing individual must report this to an Australian Customs Officer, or to the Australian Transaction Reports and Analysis Centre, (AUSTRAC). Equivalent amounts of foreign currency that are brought into Australia must also be reported.

## H. PERSONAL TAX

Income tax is payable by Australian resident individuals on non-exempt income derived from worldwide sources. Non-resident individuals are only required to pay tax on Australian-sourced income. Residency is generally determined by reference to common law principles of residence. However, an individual can also be deemed an Australian resident if the individual's domicile is in Australia (unless they have a permanent place of abode outside Australia) or where the individual has spent more than one half of the relevant year of income in Australia (unless their usual place of abode is outside Australia and they do not intend to take up residence in Australia).

Individuals that become residents for a short time may be eligible for the temporary resident tax exemptions on their foreign income and capital gains. If they are holders of a temporary resident visa (generally for up to four years but may be longer), they will not be taxed on foreign-sourced income unless the income relates to employment or services rendered while they are a resident of Australia. In addition, temporary residents are not taxed on capital gains except for gains on 'Taxable Australian Property' (see capital gains section above). Income tax is payable on taxable income, which is the 'excess' of assessable income less allowable deductions.

Assessable income includes business income, employment income, capital gains on certain assets, dividends, rent and interest. Allowable deductions include outgoings incurred in gaining or producing assessable income such as interest expenses and statutory deductions such as tax-deductible gifts to specified charitable entities.

Most individual taxpayers that are employees will generally have Pay-As-You-Go (PAYG) tax instalments withheld from their salary or wage payments by their employers. Most individuals who are either self-employed or who earn non-salary income are required to make interim payments of tax during the financial year. The amount of these instalments is calculated using the same method outlined in section 'A' above for companies. Individuals with a most recent notional tax assessment of less than AUD 8,000 can elect to make an annual payment, otherwise interim payments are generally required either 21 days after the payment period (or 28 days if they are deferred business activity statement (BAS) payers).

A 2% levy, called the Medicare Levy, is payable by resident individual taxpayers. This levy covers basic hospital and medical expenses for all Australian residents and is assessed on the taxable income of resident individual taxpayers with no maximum ceiling on the amount payable. Low income taxpayers may be eligible for an exemption or reduced levy.

Temporary residents will generally be eligible to obtain a Medicare levy exemption. Higher income individuals without private health insurance are subject to an additional Medicare Levy Surcharge of between 1% and 1.5%.

A rebate is available to resident taxpayers for the cost of private health insurance. The rebate is subject to an income test and differs depending on the age of the taxpayer. A low income tax offset is available, dependent on income levies. Various other tax offsets are also available to resident individual taxpayers such as medical expenses rebate, zone offsets and superannuation offset. The tax rates for Australian individual residents and non-residents in the 2021/2022 financial year are outlined as follows:

### Resident Individuals - rates 2021/2022

| Taxable Income Exceeding AUD | Taxable Income Not Exceeding AUD | Tax On Lower Amount AUD | Rate On Excess % |
|---|---|---|---|
| 0 | 18,200 | 0 | 0.0 |
| 18,201 | 45,000 | 0 | 19.0 |
| 45,001 | 120,000 | 5,092 | 32.5 |
| 120,001 | 180,000 | 29,467 | 37.0 |
| 180,001 | — | 51,667 | 45.0 |

Note, these rates exclude 2% Medicare Levy and Medicare Levy Surcharge.

### Non-resident Individuals - rates 2021/2022

| Taxable Income Exceeding AUD | Taxable Income Not Exceeding AUD | Tax On Lower Amount AUD | Rate On Excess % |
|---|---|---|---|
| 0 | 120,000 | 0 | 32.5 |
| 120,001 | 180,000 | 39,000 | 37.0 |
| 180,001 | — | 61,200 | 45.0 |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends[1] (%) | Interest[2] (%) | Royalties[3] (%) |
|---|---|---|---|
| Resident corporations or individuals: | 0 | 0 | 0 |
| Non-resident corporations or individuals of non-treaty countries: | 30 | 10 | 30 |
| **Treaty countries:** | | | |
| Argentina | 10/15 | 12 | 10/15 |
| Austria | 15 | 10 | 10 |
| Belgium | 15 | 10 | 10 |
| Canada | 5/15 | 10 | 10 |
| Chile | 5/15 | 5/15 | 5/15 |
| China | 15 | 10 | 10 |
| Czech Republic | 5/15 | 10 | 10 |
| Denmark | 15 | 10 | 10 |
| East Timor | 15 | 10 | 10 |
| Fiji | 20 | 10 | 15 |
| Finland | 0/5/15 | 10 | 5 |
| France | 0/5/15 | 0/10 | 5 |
| Germany | 15 | 10 | 10 |
| Greece | 30 | 10 | 30 |
| Hungary | 15 | 10 | 10 |
| India | 15 | 15 | 10/15/20 |
| Indonesia | 15 | 10 | 10/15 |
| Ireland | 15 | 10 | 10 |
| Italy | 15 | 10 | 10 |
| Japan | 0/5/10 | 0/10 | 5 |
| Kiribati | 20 | 10 | 15 |
| Korea | 15 | 15 | 15 |
| Malaysia | 0/15 | 15 | 15 |
| Malta | 15 | 15 | 10 |
| Mexico | 0/15 | 0/10/15 | 10 |
| Netherlands | 15 | 10 | 10 |
| New Zealand | 0/5/15 | 0/10 | 10 |
| Norway | 0/5/15 | 0/10 | 5 |
| Papua New Guinea | 15/20 | 10 | 10 |
| Philippines | 15/25 | 0/10/15 | 15/25 |
| Poland | 15 | 10 | 10 |
| Romania | 5/15 | 10 | 10 |
| Russia | 5/15 | 10 | 10 |
| Singapore | 15 | 10 | 10 |
| Slovak Republic | 15 | 10 | 10 |
| South Africa | 5/15 | 0/10 | 5 |

| | Dividends[1] (%) | Interest[2] (%) | Royalties[3] (%) |
|---|---|---|---|
| Spain | 15 | 10 | 10 |
| Sri Lanka | 15 | 10 | 10 |
| Sweden | 15 | 0/10 | 10 |
| Switzerland | 0/5/15 | 0/10 | 5 |
| Taiwan | 10/15 | 10 | 12.50 |
| Thailand | 15/20 | 10/25 | 15 |
| Turkey | 15 | 10 | 10 |
| United Kingdom | 0/5/15 | 0/10 | 5 |
| United States | 0/5//15 | 10/15 | 5 |
| Vietnam | 10/15 | 10 | 10 |

NOTES:

1. Franked dividends paid by Australian resident companies to non-residents are exempt from dividend withholding tax. To the extent dividends are unfranked, i.e. when paid out of profits of a company that have not borne Australian tax, the rate can be as low as 0% or 5%, if the beneficial owner of the dividends is a company that holds at least 80% or 10%, respectively, of the voting power in the payer. In all other cases, the rate is generally 15%
2. Non-resident interest withholding tax in Australia is limited to 10% under Australian tax law.
3. Withholding tax of 30% is generally imposed on the gross amount of royalties paid from Australia to non-residents. A reduced rate is applicable to residents of treaty countries as listed above.

The various rates may change according to categories and circumstances. Taxpayers should consult the applicable DTAs to ascertain the applicable rate.

# AUSTRIA

## MEMBER FIRMS

| City | Name | Contact Information |
|---|---|---|
| Graz | Clemens Corti | +43 316 82 60 82<br>clemens.corti@pkf.at |
| Salzburg | Stephan Rößlhuber | +43 662 84 22 90<br>Stephan.roesslhuber@pkf.at |
| Vienna | Thomas Außerlechner | +43 1 51 28 780<br>Thomas.ausserlechner@pkf.at |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Austria |
| Capital: | Vienna |
| Main languages: | German |
| Population: | 9.05 million (2022 estimate) |
| Monetary unit: | Euro (EUR) |
| Internet domain: | .at |
| Int. dialling code: | +43 |

## KEY TAX POINTS

- Public and private limited companies and certain other entities, such as cooperative purchasing societies and mutual insurance companies, are subject to corporate income tax at 25%.
- Resident companies are subject to tax on their worldwide income. Non-resident companies are taxed on income attributable to an Austrian permanent establishment and certain other Austrian-sourced income.
- There is no specific capital gains tax for limited companies. Capital gains and losses are generally treated as ordinary business income (or loss) and are taxed at regular corporate income tax rates.
- The group taxation regime allows for offsetting losses against group profits. In certain cases, losses incurred by non-Austrian resident members of the group may be utilised.
- VAT is generally imposed on the delivery of goods and the supply of services within Austria by entrepreneurs within the scope of their business and on imports into Austrian customs territory.
- Austria imposes a 27,5% withholding tax on dividends, unless double taxation treaties provide otherwise. Withholding tax is also levied on royalties at 20% and interest from banks and financial instruments at 25%.
- Austrian resident individuals are subject to unlimited tax liability on their worldwide income, including income from trade or business, professional services, employment, property and investments.

- Non-resident individuals are only taxed on Austrian-sourced income. An individual is generally treated as resident in Austria if he or she is domiciled or establishes a habitual place of abode in Austria (including a six-month stay in Austria).

## A. TAXES PAYABLE

### COMPANY TAX

Public and private limited companies and certain other entities, such as cooperative purchasing societies and mutual insurance companies, are subject to corporate income tax at 25%, which will be reduced to 24% in 2023 and to 23% from 2024. Limited companies incurring a tax loss or earning small profits must pay a minimum tax of EUR 1,750, EUR 3,500 or EUR 5,452 depending on the legal status of the company and the industry. A reduced minimum tax applies to the first 10 years upon incorporation. Non-resident companies are not subject to a minimum tax. Minimum tax may be credited against corporate tax payable in the following years.

Resident companies are subject to tax on their worldwide income. Non-resident companies are taxed on income attributable to an Austrian permanent establishment, immovable property located in Austria, deposits with Austrian banks, income from silent partnerships in Austria, income from leasing or renting certain property in Austria and income from commercial or industrial consulting or providing labour for domestic use. Companies are deemed to be resident if they are incorporated in Austria (i.e. the registered office is in Austria) or have their place of effective management in Austria. The fiscal year usually runs from 1 January to 31 December, although a company can choose a different fiscal year under certain circumstances. Corporate income tax is assessed on an annual basis. However, quarterly advance payments have to be made.

### CAPITAL GAINS TAX

There is no specific capital gains tax for limited companies in Austria. Capital gains and losses are generally treated as ordinary business income (or loss) and are taxed at standard corporate income tax rates. Special rules apply to capital gains and losses on property sold by legal entities other than limited companies. The sale of a property by individuals and non-corporate businesses is subject to income tax at a reduced rate of 30% regardless of the holding period. Special rules apply to the calculation of the tax basis for long holding periods and property purchased before 2002. Deductions are quite restricted.

Exemptions apply to privately owned, main residencies. Another exemption from capital gains taxation applies to real estate newly built at the seller’s own risk unless rented out during the last 10 years before sale. Capital gains from financial instruments held by private persons are taxed at a reduced rate of 25% or 27.5% regardless of the holding period. Some capital gains are also taxed with the regular income tax rate (e.g. income from personal loans).

### BRANCH PROFITS TAX

There is no branch profits tax in Austria. Austrian branches of foreign companies are subject to Austrian (corporate) income tax on Austrian-sourced income only.

### SALES TAX / VALUE ADDED TAX (VAT)

VAT is generally imposed on the delivery of goods and supply of services within Austria by entrepreneurs within the scope of their business and on imports into Austrian customs territory.

The standard VAT rate is 20%. A reduced rate of 10% or 13% applies for example to food or hotel stays. Some transactions such as exports and intra-community sales B2B are zero-rated. A number of transactions are exempt from VAT, e.g. sale of financial assets, insurance premiums. VAT is generally assessed on a calendar year basis. Monthly or quarterly preliminary returns have to be filed.

### FRINGE BENEFITS TAX (FBT)

Fringe benefits are subject to salary tax according to the value of the benefit in kind. The fringe benefits are taxed on the employee. These include e.g. the private use of a company vehicle, free meals or interest-free loans.

### LOCAL TAXES

A municipal tax of 3% is levied on the gross payroll of enterprises. In addition, municipalities levy land and property taxes.

### OTHER TAXES

Austria imposes a number of other taxes such as:

- A real estate transfer tax of 0.5% to 3.5% of the real estate value or, alternatively, based upon a deemed tax value for some transactions (which is usually not less than the market value).
- Insurance tax on insurance premiums, ranging from 1% to 11%.
- Social security is payable both by employers and employees with a capped basis of EUR 79,380 p.a. or EUR 5,670 per month (14 salary payments) for 2021. The employee rate ranges from 14% to 18% depending on the employee’s status, age and type of income. The employer rate ranges roughly from 18% to 22%. Apart from social security contributions, employers have to pay up to 7.32% salary-related charges on top of gross salary. The total staff costs amount to approximately 130% of gross salary.
- Stamp duties are due on certain transactions and documents.
- Austria does not levy any tax on inheritance or gifts. No tax is imposed on gratuitous transfers (except for land transfer tax) but mandatory reporting on such transfers exceeding certain limits has been implemented.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is calculated as balance between taxable income and allowed deductions. Generally, to be deductible, losses and expenses must have been incurred to generate taxable income. Restrictions on deductions apply to capital gains from the sale of properties and financial instruments. From 2014 management compensation exceeding EUR 500,000 per annum is disallowed as deduction for the employer’s corporate income tax. Another restriction applies to long-term (exceeding one year) provisions where the deductible amount is calculated as the net present value at a discount rate of 3.5% per annum.

Taxable income is based on the profit or loss shown in the financial statements prepared according to Austrian GAAP (called

UGB). The accounting profit/loss is then adjusted for special tax rules according to the Income Tax Act. Non-deductible taxes (e.g. corporate tax) and non-deductible expenses (such as donations and general provisions) are added. On the other hand, special allowances and non-taxable income (dividends and losses carried forward) may be deducted. Under certain circumstances Austria also allows to deduct foreign losses incurred in permanent establishments or in subsidiaries under the group taxation regime.

## CAPITAL ALLOWANCES

There are some special capital allowances in Austria that are particularly applicable to small and medium-sized enterprises.

## DEPRECIATION

Assets subject to wear and tear have to be depreciated using the straight-line method. For new investments made after 30 June 2020 a degressive depreciation scheme has been implemented. If an asset costs less than EUR 800 (EUR 1,000 from 1 Jan 2023) it can be written off immediately in the period of acquisition. The Income Tax Act stipulates fixed depreciation rates for buildings, ranging between 1.5% and 2.5% (depending on the use and type of building). During the first 2 years an accelerated depreciation rate can be applied. For company cars, the Income Tax Act stipulates a fixed useful life of eight years for both acquisition and leasing. The costs of goodwill must be depreciated over fifteen years. The allocation key of the acquisition costs of a developed property between land and building has partially changed from 20/80 to 40/60 (disputable assumption, guilty in case of lending property). Other assets are depreciated over their useful life.

## STOCK / INVENTORY

Stock is valued at the lower of cost or market value. Where inventory is valued according to the cost price, the FIFO method is generally accepted. Fungible goods may also be valued by using the weighted average cost method.

## CAPITAL GAINS AND LOSSES

Under certain circumstances, roll-over of capital gains is allowed for individuals, trusts or partnerships but not for limited companies. If fixed assets are sold, gains resulting from disposal may be deducted from the cost of investments made in the same period or may be allocated to a tax-free reserve to be used against investments within the following 12 or 24 months. Any amounts not used within this period are subject to tax.

Several restrictions apply to the roll-over of capital gains (e.g. not applicable for limited companies). For corporate businesses there is no difference in the tax treatment of capital losses versus trading losses. For international participations, one can choose between tax-free treatment (capital gains and losses, depreciation is treated as neutral for tax-assessment) or taxable treatment. The declared option is irrevocably binding for the future. For privately held financial instruments the bank collects a withholding tax of 25% to 27.5% on capital gains.

## DIVIDENDS

There is a final withholding tax of 25% on domestic dividends (27.5% if the participation is held by a private person). Withholding tax does not apply to dividends received by:

- An Austrian company holding an interest of at least 10% in the distributing company;
- A foreign resident company holding an interest of at least 10% in the distributing company for a minimum period of one year.

Where withholding tax is incurred on dividends paid between Austrian resident companies, this is creditable against the recipient’s corporate income tax liability. In accordance with double taxation treaties withholding tax on dividends may be reduced at source or through a refund procedure.

## INTEREST DEDUCTIONS

Interest is deductible on an accrual basis. Austria applies the EU general thin-capitalisation regime. An important exception for the deductibility was introduced on 1 March 2014 whereby interest payable on intra-group loans is only allowed for deduction if the lender is subject to a 10% income tax on the interest earned in his domicile. In other words, there is no deduction for interest paid to intra-group financial holdings in tax havens. The same restriction applies to royalties.

Starting from 1 January 2021 the amount of the netted interest cost that exceeds 30% of taxable EBITDA is not deductible. A special definition for interest cost was implemented. An exemption limit was set at EUR 3 million. In case of a higher equity ratio compared to the equity ratio of the group’s consolidated financial statements there is no limitation on deductibility. Upon specific request the non-deductible part may be carried forward to the subsequent financial years. In addition, a residual EBITDA part that has not been deducted by way of interest can also be carried forward upon specific request for a maximum period of 5 years.

Interest income from bank deposits and securities is subject to a withholding tax of 25%. The withholding tax on interest is a final tax (income, donation, inheritance) for individuals. Interest income earned by a company is part of its business income and therefore subject to 25% corporate tax. For such companies, the withholding tax will be credited to corporate income tax due.

## CONTROLLED FOREIGN CORPORATION (CFC) RULES

In accordance with the requirements of the EU Anti-Tax Avoidance Directive (ATAD), passive income (in particular interest, royalties and dividends) of affiliated companies (more than 50% shareholding) taxed at low rates abroad (below 12.5% effective tax rate) can, as of 2019, be taxed in Austria. This is intended to eliminate the incentive to shift passive sources of income to countries with low tax rates.

## MANDATORY CROSS-BORDER NOTIFICATIONS (EU MANDATORY REPORTING LAW)

The year 2020 will see Austria introduce a new law that makes it mandatory to report tax-saving cross-border arrangements to the tax authorities. Failure to report – regardless of whether the underlying arrangement is classified as lawful or unlawful – can result in a fine of up to EUR 50,000.

The basis for the new law is the EU Mutual Assistance Directive 2018/822.

Both “marketable” and “bespoke” arrangements must be reported. Notification must be made in advance, and arrangements between 25 June 2018 and 30 June 2020 will have to be reported retroactively.

## LOSSES

Losses incurred by companies may be set off against trading income and capital gains of the same accounting period. Excess losses may be carried forward indefinitely, but cannot be carried back in principle.

However, in order to mitigate the financial constraints resulting from COVID-19 a temporary loss carry back regime had been introduced for 2019 and 2020, but is no longer applicable.

Losses carried forward may only be set off against the current income, i.e. a minimum of 25% of the income is subject to corporate income tax, regardless of losses carried forward. The excess loss may be credited against profits in consecutive years.

Losses incurred by individuals can be carried forward indefinitely if they stem from business sources; losses from other sources, e.g. rental income or capital assets on the other hand cannot be carried forward by individuals. Losses by individuals that incur from business investments without active participation in management, are limited to the contribution paid. Any further losses can only be offset against future profits from the same income. The 25% minimum taxable income does neither apply to individuals.

## FOREIGN-SOURCED INCOME

A resident company is subject to corporate income tax on its worldwide income. Income from foreign sources is taxable in Austria according to double taxation treaty rules. Austria does not apply specific controlled foreign company (CFC) legislation. However, to avoid tax abuse, dividends from international participations located in tax havens may be taxed in Austria if certain anti-abuse criteria are met.

## INVESTMENT ALLOWANCE / INCENTIVES

Under certain circumstances, the taxation of realised capital gains can be avoided or deferred by transferring the amount to an untaxed roll-over reserve. There are special allowances and/or tax incentives for apprenticeships and research and development (up to 14% allowance).

A further allowance for individuals and partnerships allows for 13% of annual profits to be exempt from tax provided the allowance amount (other than the first EUR 30,000 of profit) is invested in certain tangible assets or specific securities with a holding period of at least four years. The allowance is reduced to 7% for that proportion of annual profits between EUR 175,000 and EUR 350,000 and to 4.5% for that proportion of annual profits between EUR 350,000 and EUR 580,000. No allowance is available for annual profits that exceed EUR 580,000.

From 2023 onward an additional incentive scheme for investments will allow for a (fictitious additional) deduction of 10% (15% for ecologically favourable investments) of the investment costs. The tax incentive will apply to a listed number of items and exclude certain investments, such as climate damaging assets or intangibles. The maximum investment amounts to EUR 1 million per year.

## TRUSTS (PRIVATE FOUNDATION)

An Austrian Trust is a legal entity in civil law in which a donor transfers assets in order to achieve the objects of the trust. Quite often, the purpose of a trust is part of estate planning to care for family members (‘family trust’). Trusts enjoy some minor tax advantages as certain forms of income (e.g. certain capital gains, dividends, interest) are not subject to corporate income tax at the trust level. The transfers to private trusts are subject to a fixed rate of 2.5% donation tax.

Where real estate is transferred, transfer tax (from 0.5% to 3.5% of the real estate value) and donation tax must be paid. Transfers by the trust to its beneficiaries (natural persons) are subject to withholding tax. Trusts (Private Foundations) are subject to special tax regimes that vary from company taxation in quite a number of significant aspects.

## C. FOREIGN TAX RELIEF

Austria has concluded a number of double taxation treaties with other countries. Generally, an Austrian resident is subject to taxation in Austria. The double taxation treaties may either exempt foreign-sourced income or grant a credit against Austrian tax for foreign taxes paid on the same income or gain in the same fiscal period.

## D. CORPORATE GROUPS

There is a special regime for the taxation of corporate groups where profits and losses can be set off within the group. The parent (or head of the national group) must be a resident corporation or permanent establishment of an EU-corporation. Basically, the parent must hold more than 50% of the shares and voting rights in any member of the group directly or indirectly and the group status must be kept for a minimum period of three years. Losses from non-resident group members (restrictions apply to members in tax havens and countries where Austria has not concluded a treaty with a comprehensive administrative assistance clause) reduce the Austrian tax basis (subsequent taxation of these losses applies if the foreign group member can realise losses carried forward in the future). If a member leaves the group for whatever reason before expiration of the minimum period, tax will be assessed as if it had never been a group member.

Losses arising in relation to a member’s investment in another member of the corporate group are generally not deductible (for example, a realised loss on disposal of a subsidiary or impairment loss). The group taxation provides a considerably attractive tax instrument for corporate groups in Austria. However, thorough long-term tax planning is key to efficient utilisation of these provisions.

## E. RELATED PARTY TRANSACTIONS

The arm’s-length principle applies. In this context, the ‘substance-over-form’ principle, which is a general principle of Austrian income tax, has to be strictly observed. This implies that a transaction must be assessed according to its economic effect and not according to the legal form it takes. The tax administration introduced guidelines for transfer pricing basically relying on the OECD Transfer Pricing Guidelines. Particular restrictions apply to deductibility of intra-group interest and royalty payments to related parties in low tax jurisdictions.

## F. WITHHOLDING TAX

Austria imposes a withholding tax of 25% (for companies) or 27.5% (for private persons) on dividends, subject to the application of a double tax treaty. A withholding tax exemption applies if the recipient is resident company in another EU member state, holds at least 10% of the share capital and has done so continuously for one year prior to the dividend payment. Otherwise, the amount withheld can be credited by the recipient company against its own tax liability. For international participations, the EU Parent-Subsidiary Directive applies.

If the tax authorities suspect cases of tax avoidance or abuse, the withholding tax exemption can only be claimed through a refund procedure. In principle, Austria levies a 25% withholding tax not only on dividends but also on certain interest payments and capital income derived from securities. Corporate investors may achieve a tax exemption if certain conditions are met, even for portfolio dividends.

Austria imposes a withholding tax regime also on royalties and income from artists, musicians, actors, sportspersons and the like. The tax rate is usually 20% of the gross receipts. Regarding royalties, however, the rate is reduced to zero by many of Austria's double tax treaties.

## G. EXCHANGE CONTROL

Most exchange controls have been abolished in recent years. There are hardly any restrictions on the transfer of capital and currency transactions. However, there are reporting requirements for capital outflows from accounts of individuals exceeding an amount of EUR 50,000 (national or international). In addition, all accounts of individuals are kept in a register. The tax authorities may be allowed to get information from this register. Furthermore, even access to the content of accounts is possible under certain circumstances.

## H. PERSONAL TAX

Austrian resident individuals are subject to unlimited tax liability on their worldwide income. Non-resident individuals are only required to pay tax on Austrian-sourced income. Taxable income consists of the following seven sources:

(1) Agriculture and forestry;

(2) Independent (professional) services (including scientific, artistic, literary, educational, or other professional services);

(3) Trade or business, including gains on the sale of a business or partnership share;

(4) Employment, e.g. wages and salaries, social security pensions;

(5) Capital assets (dividends, interest and capital gains from financial instruments);

(6) Rentals and royalties;

(7) Annuities and other income of a recurring nature, capital gains from property, speculative gains, and income from certain non-recurring services.

The current average tax rates are as follows:

| Taxable Income (EUR) | Marginal Tax Rate % |
|---|---|
| 0 – 11,000 | 0 |
| 11,001 – 18,000 | 20 |
| 18,001 – 31,000 | 32.5 |
| 31,001 – 60,000 | 42 |
| 60,001 – 90,000 | 48 |
| 90,001 – 1,000,000 | 50 |
| Over 1,000,000 | 55[1] |

1. The income tax rate of 55% is limited to the years 2016 to 2025.

The tax payable is reduced by certain tax credits, depending on marital status, number of children and other personal circumstances. Special regulations and rates apply for non-residents. Approximately 1/7 of an employee's salary is paid as extra payments, e.g. 13th and 14th salary (which are mandatory pays in most industries) per year is taxed at a fixed rate of 6%. For higher income the reduced rate on extra payments is not applicable anymore or limited. The favourable taxation rates are as follows:

| Extra payments p.a. (EUR) | Tax Rate (%) |
|---|---|
| 0 – 620 | 0 |
| 621 - 25,000 | 6 |
| 25,001 - 50,000 | 27 |
| 50,001 - 83,333 | 35.75 |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Interest paid to non-residents is generally not subject to withholding tax.

| | Dividends (%) | Royalties (%) |
|---|---|---|
| | | |
| **Domestic rates (companies)** | 0/25/27.5 | 0/20 |
| **Treaty countries:** | | |
| Albania | 5/15 | 5 |
| Algeria | 5/15 | 10 |

| | Dividends (%) | Royalties (%) |
|---|---|---|
| Armenia | 5/15 | 5 |
| Australia | 15 | 10 |
| Azerbaijan | 5/10/15 | 5/10 |
| Bahrain | 0 | 0 |
| Barbados | 5/15 | 0 |
| Belarus | 5/15 | 5 |
| Belgium | 15 | 0/10 |
| Belize | 5/15 | 0 |
| Bosnia and Herzegovina | 5/10 | 5 |
| Brazil | 15 | 0 |
| Bulgaria | 0/5 | 5 |
| Canada | 5/15 | 10 |
| Chile | 15 | 5/10 |
| China | 7/10 | 6/10 |
| Croatia | 0/15 | 0 |
| Cuba | 5/15 | 0/5 |
| Cyprus | 10 | 0 |
| Czech Republic | 0/10 | 5 |
| Denmark | 0/15 | 0 |
| Egypt | 10 | 0/20 |
| Estonia | 5/15 | 5/10 |
| Finland | 0/10 | 5 |
| France | 0/15 | 0 |
| Georgia | 0/10 | 0 |
| Germany | 5/15 | 0 |
| Greece | 5/15 | 7 |
| Hong Kong | 0/10 | 3 |
| Hungary | 10 | 0 |
| Iceland | 5/15 | 5 |
| India | 10 | 10 |
| Indonesia | 10/15 | 10 |
| Iran | 5/10 | 5 |
| Ireland | 10 | 0/10 |
| Israel | 0/10/15 | 0 |
| Italy | 15 | 0/10 |
| Japan | 0/10 | 10 |
| Kazakhstan | 5/15 | 10 |
| Korea | 5/15 | 2/10 |
| Kosovo | 0/15 | 0 |
| Kuwait | 0 | 10 |
| Kyrgyzstan | 5/15 | 10 |
| Latvia | 5/10 | 5/10 |
| Liechtenstein | 0/15 | 5/10 |
| Lithuania | 5/15 | 5/10 |
| Luxembourg | 5/15 | 0/1012 |
| Malaysia | 5/10 | 10/15 |

| | Dividends (%) | Royalties (%) |
|---|---|---|
| Malta | 15 | 0/10 |
| Mexico | 5/10 | 10 |
| Moldova | 5/15 | 5 |
| Mongolia | 5/10 | 5/10 |
| Montenegro | 5/10 | 5/10 |
| Morocco | 5/10 | 10 |
| Nepal | 5/10/15 | 15 |
| Netherlands | 5/15 | 0/10 |
| New Zealand | 15 | 10 |
| North Macedonia | 0/15 | 0 |
| Norway | 0/15 | 0 |
| Pakistan | 10/15 | 10 |
| Philippines | 10/25 | 15 |
| Poland | 5/15 | 5 |
| Portugal | 15 | 5/10 |
| Qatar | 0 | 5 |
| Romania | 0/5 | 3 |
| Russia | 5/15 | 0 |
| San Marino | 0/15 | 0 |
| Saudi Arabia | 5 | 10 |
| Serbia | 5/15 | 5/10 |
| Singapore | 0/10 | 5 |
| Slovakia | 10 | 5 |
| Slovenia | 5/15 | 5 |
| South Africa | 5/15 | 0 |
| Spain | 10/15 | 5 |
| Sweden | 5/10 | 0/10 |
| Switzerland | 0/15 | 0 |
| Syria | 5/10 | 12 |
| Taiwan | 10 | 10 |
| Tajikistan | 5/10 | 8 |
| Thailand | 10/25 | 15 |
| Tunisia | 10/20 | 10/15 |
| Turkey | 5/15 | 0/10 |
| Turkmenistan | 0/15 | 10 |
| Ukraine | 5/10 | 5 |
| United Arab Emirates | 0 | 0 |
| United Kingdom | 0/10/15 | 0 |
| United States | 5/15 | 0/10 |
| Uzbekistan | 5/15 | 5 |
| Venezuela | 5/15 | 5 |
| Vietnam | 5/10/15 | 7.5/10 |

# AZERBAIJAN

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Baku | Ziya Husseinzadeh | +994 55 221 70 30<br>ziya.husseinzadeh@pkf.az |

## BASIC FACTS

| | |
|---|---|
| Full name: | Azerbaijan Republic |
| Capital: | Baku |
| Main languages: | Azeri |
| Population: | 10.31 million (2022 estimate) |
| Monetary unit: | 1 Azerbaijani New Manat (AZN) = 59 Cents |
| Internet domain: | .az |
| Int. dialling code: | +994 |

## KEY TAX POINTS

- Azerbaijan has three separate tax regimes:
  - Production Sharing Agreements (PSA) – applicable to oil and gas and mining companies operating under the PSAs;
  - Host Government Agreements (HGAs) – applicable to the companies operating under Baku Tbilisi Ceyhan (Main Export) Pipeline and the South Caucasus Pipeline;
  - Statutory regime – applicable to companies operating beyond the scope of PSAs and HGAs. The Following taxes are applicable to companies operating under the statutory regime: Corporate Profits Tax, Value Added Tax (VAT), Personal Income Tax (PIT), Simplified Tax, Property Tax, Land Tax, Road Tax, Mining Tax and Excise Tax.
- Tax categories under the Tax code of Azerbaijan include the following:
  - State taxes;
  - Taxes levied by the Nakhchivan Autonomous Republic and;
  - Local or municipal taxes.
- The tax year in Azerbaijan is the same as the calendar year.
- Individuals are considered resident for tax purposes if they have spent 183 days or more in Azerbaijan per calendar year;
- All bank payments between local taxpayers must be executed in AZN;
- Taxable profits include trading profit, capital gains, income from financial activities and other income. Residents, including those entities with foreign investment, are taxable on profit generated worldwide. Non-residents are taxable only on profit from activities performed in Azerbaijan.
- VAT payers may perform cash operations with a limit of up to 30,000 AZN per month.
- Simplified taxpayers may perform cash operations with a limit of up to 15,000 AZN per month.
- Any breach of the rules leads to penalties in the amount of 10% of the operations the first time, 20% the second time and 40% for three and more infringements.
- Any cash withdrawal is subject to 1% simplified tax plus a bank encashment fee to the taxpayer.
- 1% from the withdrawn amount is accrued and paid by the bank to the State Tax Authorities.
- Cash register payments will no longer be accepted as supporting documentation for expenses.
- Taxpayers selling goods (works, services) will now be obliged to issue electronic invoices in a prescribed form.
- With regard to the provision of works and services by electronic trade sellers (suppliers) as well as electronic lotteries or contests, the place for the provision of works and services will be the place where the purchaser of the works and services is located or registered.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

### COMPANY TAX

Legal entities incorporated in Azerbaijan are treated as residents and are taxable on their worldwide income. Legal entities incorporated abroad are treated as non-residents and are taxable on income from sources in Azerbaijan. Companies are required to make quarterly advance tax payments based on the previous year's net income. Corporate profit tax returns should be submitted by 31 March of the following year. The corporate profit tax rate is 20%, which is applied to the difference between revenue and taxable expenses.

### CAPITAL GAINS TAX

Capital gains are treated as ordinary income and taxed at the corporate profit tax rate of 20%.

## BRANCH PROFITS TAX

There is no separate branch profits tax in Azerbaijan Republic. Branches are taxed at the standard corporate income tax rate of 20%. A branch remittance tax of 10% applies.

## SALES TAX / VALUE ADDED TAX (VAT)

Each taxpayer with a sales turnover in excess of 200,000 AZN during consecutive 12 months must register for VAT. Provision of goods, works, rendering of services and import of goods are subject to taxation. VAT payers are entitled to recover VAT paid on purchases and are liable to pay VAT generated on sales of goods and rendering of services. VAT is the difference between VAT on sales and the sum of VAT on purchases and VAT on import of equipment. Reimbursement of VAT on purchases and import occurs through the receipt of an electronic tax invoice from the supplier via an electronic tax system (www.e-taxes.gov.az) and customs declarations appropriately.

The following VAT rates apply in Azerbaijan:

- 18% standard rate;
- 0% for the following categories, among others:
  - goods and services intended for use of diplomatic and consular representations accredited in the Azerbaijan Republic;
  - import and supply of goods and services undertaken in the context of receiving financial aid from abroad;
  - export of goods and services;
  - international and transit cargo and passenger transportation, except for international postal services;
  - entities operating under Special Economic Regimes for PSAs and HGAs.

The following categories, among others, are exempt from VAT:

- the value of state enterprise property purchased within a privatization program;
- the supply of financial services (banks, etc.);
- supply and import of the national and foreign currencies (except for numismatic purposes) as well as of securities;
- editing, publishing and printing activities in connection with the production of text books for schools (except work books), children's literature and state publishing funded by the state budget.

Zero VAT operations can be reimbursed unlike operations exempt from tax.

## LOCAL TAXES

Local taxes are applied by resolution of municipalities and obligatory for payment on the territory of municipalities. The following are the local (municipal) taxes:

- land use tax levied on natural persons;
- property tax levied on natural persons;
- mineral royalty tax on construction materials of local importance;
- profit tax of enterprises and organizations that are the property of municipalities.

## FRINGE BENEFITS TAX

Any fringe benefits provided to employees are considered as employees' additional income, which is taxable at personal income tax rates (14% and 25%).

## REGISTRATION DUTY

State registration of legal entities is executed by the Ministry of Taxes of Azerbaijan in line with the "one stop shop" principle, which includes electronic query and lasts 1 day in case of a local shareholder and 2 days in case of a foreign shareholder.

Foreign companies may open a branch office or representative office in order to carry out activities in Azerbaijan. The tax treatment is the same for both but the branch office would have more benefits because of a right to perform commercial operations on behalf of its head office.

Legislation defines "permit" as an official document granted by the authority issuing permits to exercise certain business activities or actions. Legislation contains a specific list of 87 types of activities requiring the obtention of permits. Applications for licence obtention shall be made via the Electronic Portal on Licence and Permits, which will enable to conduct all operations related to licensing (e.g. obtention of licences, their duplicates, and amendments thereto, renewal, suspension, resumption and termination thereof). The issuance period of licences and permits has been decreased to ten working days for obtaining a licence and seven working days for obtaining a permit.

## REAL ESTATE WITHHOLDING TAX

Rental fees paid to individuals are taxed at the source of payment at the rate of 14%. The minimum threshold for the rental fee amount from immovable property in Azerbaijan is determined in accordance with market prices for taxation purposes.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income for residents is worldwide generated income. Taxable income of non-residents comprises income generated in Azerbaijan. All expenses related to business activities of the company are deductible from revenue. The following categories relate to non-deductible items:

- expenses that must be capitalized;
- non-commercial expenses which do not relate to the company's business activities;
- entertainment expenses and food and accommodation costs;
- travel, logistics and other costs spent in excessive of allowed standards established by the Azeri Tax Code.

## DEPRECIATION

Depreciation is a deductible expense. The depreciation rates are:

- Buildings – up to 7%
- Computing techniques which are the product of high technology – up to 25%
- Vehicles, equipment and computers – up to 20%
- Other fixed assets – up to 20%
- Fixed assets with a determined period of use – at an annual rate, pro-rata to that determined period of use
- Intangible assets – up to 10%

Land and facilities that are historical or architectural monuments may not be depreciated.

## STOCK / INVENTORY

Inventory includes raw materials, work-in-progress and finished goods. Each item of inventory must be valued at acquisition cost or cost of production. Accepted valuation methods include 'first in, first out' (FIFO), average cost and specific identifications.

## DIVIDENDS

Dividends paid from profit are liable to 10% withholding tax. Income from the distribution of property upon liquidation of a legal entity, as well as payments made with distribution of shares without changes to percentage of shares owned by shareholders and shares buy-backs at their nominal price, shall not be considered as a dividend.

## INTEREST DEDUCTIONS

Interest expenses paid or incurred by the company in the course of its business activities are tax deductible. An exception to the rule relates to loans received from abroad or related parties, which cannot exceed the expense calculated using an interest rate of 125% of the inter-bank credit auction rate set forth by the Central Bank of Azerbaijan.

## LOSSES

Taxpayers have a right to carry losses forward during a period of 5 years without limitation. In case of a change in principal ownership of a legal person of at least 50% as compared the previous year's ownership, the carry forward of a credit, deduction or loss from a previous taxable year may be disallowed.

## TAX INCENTIVES

The following tax incentives have been implemented in Azerbaijan:

- Entities operating in industrial and technology parks are entitled to a VAT exemption on import of equipment for construction, scientific research and other works in these parks for seven years or an indefinite period, depending on the nature of their activities.
- The Law on the Special Economic Regime for Export-Oriented Oil and Gas Activities applies the following incentives to contractors and subcontractors who should obtain a special confirmation certificate from the Ministry of Industry and Energy:
    - Local companies are permitted to choose between profit tax at a rate of 20% or 5% withholding tax on gross revenue;
    - Foreign subcontractors are subject only to a 5% withholding tax;
    - A 0% VAT rate;
    - Exemption from dividend withholding tax and taxation on branch and CJSC net profits;
    - Exemption from customs duties and taxes;
    - Exemptions from property tax and land tax.

## C. FOREIGN TAX RELIEF

Foreign taxes paid on income taxable in Azerbaijan may be credited against tax payable in Azerbaijan. The amount credited in Azerbaijan may not exceed the domestic tax payable on the foreign income. This limitation is calculated on the overall basis. The carry-forward of excess credit is not applicable in Azerbaijan. Treaty relief may be granted upon request by the taxpayer. Azerbaijan has concluded double tax treaties with 49 countries (see Section I below).

## D. CORPORATE GROUPS

There is no group taxation in Azerbaijan.

## E. RELATED PARTY TRANSACTIONS

The Tax Code provides that relations between associated entities must be based on the arm's length principle. Associated persons, for the purposes of taxation, are natural and/or legal persons, the relations between which might have a direct effect on the economic results of their activities or the activities of persons they represent. As from 1 January 2017, the concept of transfer pricing has been formally introduced in Azerbaijan whereby transactions between the following entities/persons are covered:

- a resident and an entity established or registered in a jurisdiction with a favourable tax regime;
- a resident and a related non-resident;
- a PE of a non-resident and an entity established or registered in a jurisdiction with a favourable tax regime; and
- a PE of a non-resident and the non-resident enterprise, as well as between that PE and any PE (or subsidiary/group member) of the non-resident enterprise in another country.

Only transactions with a total value in excess of AZN 500,000 in a calendar year are targeted by this legislation. The Administration needs to be notified about such transactions before 31 March of each year.

## F. WITHHOLDING TAX

Income received from Azerbaijan sources not attributable to a PE of a non-resident in Azerbaijan is subject to WHT at the following rates:

- Dividends paid by resident enterprises: 10%
- Interest paid by residents: 10%
- Rental fees for movable and immovable property: 14%
- Royalties: 14%
- Technical or management fees: 14%
- Leasing, risk insurance, or reinsurance payments: 4%
- Telecommunications or international transport services: 6%
- Other Azeri-source income: 10%

Interest on deposits is taxed at a 10% withholding tax rate on the amount in excess of 500 AZN.

## G. EXCHANGE CONTROL

Withholding tax at the rate of 20% is introduced for foreign currency transferred outbound Azerbaijan for the following:

- foreign direct investment by resident and non-resident legal entities and individuals;
- acquisition of investment securities and immovable property by resident and non-resident legal entities and individuals;
- transfer of capital by resident legal entities to subsidiaries, branches and representative offices and other affiliated bodies with respect to the amount that exceeds the equivalent of USD 50,000 in a calendar year.

Banks and insurance companies are an exception to the aforementioned rules. A bank transfer by an individual to the foreign account is subject to a withholding tax of 20% with respect to the amount that exceeds USD 50,000 in a calendar year. Withholding tax does not apply if the transferred amounts:

- are paid back as they were previously transferred to Azerbaijan;
- are paid for medical fees of a foreign health care provider, educational fees of a foreign education institution or bills related to decisions of foreign judicial and law enforcement institutions.

## H. PERSONAL INCOME TAX

Personal income of a resident in Azerbaijan consists of worldwide generated income, while a non-resident's income is generated only on the territory of Azerbaijan.

From 1 January 2019, monthly income of employees who are engaged in employment for non-oil-gas and non-government sectors shall be exempted for a seven-year period (i.e. until 31 December 2025), as follows:

| Taxable monthly income (AZN) | Tax rate (%) |
|---|---|
| Up to 8,000 | 0 |
| Over 8,000 | 14% of the amount over AZN 8,000 |

The standard rates that are applicable to the employees of the oil and gas and government sectors, and which will be applied after the seven-year grace period, are as follows:

| Taxable monthly income (AZN) | Tax rate (%) |
|---|---|
| Up to 2,500 | 14 |
| Over 2,500 | AZN 350 + 25% of the amount over AZN 2,500 |

Residents and non-residents who generate income in connection with their work in Azerbaijan must contribute 10% of their gross salary to the Social Insurance Fund. Contributions are withheld from employees' salaries and paid to the Social Insurance Fund by the employer. In addition to this, the employer pays 15% (below 200 AZN – 22%, over 200 AZN – 15%) of employees' gross salaries to the Social Insurance Fund. In addition to this, mandatory unemployment insurance must be paid at a rate of 0.5% of salary both by the employee and the employer, and mandatory health insurance must be paid at a rate of 2% of salary both by the employee and the employer.

Taxable income of individuals engaged in business activities without establishing a legal entity is taxed at a rate of 20%. An individual has a right to choose the type of taxation – VAT (18%), income (20%) or simplified taxpayer (4% for capital Baku and 2% for regions). The selected type appears in the electronic tax personal office (www.e-taxes.gov.az) and serves as a confirmation of the type of taxes paid by the individual.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Azeri tax law allows to claim a refund of taxes withheld from payments to non-residents who are subject to the provisions of double tax treaties signed between Azerbaijan and 49 countries. DTA-05 statement serves a confirmation to withholding tax payment. The certificate may be obtained within 20 days of the moment of application.

In case a non-resident company pays all its taxes in its home country, it must provide a DTA-03 certificate, which would entitle it to receive full payment from the Azerbaijan resident taxpayer.

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Domestic rates** | | | |
| Companies | 10 | 10 | 14 |
| Individuals | 0/10 | 0/10 | 14 |
| **Treaty countries:** | | | |
| Austria | 5/10/15 | 10 | 5/10 |

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Belarus | 15 | 10 | 10 |
| Belgium | 5/15 | 10 | 5/10 |
| Bosnia and Herzegovina | 10 | 10 | 10 |
| Bulgaria | 8 | 7 | 5/10 |
| Canada | 10/15 | 10 | 5/10 |
| China | 10 | 10 | 10 |
| Croatia | 5/10 | 0/10 | 10 |
| Czech Republic | 8 | 5/10 | 10 |
| Denmark | 5/15 | 0/8 | 5/10 |
| Estonia | 5/10 | 10 | 10 |
| Finland | 5/10 | 10 | 5/10 |
| France | 10 | 10 | 5/10 |
| Georgia | 10 | 10 | 10 |
| Germany | 5/15 | 5 | 5/10 |
| Greece | 8 | 8 | 8 |
| Hungary | 8 | 8 | 8 |
| Iran | 10 | 10 | 10 |
| Israel | 15 | 0/10 | 5/10 |
| Italy | 10 | 10 | 5/10 |
| Jordan | 8 | 8 | 10 |
| Kazakhstan | 10 | 10 | 10 |
| Korea (South) | 7 | 10 | 5/10 |
| Kuwait | 5/10 | 7 | 10 |
| Latvia | 5/10 | 10 | 5/10 |
| Lithuania | 5/10 | 10 | 10 |
| Luxembourg | 5/10 | 10 | 5/10 |
| Malta | 8 | 8 | 8 |
| Moldova | 8/15 | 10 | 10 |
| Montenegro | 10 | 0/10 | 10 |
| Netherlands | 5/10 | 10 | 5/10 |
| North Macedonia | 8 | 0/8 | 8 |
| Norway | 10/15 | 10 | 10 |
| Pakistan | 10 | 10 | 10 |
| Poland | 10 | 10 | 10 |
| Qatar | 7 | 7 | 5 |
| Romania | 5/10 | 8 | 10 |
| Russia | 10 | 10 | 10 |
| San Marino | 5/10 | 10 | 5/10 |
| Saudi Arabia | 5/7 | 7 | 10 |
| Serbia | 10 | 10 | 10 |
| Slovenia | 8 | 8 | 5/10 |
| Spain[1] | 5/10 | 0/8 | 5/10 |
| Sweden | 5/15 | 0/8 | 5/10 |
| Switzerland | 5/15 | 5/10 | 5/10 |
| Tajikistan | 10 | 10 | 10 |
| Turkey | 12 | 10 | 10 |
| Turkmenistan | 10 | 10 | 10 |
| Ukraine | 10 | 10 | 10 |
| United Arab Emirates | 10 | 7 | 5/10 |
| United Kingdom | 10/15 | 10 | 5/10 |
| Uzbekistan | 10 | 10 | 10 |
| Vietnam | 10 | 10 | 10 |

Notes:

1. Effective date: 1 January 2022.

# BAHAMAS



## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Nassau | Renée D. Lockhart | +1 242 322 8560<br>rlockhart@pkfbahamas.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Commonwealth of The Bahamas |
| Capital: | Nassau |
| Main languages: | English |
| Population: | 400,054 (2022 estimate) |
| Monetary unit: | Bahamian Dollar (BSD); (US dollar, which is on par to the BSD, is widely accepted) |
| Internet domain: | .bs |
| Int. dialling code: | +1242 |

## KEY TAX POINTS

- There are no corporate, personal income, capital gains, withholding, inheritance and estate taxes.
- Income received in the Bahamas may be subject to tax in the country of origin.
- There are some tax information exchange agreements between the Bahamas and other countries.

## A. TAXES PAYABLE

The Bahamas offers the offshore financial sector freedom from corporate, personal income, capital gains, withholding, inheritance and estate taxes. However, income received in the Bahamas may be subject to the taxes in the country of origin.

There are tax information exchange agreements (TIEAs) between the Bahamas and other countries. The financial sector advantages are supported by a strong respect for privacy, flexible exchange controls, geographical location and continued record of political stability.

Government tax revenue is derived from the following sources:

- Import and export duties are levied at varying percentage rates; these continue to be reduced by varying percentages since the implementation of VAT on 1 January 2015, (now at the rate of 10%).
- Effective 1 January 2022, 10% VAT is payable on taxable supplies at all ports of entry in the Bahamas; Value Added Tax was initially implemented on 1 January 2015. The VAT registration threshold is a turnover of BSD 100,000 generally;
- Real Property tax;
- Motor vehicle licences;
- Gaming tax;
- Tourism tax;
- Stamp tax;
- Company fees:
  - The registration fee for a foreign company is BSD 50 and stamp duty is payable in the amount of BSD 600. All foreign companies must also pay an annual licence fee of BSD 1,000.
  - Private companies are required to pay a fee of BSD 300 upon filing their Memorandum of Association and an additional fee of BSD 30 for the filing of the Articles of Association. An annual licence fee of BSD 1,000 is also payable.
  - Additionally, stamp duty is payable on the authorised capital of a company. Where the authorised capital is BSD 5,000 or less, the stamp duty is BSD 60. For every additional BSD 1,000 or fraction thereof, the stamp duty will be BSD 300.
- Bank and trust company fees;
- Insurance company fees;
- Other fees, including business licence fees;
  - Under the Business Licence Act of 2010, as recently amended on 1 July 2021, business licence fees are levied on the turnover of a business at varying percentage rates or amounts from 0.5% to 3%, based on the company's annual turnover. Businesses with an annual turnover not exceeding BSD 100,000 are exempt from business licence fees.
  - Under the Value Added Tax Bill of 2014 (as amended), VAT at the rate of 10% is levied on goods and services. The increased revenue will be offset by a corresponding reduction in customs duties on imports.

# BAHRAIN

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Manama | Maged Haleem | +973 396 424 69<br>maged.haleem@pkf.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Kingdom of Bahrain |
| Capital: | Manama |
| Main languages: | Arabic |
| Population: | 1.81 million (2022 estimate) |
| Monetary unit: | Bahraini Dinar (BHD) |
| Internet domain: | .bh |
| Int. dialling code: | +973 |

## A. TAXES PAYABLE

No form of personal, corporate or withholding tax is applicable In Bahrain. There is no personal tax except for municipal tax of 10% on the monthly rental of residential and business property. In addition, a 5% government levy on gross turnover is imposed on hotel services and entertainment.

Customs (Import) duties are generally levied at a rate of 5% but there are many items such as medicines, most food products, capital goods and raw material for industries which are exempt from customs duty. After implementation of the new Uniform Customs Tariff which became effective on 1 January 2003, all non-Gulf Co-operation Council (GCC) products, except for those exempted, are subject to 5% customs duty. However, the products of GCC countries shall enter into each other's markets free of customs duty subject to the provision of the required documentation.

Products are considered as originating in a GCC country if the value added to such a product in the said country is more than 40% of the value of the product in question and if the factory that manufactured the product is at least 51% owned by GCC nationals. In the event of re-export to non-GCC countries, a customs deposit has to be made and this will be refunded when proof of re-export is given to the authorities. In the event of re-export to GCC countries, customs duty at 5% will be levied at the first point of entry. The provisions of the GCC Customs Union, which was implemented from 1 January 2003, will be applicable.

## B. VALUE-ADDED TAX

A 5% VAT rate was implemented effective 1 January 2019. This was increased to 10% effective 1 January 2022.

A person is required to register for VAT if the amount of annual supplies during the previous 12 months exceeds, or the amount of annual supplies in the next 12 months is expected to exceed the mandatory registration threshold of BHD 37,500 (approximately USD 100,000). The registration must generally take place within 30 days from the end of the month in which the mandatory threshold is exceeded, or within 30 days prior the first day of the month in which the mandatory threshold is expected to be exceeded.

Unless a supply is exempt or subject to the 0% rate (among others export of goods, health care services, education services, local transport services etc.), it is subject to VAT at the standard rate of 5%.

Excise Tax was introduced in Bahrain with effect from 30 December 2017, with tobacco products subject to excise tax at 100%, soft drinks at 50% and energy drinks at 100%. Other goods may also become subject to the tax.

## C. WITHHOLDING TAX

Bahrain currently has 44 double tax treaties with various countries: Algeria, Austria, Bangladesh, Barbados, Belarus, Belgium, Bermuda, Brunei, Bulgaria, China, Cyprus, Czech Republic, Egypt, Estonia, France, Georgia, Hungary, Iran, Ireland, Isle of Man, Jordan, Korea, Lebanon, Luxembourg, Malaysia, Malta, Mexico, Morocco, Netherlands, Pakistan, Philippines, Portugal, Seychelles, Singapore, Sri Lanka, Sudan, Syria, Tajikistan, Thailand, Turkey, Turkmenistan, United Kingdom, Uzbekistan and Yemen.

Dividends, interest and royalty payments made by Bahraini companies to non-residents under these treaties are not subject to any withholding tax as Bahrain has no such withholding tax under its domestic tax law.

A Free Trade Treaty agreed between Bahrain and the US was signed on 14 September 2004 by the Kingdom.

# BANGLADESH

## CORRESPONDENT FIRM

| City | Name | Contact Information |
|---|---|---|
| Dhaka | Jamshed Choudhury | +880 1713 008696<br>jsachoudhury@gmail.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | People's Republic of Bangladesh |

| | |
|---|---|
| Capital: | Dhaka |
| Main languages: | Bengali, English |
| Population: | 167.67 million (2022 estimate) |
| Monetary unit: | Bangladesh Taka (BDT) |
| Internet domain: | .bd |
| Int. dialling code: | +880 |



## KEY TAX POINTS

- In Bangladesh, the principal taxes are Customs Duty, Value-Added-Tax (VAT), Supplementary Duty, Personal income tax and corporate income tax.
- According to Finance Act 2021-22, VAT rates vary from 5% to 15% depending on the types & nature of VAT imposable goods & services. The previous 15% standard rate is also applicable if so desired by the VAT payers but in that case, no VAT credit for input tax will be allowed.
- For Bangladesh tax purposes, income is categorised into seven areas, namely, salaries, interest on securities, income from house property, agricultural income, income from business or profession, capital gains and income from other sources.
- Among direct taxes, income tax is one of the main sources of revenue. It is a progressive tax system. Income tax is imposed on the basis of ability to pay, based on the principle of "…the more a taxpayer earns, the more he should pay". It aims at ensuring equity and social justice.
- The income tax rate for individuals, Hindu Undivided Family & Partnership Firm who are a resident assessee or non-resident Bangladeshi vary from 5% to 25% and for individuals who are a non-resident assessee (except non-resident Bangladeshi) the flat tax rate is 25%.
- For the 2021-2022 tax year (1 July 2021 to 30 June 2022) the top corporate tax rate is 45%. However, publicly traded companies registered in Bangladesh are taxed at a lower rate of 22.5%. Publicly traded Banks (except for Merchant Bank), Financial Institutions and Insurance companies are taxed at 37.5%, Merchant Bank 37.5% and such non-publicly traded company tax rate is 40% whilst all other non-publicly traded companies are taxed at the 30% rate. Co-operative Society registered under the Co-operative Society Act 2001 are taxed at the 15% rate and Manufacturer and Exporter of Knitwear & Woven garments are taxed at the 12% rate (10% for factory having green building certifications).
- An individual is treated as a resident of Bangladesh if that person stays in Bangladesh for 182 days or more in any income year; or 90 days or more in an income year if that person has previously resided in Bangladesh for a period of more than 365 days during the 4 preceding years. Residence is determined in Bangladesh purely on the period of presence in Bangladesh, irrespective of residency in other countries. Short-term visitors and dependents of foreign nationals not earning any income in Bangladesh are not taxed and are not required to file a tax return in Bangladesh.
- In general, all remuneration and benefits received by an employee who is resident in Bangladesh, or for services rendered in Bangladesh, are taxable. Taxable remuneration and benefits include salary, bonuses, commissions, accommodation allowances, transport benefits, education allowances for children, employer-provided domestic assistance and medical allowances.

## A. TAXES PAYABLE

### TAX AUTHORITY ADMINISTRATION

The National Board of Revenue (NBR) is the central authority for tax administration in Bangladesh. Administratively, it is under the Internal Resources Division (IRD) of the Ministry of Finance (MoF) which is split into 4 divisions, namely, the Finance Division (FD), the Internal Resources Division (IRD), the Banking Division (BD) and the Economic Relations Division (ERD). Each division is headed by a Secretary to the Government. NBR is responsible for formulation and continuous re-appraisal of tax policies and tax laws in Bangladesh.

Negotiating tax treaties with foreign governments and participating in inter-ministerial deliberations on economic issues having a bearing on fiscal policies and tax administration are also the NBR's responsibilities. Its main responsibility is to mobilize domestic resources through collection of import duties and taxes, VAT and income tax for the government. Side by side with the collection of taxes, facilitation of international trade through quick clearance of import and export cargoes has also emerged as a key role of NBR. Other responsibilities include administration of matters related to taxes, duties and other revenue related fees/charges and prevention of smuggling. Under the overall control of IRD, NBR administers the excise, VAT, customs and income tax services consisting of 3434 officers of various grades and 10195 supporting staff positions.

### COMPANY TAX

The following rates apply to the taxation of the following companies:

| | |
|---|---|
| 22.5% | Publicly Traded Company |
| 25% | One Person Company (OPC) |
| 30% | Non-publicly Traded Company |
| 37.5% | Publicly Traded Bank, Insurance & Financial Company (Except Merchant Bank) & such Non-publicly Traded 40% |
| 37.5% | Merchant bank |
| 45% | Cigarette manufacturing company and surcharges 2.5% |
| 45% | Mobile Phone Operator Company |
| 40% | Publicly traded mobile company |
| 15% | Co-operative Society registered under the Co-operative Society Act 2001 |
| 12% | Manufacturer and Export Knitwear & Woven Garments (10% for factory having green building certifications) |

## COMPANY TAX ADMINISTRATION

Company tax returns should be submitted by the fifteenth day of the seventh month following the end of the income year or the fifteenth day of September following the end of the income year where said fifteenth day falls before the fifteenth day of September. The consequences of not submitting a tax return (including withholding tax) are that a penalty arises of 10% of the tax of a taxpayer's last assessed income (subject to a minimum of BDT 1,000) and in the case of continuing default, a further penalty of BDT 50 is levied for every day of delay (provided that such penalty shall not exceed (a) in case of an assessee, being an individual, whose income was not assessed previously BDT 5,000 (b) in case of an assessee, being an individual, whose income was assessed previously, 50% of the tax payable on the last assessed income or BDT 1,000, whichever is higher). There is also a penalty for using a false Taxpayer Identification Number (TIN) which will not be exceeding BDT 20,000 on that person.

There is a formal dispute resolution system for taxpayers in Bangladesh, and where a return has been submitted under the normal scheme a taxpayer can make his case at a Hearing, where a decision (assessment) will then be made. For returns submitted under the Universal Self-Assessment Scheme, the issue of an acknowledgement slip is determined to be an Assessment Order. Universal Self-Assessment is subject to audit.

## PERMANENT ESTABLISHMENT CONSIDERATIONS

There is the potential that a permanent establishment (PE) could be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has. The concept of a PE primarily exists in tax treaties.

## VALUE ADDED TAX

Value Added Tax (VAT) is levied on the importation of goods and services and the making of taxable supplies in the course of carrying out a taxable activity. According to Finance Act 2021-22, VAT rates vary from 5% to 15% depending on the types and nature of VAT imposable goods and services. The previous 15% standard rate is also applicable if so desired by the VAT payers but in that case, no VAT credit for input tax will be allowed. Reduced rates ranging from 0% to 15% are available depending on the nature of the taxable supply. VAT operates in Bangladesh partly as a sales tax.

## FRINGE BENEFITS TAX

There is no separate Fringe Benefits Tax. However, all benefits received by an employee who is a resident in Bangladesh, or for services rendered in Bangladesh, are taxable.

## INCENTIVES – TAX REBATE

An assessee, being a resident or a non-resident Bangladeshi, shall be entitled to a credit from the amount of tax payable on his total income. The amount of allowable investment is: actual investment or 25% of total (taxable) income excluding any income for which a tax exemption or a reduced rate is applicable under sub-section (4) of section 44 or any income from any source or sources mentioned in clause(a) of sub-section (2) of section 82C or BDT 1,500,000, whichever is less. The tax rebate amounts to 15% of allowable investment. A tax rebate of 15% of the allowable investment not exceeding BDT 15 Lakh and 10% when the amount exceeds BDT 15 Lack can be received depending on the investment satisfying certain conditions.

Types of investment qualified for the tax rebate are:

- Life insurance premium up to 10% of the face value;
- Contribution to Provident Fund to which Provident Fund Act, 1925 applies;
- Self-contribution and employer's contribution to Recognised Provident Fund.
- Deferred Annuity up to one-fifth of the salary;
- Contribution to approved Superannuation Fund;
- Contribution up to BDT 60,000 to deposit pension scheme sponsored by any scheduled bank or a financial institution;
- Investment in approved first hand debenture or debenture stock, IPO of stocks or shares;
- Contribution to Zakat Fund;
- Donation to charitable hospital approved by National Board of Revenue;
- Any sum paid to an organisation set up for the welfare of retarded people;
- Donation to philanthropic or educational institution approved by the Government;
- Donation to socio-economic or cultural development institution established in Bangladesh by Aga Khan Development Network;
- Donation to National level institution set up in memory of liberation war;
- Donation to National level institution set up in memory of Father of the Nation;
- Any investment by an individual in savings certificate and Bangladesh Government Treasury Bond, etc.;
- Any sum invested in the purchase of Bangladesh Treasury Bond.

## TAX INCENTIVES

The following fiscal incentives are available to taxpayers:

- Exemption u/s. 44;
- Exemption of income of an Industrial Undertaking (IU) (u/s. 45);
- Exemption of income of a tourist industry (TI) (u/s. 46, 46A, 46B, 46BB, 46CC, 47);

## SPECIAL TAX TREATMENT IN RESPECT OF INVESTMENT IN ECONOMIC ZONES OR HI-TECH PARKS

No question shall be raised as to the source of any sum invested in any economic zone declared under section 5 of Bangladesh Economic Zone Act 2010 or in any hi-tech park declared under section 22 of Bangladesh Hi-Tech Park Authority Act 2010 for setting up industrial undertaking engaged in producing goods or services therein within the period from 1 July 2019 and 30 June

2024 (both days inclusive) by a company, if tax at the rate of 10% cent is paid on the sum so invested before filing of the return for the concerned income year.



### MAJOR AREAS FOR FINAL SETTLEMENT OF TAX LIABILITY

Tax deducted at source for the following cases is treated as a final discharge of tax liabilities. No additional tax is charged or refund is allowed in the following cases:

| Head of Source | Tax rate |
|---|---|
| Compensation against acquisition of properties (Sec. 52C) | As mentioned in section 52C, i.e. 2%/1% |
| The amount received as interest from any savings certificate (Sec. 52D) | As mentioned in section 52D, i.e. 5% |
| Cash subsidy (Sec. 53DDD) | As mentioned in section 53DDD, i.e. 3% |
| Deduction at source from interest on saving deposits and fixed deposits, etc. (53F) | As mentioned in section 53F, i.e. 10%/5% |
| Transfer of property (Sec. 53H) | As mentioned in section 53H and the rule made thereunder (see the Section and Rule 17II) |

## B. RELATED PARTY TRANSACTIONS

Transfer pricing was introduced into Bangladesh tax laws in 2012. However, such regulation has become effective from 1 July 2015.

## C. EXCHANGE CONTROL

Expatriates are allowed to open foreign currency bank accounts in Bangladesh and remit a portion of their post-tax earnings through proper banking channels after obtaining the necessary permissions from the central bank. The balance can be taken out the country when leaving permanently.

## D. PERSONAL INCOME TAX

### RESIDENTIAL STATUS

An individual is treated as a resident of Bangladesh if he/she stays in Bangladesh for 182 days or more in any income year; or 90 days or more in an income year if that person has previously resided in Bangladesh for a period of more than 365 days during the 4 preceding years. Residence is determined in Bangladesh purely on the period of presence in Bangladesh, irrespective of residency in other countries. Short term visitors and dependents of foreign nationals not earning any income in Bangladesh are not taxed and are not required to file a tax return in Bangladesh. Otherwise, every taxpayer is required to file an annual tax return.

### TAX RATE

For individuals other than female taxpayers, senior taxpayers of 65 years or more and disabled taxpayers, tax is payable at the following rates on income slabs:

| | |
|---|---|
| First BDT 300,000 | 0% |
| Next BDT 100,000 | 5% |
| Next BDT 300,000 | 10% |
| Next BDT 400,000 | 15% |
| Next BDT 500,000 | 20% |
| Balancing amount | 25% |

An individual who is a non-resident assessee (non-resident Bangladeshi) is subject to a 25% flat income tax rate on his total income.

Tax-exempt income for all 3rd gender, female taxpayers and senior taxpayers over 65 years of age is BDT 350,000 while it is BDT 450,000 for a person with disability and for gazetted war-wounded freedom fighters. However, tax-exempt income for parents and legal guardians of a person with disability will be BDT 400,000 higher than the usual amount. Only one of the parents would avail that benefit.

Minimum Tax for any individual category of assessee is as follows:

| | |
|---|---|
| Dhaka and Chittagong City Corporation | BDT 5,000 |
| Other City Corporation | BDT 4,000 |
| Other than City Corporation | BDT 3,000 |

### TAX RETURN FILING

An individual's tax return must be filed by 30 November following the end of the income year. The return filing date may be extended up to 2 months from the date so specified by the Deputy Commissioner of Taxes upon application by an individual being assessed and the date may be further extended up to 2 months with the approval of the Inspecting Joint Commissioner.

### TAXABLE REMUNERATION AND BENEFITS OF EMPLOYEE

In general, all remuneration and benefits received by an employee who is resident in Bangladesh, or for services rendered in Bangladesh, are taxable. Taxable remuneration and benefits include salary, bonuses, commissions, accommodation allowances, transport benefits, education allowances for children, employer- provided domestic assistance and medical allowances. Employers are required to withhold income tax when making payments to employees. Employers are also required to file an annual return showing the respective payments and tax deducted at source for each employee in the tax year.

## WORKER PROFIT PARTICIPATION FUND

Exemption of any payment received from workers' profit participation fund established under Bangladesh Labour Act 2006 (amended up to 2013) has been restricted up to BDT 50,000 only. There was no such limitation previously.

## WORK PERMITS/VISA REQUIREMENTS

A visa must be applied for before the individual enters Bangladesh. The type of visa required will depend on the purpose of the individual's entry into Bangladesh. Foreigners working in Bangladesh must have a work permit. Currently, these are issued by the Bangladesh Investment Development Authority (BIDA), however, previously issued by the Board of Investment (BOI).

## LOCAL DATA PRIVACY REQUIREMENTS

Bangladesh does not currently have data privacy laws. However, Bangladesh tax laws provide certain protection of information submitted under them.

## E. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Bangladesh has concluded double taxation agreements with the following countries:

| | Dividends | | Interest[11] (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 20 | 20 | 20 | 20 |
| Individuals | 30[13] | -- | 20 | 20 |
| **Treaty countries:** | | | | |
| Bahrain[12] | 15 | 10[1] | 10 | 10 |
| Belgium | 15 | 15 | 15 | 10 |
| Canada | 15 | 15 | 15 | 10 |
| China | 10 | 10 | 10 | 10 |
| Czech Republic[14] | 15 | 10[15] | 10 | 10 |
| Denmark | 15 | 10[1] | 10 | 10 |
| France | 15 | 10[1] | 10 | 10 |
| Germany | 15 | 15 | 10 | 10 |
| India | 15 | 10[2] | 10 | 10 |
| Indonesia | 15 | 10[1] | 10 | 10 |
| Italy | 15 | 10[1] | 10/15[6] | 10 |
| Japan | 15 | 10[3] | 10 | 10 |
| Korea | 15 | 10[1] | 0/10[7] | 10 |
| Malaysia | 15 | 15 | 15 | 15 |
| Mauritius | 10 | 10 | –[8] | –[8] |
| Netherlands | 15 | 10[1] | 0/7.5/10[9] | 10 |
| Norway | 15 | 10[1] | 10 | 10 |
| Pakistan | 15 | 15 | 15 | 15 |
| Philippines | 15 | 10[2] | 15 | 15 |
| Poland | 15 | 10[1] | 10 | 10 |
| Romania | 15 | 10[1] | 10 | 10 |
| Saudi Arabia | 10 | 10 | 7.5 | 10 |
| Singapore | 15 | 15 | 10 | 10 |
| Sri Lanka | 15 | 15 | 15 | 15 |
| Sweden | 15 | 10[1] | 10/15[6] | 10 |
| Switzerland | 15 | 10[4] | 10 | 10 |
| Thailand | 15 | 10[1] | 10/15[6] | 15 |
| Turkey | 10 | 10 | 10 | 10 |
| United Arab Emirates | 10 | 5[5] | 10 | 10 |
| United Kingdom | 15 | 10[1] | 10 | 10 |
| United States | 15 | 10[1] | 5/10[10] | 10 |
| Vietnam | 15 | 15 | 15 | 15 |

NOTES:

1. The reduced rate applies to dividends paid to a beneficial owner which is a company holding directly at least 10% of the capital of the payer.
2. The reduced rate applies to dividends paid to a beneficial owner which is a company holding directly at least 25% of the capital of the payer.
3. The reduced rate applies to dividends paid to a beneficial owner which is a company that owns at least 25% of the voting shares of the payer during the period of six months immediately before the end of the accounting period for which the distribution of profits takes place.
4. The reduced rate applies to dividends paid to a beneficial owner which is a company holding directly at least 20% of the capital of the payer.
5. The reduced rate applies to dividends paid to a beneficial owner which is a company that owns at least 3% of the shares of the payer.
6. The reduced rate applies to interest derived by a bank or any other financial institution (including an insurance company).
7. The reduced rate applies if interest is paid in connection with sale on credit of any industrial, commercial or scientific equipment.

8. No reduction under the tax treaty so the domestic rate applies.
9. Exemption for interest related to the construction of industrial, commercial or scientific installations or public works. The 7.5% reduced rate applies to interest received by a bank or any other financial institution (including an insurance company) as long as the Netherlands does not levy a withholding tax on interest.
10. The reduced rate applies to interest derived by a bank or any other financial institution (including an insurance company) or interest paid in connection with sale on credit of any industrial, commercial or scientific equipment or of any merchandise.
11. Certain tax treaties provide for an exemption or a reduction for some types of interest (but are not listed here), e.g. interest paid to public bodies and financial institutions or in relation to sales on credit or approved transactions.
12. Effective date: 1 January 2019 (Bahrain); 1 July 2019 (Bangladesh).
13. Dividends paid to non-resident individuals (other than non-resident Bangladeshis) is subject to a 30% withholding tax. Dividends received by non-resident Bangladeshis are subject to a 10% withholding tax (15% if a 12-digit TIN is not furnished).
14. Effective date: 1 July 2021 (Bangladesh); 1 January 2022 (Czech Republic).
15. The reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend).

# BELARUS

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Minsk | Stefaan De Ceulaer | +44 20 3691 2511<br>stefaan.deceulaer@pkf.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Belarus |
| Capital: | Minsk |
| Main languages: | Belarusian, Russian |
| Population: | 9.44 million (2022 estimate) |
| Monetary unit: | Belarusian Rouble (BYN) |
| Internet domain: | .by |
| Int. dialling code: | +375 |

## KEY TAX POINTS

- Belarus resident companies are subject to tax on their worldwide income. Non-resident companies are subject to tax on their Belarus-sourced income only which is derived from a permanent establishment (PE) in Belarus. Where a non-resident’s Belarus PE does not have any business activity it will be subject to withholding tax on its Belarus-sourced income.
- The standard corporate profits tax rate is 18%. Profits of commercial microfinance organisations included in the register of microfinance organisations derived from microfinance activities are subject to income tax at a rate of 25%. Profits earned by a forex company, the National Forex Centre, and from operations with non-deliverable OTC financial instruments are subject to income tax at a rate of 25%.
- There is no specific branch profits tax in Belarus.
- Capital gains are taxed at 18%.
- Broadly, local supplies of goods and services in Belarus provided by a taxpayer as well as the importation of goods, are subject to VAT. Supplies may be zero-rated, exempt, standard or preferential rated. The standard rate of VAT is 20%. A preferential rate of 10% applies to certain supplies. Telecommunication services are subject to 25%.
- Belarus does not impose estate tax, gift taxes or a net worth tax.
- For company taxation, the net profit shown in the financial statements is adjusted for tax purposes and expenses incurred in earning income or receiving an economic benefit are allowed to be deducted in full, unless the Tax Code or Presidential Regulations provide otherwise or limit or restrict the deduction.
- Unless otherwise provided by a double tax treaty, dividends paid to foreign legal entities not having a permanent establishment in Belarus are subject to 12% withholding tax. Dividends distributed by a resident company to another resident company are subject to 12% withholding tax. Dividend withholding tax is 6% or 0% subject to certain conditions in the Tax Code.
- Thin capitalisation rules apply to legal entities in Belarus which restrict the deduction of interest to a debt-to-equity ratio of 3:1 and apply to certain controlled debt obligations.
- The Tax Code empowers the tax authority to ensure that transactions between related parties reflect a third party arm’s length price, i.e. an objective market value.
- The tax year in Belarus is the calendar year. Belarus resident individuals are subject to personal income tax on their worldwide income whereas non-resident individuals are taxed on their Belarusian-sourced income only.
- Employment income includes salary, any other compensation and bonuses received in cash or in kind. Employers calculate, deduct and pay the relevant tax on the compensation paid to their employees.
- Social security contributions are payable by an employer at a rate of 34% (28% for pension insurance and 6% for social insurance) and by an employee at a rate of 1% of their gross compensation (withheld by the employer).
- Capital gains are not taxed separately but included in the total income of an individual taxpayer.

## A. TAXES PAYABLE



### COMPANY TAX

Belarus resident companies are subject to tax on their worldwide income. Non-resident companies are subject to tax on their Belarus source income only which is derived from a permanent establishment (PE) in Belarus. Where a non-resident's Belarus PE does not have any business activity it will be subject to withholding tax on its Belarus-sourced income. The standard corporate profits tax rate is 18%. However, a reduced tax rate applies to the following income:

- Dividends paid to Belarus companies (standard rate 12%; dividend withholding tax is 6% or 0% subject to certain conditions in the Tax Code);
- Income (profits) of producers of high-technology products (5%).

Belarus has several tax regimes as follows:

(1) Simplified system of taxation:

Under the simplified system of taxation business entities are not subject to corporate profits tax and, under certain conditions, neither to VAT (and some other taxes), but instead pay a unified tax of either 5% of gross revenues or, if the business entity continues to pay VAT, 3% of gross revenues, or 16% for certain non-sales income.

(2) Unified tax on agricultural producers:

A 1% unified tax rate applies to the gross revenues of agricultural producers from the sale of goods (works and services) and other property and income derived from non-sales transactions. For an agricultural entity to apply the unified tax method at least 50% of its annual gross revenue must be from the sale of its own manufactured crop products (excluding flowers and ornamental plants), livestock products, fish breeding and bee breeding products, otherwise the unified tax is paid at a rate of 3%.

(3) Tax on gambling industry:

Gambling (except for lotteries) is subject to fixed tax rates. The rate depends on the type and number of operational gambling equipment used. An additional gambling tax of 4% applies to the positive difference between the amount of received bids and the fund to be paid to the winner.

(4) Tax on income generated by lottery sales:

Lottery sales are subject to an 8% tax rate on the gross revenue less the awarded prize fund.

(5) Tax on electronic interactive games:

An electronic interactive games tax applies at 8% to the difference between the amount of revenue from the electronic interactive games and the fund to be paid to the winner(s).

### COMPANY TAX - ADMINISTRATION

The basic tax reporting period is the calendar quarter and tax returns must be filed within 20 days of the month following the end of the reporting quarter. Any corporate profits tax liability must be paid within 22 days of the month following the end of the respective reporting quarter.

Corporate profits tax for the fourth quarter of a year must be paid by 22 December of the current year in an amount equal to two-thirds of the tax payable in the third quarter of the current year with subsequent additional payment or reduction not later than 22 March of the next year.

A fine of 40% of the unpaid tax, at a minimum of 10 base values, may arise where there is non-payment or an incomplete payment of tax. A fine of up to 1 base value may arise if a tax return is submitted late but not later than 3 working days. A fine of 2 base values applies increased by 0.5 base values for every complete month of delay in submission, at a maximum of 10 base values. Furthermore, a penalty is applied for every calendar day of delay in tax payment. The penalty is assessed on the basis of the refinance rate established by the National Bank of the Republic of Belarus.

### CAPITAL GAINS TAX

Capital gains are taxed at 18%. Capital gains are not taxed separately but included in the total income of an individual taxpayer.

### BRANCH PROFITS TAX

There is no specific branch profits tax however a permanent establishment (PE) of a non-resident legal entity will pay tax on profits attributable to it. A PE can include any place through which a foreign legal entity regularly carries out its business activities in Belarus. There is no branch remittance tax in Belarus.

### VALUE ADDED TAX (VAT)

Broadly, local supplies of goods and services in Belarus provided by a taxpayer as well as the importation of goods, are subject to VAT. Supplies may be zero-rated, exempt, standard or preferential rated. The standard rate of VAT is 20%. A preferential rate of 10% applies to the following:

- Import (only produced on the territory of the member states of the Eurasian Economic Union) and/or local supplies of crop products (excluding floriculture, cultivation of ornamental plants), beekeeping, livestock (excluding fur production) and locally produced fishing, import and/or local supplies of certain food products and goods for children.
- Import and/or local supply of certain drugs and medical devices.

Telecommunication services are subject to 25%.

Exempt local supplies include:

- Provision of certain medical services;
- Supply of folk art products of recognised artistic merit according to the list of such products approved by the President of the Republic of Belarus;
- Supply of goods (works, services) by payers using the labour of disabled people, if the number of disabled people on average

for the period is at least 30% of the number of employees on average for the same period;

- Sale of goods by duty-free shops;
- Implementation of R&D, experimental and technological work, registered in the state register of R&D, experimental and technological work in the manner determined by the President of the Republic of Belarus;
- other.



Normally taxpayers recognise revenue for VAT purposes on an accrual basis however, as an exception to this, revenue is recognised on a cash basis by taxpayers using the simplified taxation system and keeping simplified tax records without accounting records. VAT returns should be submitted to the tax authority on either a monthly or quarterly basis, within the first 20 days of the month following the reporting period. The payment of any VAT liability should be made within the first 22 days of the month following the reporting period.

## OTHER TAXES – CUSTOMS DUTIES

The Eurasian Economic Union exists between Russia, Kazakhstan, Belarus, Armenia and Kyrgyzstan with its unified trade regulations and Customs Code. The following charges are considered as customs duties:

- Import duties;
- Export duties;
- Special anti-dumping and countervailing duties;
- VAT and excise taxes due upon importation of goods; and,
- Fees for customs processing/services.

## OTHER TAXES – ESTATE AND GIFT TAXES

Belarus does not impose estate and gift taxes or a net worth tax.

## B. DETERMINATION OF TAXABLE INCOME

The net profit shown in the financial statements, calculated in accordance with the Belarus accounting standards, is adjusted for tax purposes in accordance with the Tax Code. Broadly, all costs are deductible for tax purposes that are incurred in earning income or receiving an economic benefit, unless the Tax Code of Belarus or Presidential Regulations provide otherwise or limit or restrict the deduction.

## CAPITAL ALLOWANCES

Fixed assets (buildings, premises, equipment and vehicles) may be depreciated using the straight-line method, the indirect disproportionate method, and the production method in accordance with the rates prescribed in the Tax Code. Land is not depreciated. Broadly, fixed assets can be divided into five basic groups and the depreciation rate or rates of each group are as follows:

| Group | Description of the assets | Annual rate of depreciation |
|---|---|---|
| 1 | Immovable property | 0.8% to 20% |
| 2 | Plant, machinery and equipment | 2% to 25% |
| 3 | Trademarks, patents and other intangible property | 2.5% to 20% |
| 4 | Computers | 20% |
| 5 | Transport vehicles | 5% to 20% |

## INVESTMENT DEDUCTION

For corporate profits tax purposes, a percentage of the initial value of acquiring or reconstructing tangible assets (value of investments for reconstruction) can be deducted, as follows:

- Not more than 15% - Buildings and structures.
- Not more than 30% - Machinery and equipment, and certain transport vehicles.

The tax base (the initial cost of the asset) is not reduced by the investment allowance for tax depreciation purposes. After taking an investment deduction the taxpayer may accrue depreciation on the initial value of fixed assets.

## STOCK / INVENTORY

The domestic accounting legislation allows for the following stock / inventory valuation methods:

- First in first out (FIFO);
- Cost of each unit; and,
- Average cost.

The stock / inventory valuation method used for corporate income tax purposes must be the same as the taxpayer's accounting policy.

## DIVIDENDS

Unless otherwise provided by a double tax treaty, dividends paid to foreign legal entities not having a permanent establishment in Belarus are subject to 12% withholding tax. Dividends distributed by a resident company to another resident company are subject to 12% withholding tax. However, the tax rate is reduced in the following cases:

- To 6% if a resident company has not distributed profit between its members (shareholders) for three successive calendar years;
- To 0% if a resident company has not distributed profit between its members (shareholders) for five successive calendar years.

Since the dividends have been subjected to withholding tax at source they are not again taxed under corporate income tax in the hands of the recipient. Where a foreign entity pays a dividend to an entity in Belarus, the dividend received is subject to 12% corporate income tax even though withholding tax may have been deducted at source by the foreign paying entity.



### INTEREST DEDUCTIONS

Thin capitalisation rules apply to legal entities in Belarus which restrict the deduction of interest to a debt-to-equity ratio of 3:1 and apply to the following controlled debt obligations:

- Between parties being founders (participants) of one company, if direct and/or indirect participation between each of these persons is not less than 20%;
- Between organisations if one party directly and/or indirectly participates in these organisations and its participation in each of these organisations is not less than 20%, as well as when their beneficial owner is one and the same natural person;
- Between organisations in which the collective executive body or board of directors has more than 50% of the same natural persons in common with related parties as described in the sixth bullet below.
- When one party (including a natural person together with its related parties as described in the sixths bullet below) acts as a founder (participant) of another organisation, if direct and/or indirect participation of the former is not less than 20%;
- When one party executes (directly or indirectly) control over another (other) party (parties);
- When natural persons are in accordance with domestic legislation married, close relatives or in an in-law relationship, an adoptive parent and adopted person, guardian, curator and ward as well as between organisations in which such natural persons are founders (participants), if direct and/or indirect participation between such natural persons in these organisations is not less than 20%.

However, the thin capitalisation rules do not apply to banks, insurance companies, or to lessors or landlords subject to certain conditions.

### LOSSES

Tax losses can be carried forward and utilised against future taxable profits arising in the subsequent 10 years (commencing with 2011 tax losses), although some restrictions apply. Tax losses which have arisen from certain operations may only be utilised against taxable profits arising from the same operations. If tax losses are not attributable to a particular group, they are carried forward generally regardless of the operations or activities in which they were incurred. Tax losses may not be carried back.

### INCENTIVES

There are several locations where incentives are available in Belarus:

(1) Taxation of residents of the High Technologies Park;

(2) Taxation of the members of the Augustow Canal Special Tourist and Recreation Park;

(3) Taxation of the members of the China-Belarus Industrial Park;

(4) Free-economic zones; and,

(5) Taxation of commercial organisations and individual entrepreneurs engaged in medium-sized or small towns and rural areas.

Special conditions and procedures apply for claiming the above and other benefits.

## C. FOREIGN TAX RELIEF

Subject to the Belarus tax authorities being provided with the certificate issued by the foreign competent authority confirming the amount of tax paid (withheld) in the foreign state, a tax credit for the foreign tax paid by, or withheld from, a Belarusian taxpayer will be granted. Tax paid abroad on foreign-source income derived by a Belarusian legal entity may be credited against its corporate income tax (CIT) liability. The amount deducted however cannot exceed the equivalent amount of Belarus tax calculated on the foreign-sourced income.

## D. CORPORATE GROUPS

Each entity in Belarus is taxed separately as a stand-alone entity. The tax legislation does not provide for tax groups or group taxation.

## E. RELATED PARTY TRANSACTIONS

The Tax Code empowers the tax authority to ensure that transactions between related parties reflect a third party arm's length price, i.e. an objective market value. The tax authorities can check whether prices set by particular taxpayers are in line with market prices when conducting a tax audit. In particular, they can apply the market price to:

(1) A foreign-trade transaction with a related party when the transaction price (sum of transactions prices) in one calendar year exceeds BYN 400,000 (net of indirect taxes) for organisations not included in the List of large-scale payers and BYN 2,000,000 (net of indirect taxes) for organisations included in the List of large-scale payers, except for transactions with an offshore zone resident;

(2) A transaction on sale or acquisition of goods (works, services) property rights with a related party – tax resident of the Republic of Belarus not calculating and paying profit tax in the year when the transaction is performed when the transaction price (sum of transactions prices) in one calendar year exceeds BYN 400,000 (net of indirect taxes) for organisations not included in the List of large-scale payers and BYN 2,000,000 (net of indirect taxes) for organisations included in the List of large-scale payers;

(3) A transaction with a related party or a taxpayer applying special tax regimes on sale or acquisition of immovable property (its part) or housing bonds in the process of their circulation after state registration of erection of a construction object;

(4) A foreign-trade transaction on sale or acquisition of strategic goods included in the list issued by the Council of Ministers of the Republic of Belarus when the transaction price (sum of transactions prices) in one calendar year exceeds BYN 2,000,000 (net of indirect taxes).

The following transactions are equated with related party transactions:

- A set of transactions with participation of (through) a third person not being a related party provided that such a person does not perform in this set of transactions significant functions, except for sale and/or acquisition of goods (works, services), property rights by one party for another party recognised as related to this party; does not use any assets and/or does not take risks for organising sale and/or acquisition of goods (works, services), property rights by one party for another party recognised as related to this party;
- A transaction on sale or acquisition of goods (works, services), property rights with an offshore zone resident when the transaction price (sum of transactions prices) in one calendar year exceeds BYN 400,000 (net of indirect taxes).

The Belarus tax authorities apply the following transfer pricing methods:

- Comparable uncontrolled price method (CUP);
- Resale price method;
- Cost plus method;
- Comparable profits method;
- Profit split method.

## F. WITHHOLDING TAX

- Dividends paid to non-resident companies are subject to a 12% standard withholding tax on the gross amount subject to the application of a double tax treaty.
- Interest and royalties not connected to a permanent establishment are subject to a 10% and 15% final withholding tax respectively on the gross amount, subject to the application of a double tax treaty.
- Non-resident companies without a permanent establishment are subject to a 6% final withholding tax on freight and forwarding charges connected with international shipping transactions, subject to the application of a double tax treaty.

Until 1 January 2025, income received from a participation in investment funds whose investment shares are registered in the Republic of Belarus for three calendar years, starting from the first calendar year in which the profit of such a fund arose, are taxed at a rate of 6%. The reduced rate applies to certain types of income:

- income from debt obligations of any kind, regardless of the way they are formalised;
- income from the disposal of securities on the territory of the Republic of Belarus (except for shares) and/or their redemption;
- income from the alienation of shares in the statutory fund (shares, stocks) of organisations located on the territory of the Republic of Belarus, or a part thereof, including income arising from the exit (exclusion) from such an organisation.

A 15% standard withholding tax applies to income derived from:

- Sale of goods in the territory of Belarus under agency agreements, commission agreements, other similar civil law agreements;
- Holding or participation in cultural and entertainment events in the territory of Belarus, as well as work of amusement rides and wild beast shows;
- Contractual fines and penalties;
- Research and development, scientific and research, development of design and technological documentation for pilot units (pilot batch) of goods, production and testing of pilot units (pilot batch) of goods;
- Provision of guarantees and/or surety;
- Provision of disc space and/or communication channel for hosting on a server and services related to its technical maintenance;
- Alienation of immovable property in the territory of Belarus; an enterprise (its part) as an asset complex owned by a foreign organisation, securities (except for shares) and/or their redemption; stakes in equity capital (participatory interests, shares) of organisations in the territory of Belarus or their parts;
- Performing works, rendering services: consultancy, accounting, auditing, marketing, legal, engineering; trust management of immovable property in the territory of Belarus; courier; intermediary; managerial; HR; educational; storage of property; insurance; advertising; installation, adjustment, inspection, servicing, measurement, testing lines, mechanisms, equipment, devices, instruments, structures, intangible assets in the territory of Belarus; cargo escorting and protection;
- Immovable property in the territory of Belarus transferred for trust management;
- Data processing and information hosting, activities of web portals on web sites subject to conditions in the Tax Code.

The following income paid to non-resident companies is taxed at a 0% rate:

- from debt obligations on loans granted to the Republic of Belarus or the Government of the Republic of Belarus, as well as to residents of the Republic of Belarus under state guarantees in the manner established by the President of the Republic of Belarus;
- from debt obligations on loans and borrowings extended to Belarusian organisations at the expense of funds received from the placement of bonds issued by foreign organisations in order to send such funds to Belarusian organisations in the form of loans and borrowings;
- from debt obligations on bonds of Belarusian organisations issued from 1 April 2008 to 1 January 2015 and from 1 July 2015, as well as from their alienation and/or their redemption, unless otherwise provided by the tax code;
- from debt obligations on bonds of the open joint-stock company “Development Bank of the Republic of Belarus” placed outside the Republic of Belarus, as well as from their alienation and/or their redemption;
- from debt obligations on government securities of the Republic of Belarus, securities of the National Bank, bonds of local executive and regulatory bodies, as well as from their alienation and/or their redemption;
- in the form of compensations (reimbursement of costs), commissions, the payment of which to foreign banks is stipulated by agreements on the provision of certain credits, loans;
- from the performance of work (provision of services) related to:

    - issue, placement, circulation, redemption of government long-term bonds of the Republic of Belarus, which are government debt obligations that form the external government debt, bonds of local executive and regulatory bodies and bonds of Belarusian organisations, the open joint stock company “Development Bank of the Republic of Belarus”, taking into account the rights to such bonds;
    - representing the interests of the Republic of Belarus in the framework of pre-trial settlement of disputes, in international arbitrations and foreign judicial bodies in disputes between foreign organisations (foreign citizens) and the Republic of Belarus;
    - from the lease of sea vessels to the subjects of merchant shipping of the Republic of Belarus for the implementation by them of the operation of such sea vessels;
    - from the provision of services to the subjects of merchant shipping of the Republic of Belarus for training employees in the field of operation of sea vessels;
- from the provision of consulting services for the implementation of international treaties of the Republic of Belarus aimed at attracting resources (loans (credits), investments) of international organisations to the Republic of Belarus, as well as their grants.

## G. EXCHANGE CONTROL

Belarus imposes restrictions, special reporting and controls with respect to transactions involving foreign and national currency. The Belarusian Rouble (BYN) has restricted convertibility. Companies doing business in Belarus must open a bank account with a bank in Belarus.

## H. PERSONAL INCOME TAX

The tax year in Belarus is the calendar year. Belarus resident individuals are subject to personal income tax on their worldwide income whereas non-resident individuals are taxed on their Belarusian-sourced income only. For tax purposes, an individual is treated as a tax resident of Belarus if they are present in Belarus for more than 183 days in a calendar year otherwise they are considered a non-resident.

The general personal income tax rate is 13%. The tax rate of 4% is applied to income in the form of gambling gains from gambling organisers being legal persons of the Republic of Belarus. Fixed tax amounts are set in relation to personal income from leasing out to natural persons of residential and/or non-residential premises and parking spaces in the territory of Belarus.

Employment income includes salary, any other compensation and bonuses received in cash or in kind. Employment income received by an individual from a foreign company or entrepreneur is treated as foreign income for personal income tax purposes, regardless of the place where the employment duties were actually performed. Belarusian tax residents may claim several deductions in determining their taxable income. Employers calculate, deduct and pay the relevant tax on the compensation paid to their employees. Social security contributions are payable by an employer at a rate of 34% (28% for pension insurance and 6% for social insurance) and by an employee at a rate of 1% of their gross compensation (withheld by the employer).

A flat personal income tax rate of 13% applies to all dividends received by a resident. However, the tax rate is reduced in the following cases:

- To 6% if a resident company has not distributed profit between its members (shareholders)-residents of Belarus for three successive calendar years;
- To 0% if a resident company has not distributed profit between its members (shareholders)-residents of Belarus for five successive calendar years.

Non-residents receiving dividends from local sources are subject to 13% personal income tax which is withheld at source.

Generally, interest received from bank deposits in Belarus is subject to personal income tax withheld by the bank except for cases when at least one of the conditions below are met:

- Such interest is accrued at an interest rate not exceeding the interest rate for call bank deposits;
- The actual deposit term is not less than one year for deposits in BYN and two years for deposits in a foreign currency.

Self-employed individuals having a business and being registered as a private entrepreneur with the appropriate registration authority are subject to (upon their choice):

- Personal income tax at a flat rate of 16% (although a specific flat rate of 9% applies to certain types of income);
- Simplified taxation (in this case individual entrepreneurs are not subject to corporate profits tax and, under certain conditions, neither to VAT (and some other taxes), but instead they pay a unified tax of either 5% of gross revenues or, if the individual entrepreneur continues to pay VAT, 3% of gross revenues);
- General taxation (like a legal entity);
- Unified tax under certain types of activities.

Self-employment income, assessed on an annual basis, consists of annual gross income less associated documented expenses.

Personal income tax is paid on a quarterly basis where a self-employed individual has a business and has registered as an individual entrepreneur with the appropriate registration authority.

Where a self-employed individual has not registered as a private entrepreneur with the appropriate registration authority, personal income tax is paid on an annual basis.

Generally, any other income is included in regular income and taxed at 13% (or 9% which applies to certain types of income). Capital gains are not paid separately but included within the total income of an individual taxpayer. Under Belarusian tax law, relevant deductions in the following four categories are deductible against a taxpayer’s personal income tax liability:

- Social tax deductions;
- Standard tax deductions;
- Property tax deductions; and,
- Professional tax deductions.

B

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Please find below a table showing the withholding tax rates for dividends, interest and royalties under the various tax treaties including former USSR's treaties which Belarus still honours. In case the domestic rate is lower than the treaty rate, the former prevails. In case the treaty rate is lower than the domestic rate, the former prevails.

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 12 | 12 | 0/10 | 15 |
| Individuals | 0/6/9/13 | -- | 0/13 | 13 |
| **Treaty countries:** | | | | |
| Armenia | 15 | 10[4] | 0/10 | 10 |
| Austria | 15 | 5[1] | 0/5 | 5 |
| Azerbaijan | 15 | 15 | 0/10 | 10 |
| Bahrain | 5 | 5 | 0/5 | 5 |
| Belgium | 15 | 5[2] | 0/10 | 5 |
| Bulgaria | 10 | 10 | 0/10 | 10 |
| China | 10 | 10 | 0/10 | 15 |
| Croatia | 15 | 5[1] | 10 | 10 |
| Cyprus | 5/10/15[3] | 5/10[3] | 5 | 5 |
| Czech Republic | 10 | 5[1] | 0/5 | 5 |
| Denmark | 15 | 15 | 0 | 0 |
| Ecuador[5] | 10 | 5[1] | 10 | 10 |
| Egypt | 15 | 15 | 10 | 15 |
| Estonia | 10 | 10 | 0/10 | 10 |
| Finland | 15 | 5[6] | 0/5 | 5 |
| France | 15 | 15 | 0/10 | 0 |
| Georgia | 10 | 5[1] | 0/5 | 5 |
| Germany | 15 | 15 | 0/5 | 0 |
| Hong Kong[8] | 0/5 | 0/5[7] | 0/5 | 3/5 |
| Hungary | 15 | 5[1] | 5 | 5 |
| India | 15 | 10[9] | 0/10 | 15 |
| Indonesia | 10 | 10 | 0/10 | 10 |
| Iran | 15 | 10[10] | 0/5 | 5 |
| Ireland | 0/10[11] | 0/5[11] | 0/5 | 5 |
| Israel | 10 | 10 | 0/5/10 | 5/10 |
| Italy | 15 | 5[1] | 0/8 | 6 |
| Japan | 15 | 15 | 0/10 | 0/10 |
| Kazakhstan | 15 | 15 | 0/10 | 15 |
| Korea (North) | 10 | 10 | 10 | 10 |
| Korea (South) | 15 | 5[1] | 10 | 5 |
| Kuwait | 0/5[12] | 0/5[12] | 0/5 | 10 |
| Kyrgyzstan | 15 | 15 | 0/10 | 15 |
| Laos | 10 | 5[13] | 0/8 | 5 |
| Latvia | 10 | 10 | 0/10 | 10 |
| Lebanon | 7.5 | 7.5 | 0/5 | 5 |
| Lithuania | 10 | 10 | 0/10 | 10 |
| Malaysia | 15 | 15 | 0/15 | 10/15 |
| Moldova | 15 | 15 | 0/10 | 15 |
| Mongolia | 10 | 10 | 0/10 | 10 |
| Montenegro | 15 | 5[1] | 8 | 10 |
| Netherlands | 15 | 0[14]/5[1] | 0/5 | 3/5/10 |
| North Macedonia | 15 | 5[1] | 10 | 10 |
| Oman | 5 | 5 | 0/5 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Pakistan | 15 | 11[15] | 0/10 | 15 |
| Poland | 15 | 10[4] | 0/10 | 0 |
| Qatar | 5 | 5 | 0/5 | 5 |
| Romania | 10 | 10 | 0/10 | 15 |
| Russia | 15 | 15 | 0/10 | 10 |
| Saudi Arabia | 5 | 5 | 5 | 10 |
| Serbia | 15 | 5[1] | 8 | 10 |
| Singapore | 5 | 0[12] | 0/5 | 5 |
| Slovak Republic | 15 | 10[9] | 0/10 | 5/10 |
| Slovenia | 5 | 5 | 0/5 | 5 |
| South Africa | 15 | 5[16] | 0/5/10 | 5/10 |
| Spain | 18 | 18 | 0 | 0/5 |
| Sri Lanka | 10 | 7.5[17] | 0/10 | 10 |
| Sweden | 10 | 0/5[18] | 0/5 | 3/5/10 |
| Switzerland | 15 | 5[1] | 0/5/8 | 3/5/10 |
| Syria | 15 | 15 | 10 | 18 |
| Tajikistan | 15 | 15 | 0/10 | 15 |
| Thailand | 10 | 10 | 0/10 | 15 |
| Turkey | 15 | 10[10] | 0/10 | 10 |
| Turkmenistan | 15 | 15 | 0/10 | 15 |
| Ukraine | 15 | 15 | 10 | 15 |
| United Arab Emirates | 10 | 0/5/10[19] | 0/5 | 5/10 |
| United Kingdom | 0 | 0 | 0 | 0 |
| United States | 0 | 0 | 0 | 0 |
| Uzbekistan | 15 | 15 | 0/10 | 15 |
| Venezuela | 15 | 5[1] | 0/5 | 5/10 |
| Vietnam | 15 | 15 | 0/10 | 15 |

Notes:

1. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
2. The 5% rate applies if the beneficial owner is a company which holds directly or indirectly at least 25% of the capital of the dividend-paying company.
3. The 5% rate applies if the beneficial owner has invested in the share capital of the dividend-paying company not less than EUR 200,000. The 10% rate applies if the beneficial owner holds directly at least 25% of the share capital of the dividend-paying company.
4. The 10% rate applies if the beneficial owner is a company which holds at least 30% of the capital of the dividend-paying company.
5. Effective 1 January 2018.
6. The 5% rate applies if the beneficial owner is a company (other than a partnership) which controls directly at least 25% of the capital of the dividend-paying company.
7. The 0% rate applies to payments to government agencies and financial institutions.
8. Effective 1 January 2018 (Belarus); 1 April 2018 (Hong Kong).
9. The 10% rate applies if the beneficial owner is a company which holds directly at least 25% of the shares of the dividend-paying company.
10. The 10% rate applies if the recipient is a company (excluding partnership) which holds directly at least 25% of the capital of the dividend-paying company.
11. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company. The 0% rate applies to payments to government agencies and financial institutions.
12. The 0% rate applies to payments to government agencies and financial institutions.
13. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company.
14. The 0% rate applies if the beneficial owner is a company (other than a partnership) (i) which holds directly at least 50% of the dividend-paying capital and provided that an investment of at least 250,000 EUR has been made in the capital of the dividend-paying company or (ii) which holds directly at least 25% of the capital of the dividend-paying company and whose investment in the capital of the dividend-paying company is, directly or indirectly, guaranteed or insured by the government of the other contracting state.
15. The 11% rate applies if the beneficial owner is an individual or a company which holds at least 25% of the capital of the dividend-paying company.
16. The 5% rate applies if the beneficial owner is a company which holds at least 25% of the capital of the dividend-paying company.
17. The 7.5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
18. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 30% of the capital of the

dividend-paying company. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly 100% of the capital of the dividend-paying company but only to the extent that the profits out of which the dividends are paid have been derived from industrial or manufacturing activities or from agriculture, forestry, fishing or tourism (including restaurants and hotels). However, this exemption shall not apply if the profits out of which the dividends are paid have been exempt from tax in the source state.

19. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 100,000 USD of the dividend-paying company.

    The 0% reduced rate applies if the beneficial owner of the dividends is the UAE government, the UAE Central Bank, the Abu Dhabi Investment Authority, the Dubai investment Corporation or the Mubadala Development Company (Item 3 of the Protocol to the treaty that was signed on 29 March 2019 and entered into force on 1 May 2020 and is effective as of 1 January 2021).

# BELGIUM

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Antwerp/Brussels | Aleksandr Natanelov | +32 2 486 59 75<br>aleksandr.natanelov@bofidi.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Kingdom of Belgium |
| Capital: | Brussels |
| Main languages: | Dutch, French, German |
| Population: | 11.68 million (2022 estimate) |
| Monetary unit: | Euro (EUR) |
| Internet domain: | .be |
| Int. dialling code: | +32 |

## KEY TAX POINTS

- A resident company is liable for Belgian resident corporate tax on its worldwide profits (with Belgian tax relief for eligible foreign-source profit). A non-resident company, i.e. a legal branch or permanent establishment, is liable for Belgian non-resident corporate tax levied on Belgian-source income only.
- Capital gains are normally treated as ordinary business income and are taxable at the normal corporate tax rates, be it that tax exemptions and roll-over tax relief are available if certain conditions are met.
- Belgian tax law comprises controlled foreign company (CFC) legislation as of 2019.
- Belgian tax law comprises group relief for corporate tax purposes as of 2019. In addition and subject to certain conditions, separate taxable persons can form a VAT unit and hence be considered as a single taxable person for VAT purposes.
- The standard Belgian withholding tax rate applicable to dividend, interest or royalty income is 30%. However, both Belgian domestic tax law and double tax treaties concluded by Belgium comprise numerous withholding tax exemptions that can be claimed by various investors, mainly non-residents and financial institutions.
- An individual resident in Belgium is liable for progressive personal income tax rates that apply to worldwide income. Qualifying foreign-source income can be eligible for a Belgian personal tax exemption with progression reserve if conditions are met.
- Belgian tax law does not comprise asset tax nor a general capital gains taxation for individuals.
- Belgium has a very tax-attractive expatriate tax regime for foreign executives that are temporarily working in Belgium after being seconded to Belgium or being recruited outside Belgium.
- Belgium has a very extensive tax treaty network and a very active tax treaty policy.
- Belgium has a very active upfront tax ruling practice. No-name pre-filing meetings with the Belgium tax ruling commission are common practice.
- Taxable persons performing supplies of goods or services have to charge 21% VAT on these supplies unless these transactions are subject to a reduced rate, ‘exempt’ from VAT, ‘outside the scope’ of VAT or subject to ‘reverse charge’.

## A. TAXES PAYABLE

## COMPANY TAX

A resident company is liable to corporation tax on its worldwide profits. A company is resident in Belgium if its registered office or centre of management is situated in Belgium. The place of incorporation is irrelevant.

The standard Belgian corporate tax rate is 25%. A small or medium-sized company is subject to 20% corporate tax on the EUR 100,000 fraction of the taxable basis subject to certain conditions.

A company with tax residence outside Belgium that has a legal branch or permanent establishment in Belgium is subject to the same Belgian corporate tax rate of 25% (or the reduced tax rate if the conditions are met), be it on Belgian-source income only.

A company with tax residence outside Belgium that has no legal branch or permanent establishment in Belgium is basically only subject to Belgian non-resident corporate tax on income derived from Belgium based real estate. In addition, Belgian-source dividend, interest or royalty income is subject to 30% Belgian withholding tax. However, it is very likely that either a reduced tax treaty rate or even 0% withholding tax applies at the level of a non-resident beneficiary of this type of income.

To avoid a surcharge, tax must be paid in advance in quarterly instalments. For a taxpayer whose fiscal year runs concurrently with the calendar year, the due dates for the advance tax payments are 11 April 2022, 11 July 2022, 10 October 2022 and 20 December 2022. For tax year 2023 (taxable periods starting on or after 1 January 2021), the surcharge is 6,75%.



## CAPITAL GAINS TAX

Capital gains are normally treated as ordinary business income and are taxable at the normal corporate tax rates. However, there are exceptions such as realised capital gains on eligible shares which can be 100% tax-free if the Belgian participation exemption (see further) is applicable. In addition, realised capital gains on business assets can be eligible for spread taxation – i.e. roll-over tax relief – if, amongst others, the sales proceeds are timely reinvested in qualifying other business assets (including real estate).

## BRANCH PROFITS TAX

There is no separate branch profits (remittance) tax in Belgium.

## VALUE ADDED TAX (VAT)

VAT is a tax on 4 types of transactions: the supply of goods, the supply of services, the importation of goods from outside the EU, and the acquisition of goods from another EU Member State ("intra-Community acquisition of goods"). In case these transactions are deemed to take place in Belgium for VAT purposes, as a general rule 21% Belgian VAT will be due. However, many exceptions to this main rule exist:

- Certain supplies are zero-rated (e.g. daily and weekly publications) or subject to 6% (e.g. food and water, hotel accommodation, renovation of private dwellings, etc.), or 12% (e.g. restaurant and catering services);
- Certain supplies are VAT exempt (e.g. export of goods, intra-Community supplies of goods, social-cultural services, insurance, some financial operations);
- For certain supplies, the liability to pay the Belgian VAT is shifted to the customer (reverse charge).

Although many of these exceptions stem from EU legislation, the relevant Belgian rules often have a different scope or are interpreted differently by the Belgian VAT authorities (as is the case in most other EU Member States as well). It is therefore advised to carefully examine the correct VAT treatment of the operations taking place in Belgium.

The VAT legislation is formalistic, and imposes various administrative and document retention requirements. Non-compliance with these rules often leads to adverse VAT consequences, such as the rejection of input VAT deduction, the rejection of the application of a VAT exemption (resulting to a VAT claim) or administrative penalties.

Businesses that are VAT registered in Belgium need to file periodical VAT returns and an annual client listing. Depending on the type of transactions performed, possibly also intra-Community sales listings and Intrastat returns may need to be filed. As a general rule, these returns and listings need to be filed on a monthly basis. The VAT returns and intra-Community sales listings however only need to be filed on a quarterly basis if certain thresholds are not exceeded.

VAT should in principle be neutral for businesses, since a taxable person (even foreign businesses that are not VAT registered in Belgium) can recover the input VAT on goods or services they have purchased. However, in practice this is not always the case, as the business can be faced with:

- Non-recoverable VAT: In some cases, a taxable person cannot fully deduct the input VAT either due to the fact that it partly/only performs activities that are out of scope or exempt from VAT or due to the fact that for certain types of costs no VAT deduction is allowed.
- VAT pre-financing: There can be a significant timing difference between the moment the input VAT is paid and the moment this input VAT is actually recovered.
- VAT penalties: Infringements on the VAT legislation (even minor ones) can lead to severe penalties.
- VAT administration costs: the costs associated with having a Belgian VAT registration, filing returns and listings, complying with invoicing and bookkeeping requirements.

In many cases, the scenarios in which VAT can become a cost for a business can be avoided or optimised by careful planning. The Belgian VAT legislation e.g. contains various simplification rules that, if applied correctly, can avoid the need to VAT register or to pre-finance VAT.

## LOCAL TAXES

Other than some minor and very specific local taxes that may apply to e.g. advertising, office furniture, producing copies, etc., there are no significant and general local taxes in Belgium.

## OTHER TAXES:

## REGISTRATION DUTY

Registration duties are indirect taxes and are therefore applied on a transaction basis, in particular when a notary deed is required. The tax rate can be different in either the Brussels Region, Flemish Region or Walloon Region. Transactions that are subject to proportional registration duties include the transfer of legal title of real estate situated in Belgium. A registration duty of 12% in the Flemish Region and of 12.5% in the Brussels Region and the Walloon Region applies to the price or market value of the real estate (except in restructuring scenarios in which case an exemption can apply). However, as of 1 January 2021, the registration duty applied to the price or market value of a family house in the Flemish Region has decreased to 3% if certain formalities are met in due time. Subject to certain conditions, an exemption of registration duties is applicable on the first 175,000 EUR of a family home in the Brussels Region. And in the Walloon Region, a 6 or 5% registration duty is applied on modest homes in certain cases.

In general, no Belgian registration duties are due when increasing the capital of a Belgian-based company.

## REAL ESTATE WITHHOLDING TAX

Owners of real estate located in Belgium pay real estate taxes on the deemed rental value – this is a fictitious, but fairly low income – of their property. The applicable rate depends on the location and use of the property.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a Belgian company or Belgian permanent establishment is based on its Belgian GAAP accounting profit as laid down in its annual accounts. This accounting profit is then adjusted for Belgian corporate tax purposes. We will list the main tax adjustments here under.

### DISALLOWED EXPENSES

Some accounting charges are not (fully) tax-deductible. The main disallowed expenses are as follows:

- Restaurant costs are only 69% tax-deductible;
- Reception costs and business gifts are only 50% tax-deductible;
- As of 2020 the tax-deductibility of both car and fuel costs are calculated as follows: 120% – [ 0,5% * fuel coefficient * $CO^2$ emission rate ];
- Hospitalization insurance premiums are not tax-deductible;
- Meal voucher expenses are tax-deductible at EUR 2 per voucher if the employer's fee does not exceed EUR 6.91 and the employee contributes at least EUR 1.09.

### INVESTMENT ALLOWANCE

Companies are entitled to "investment allowance" tax relief – called "investment deduction" – if conditions are satisfied. Specifically, in the event of an investment in qualifying assets that are used for own business purposes, the taxpayer cannot only amortise the asset for Belgian corporate tax purposes, but is also eligible for an additional tax deduction. Such tax deduction is either:

- A one-off tax deduction applied to the total investment value, or;
- A spread tax deduction applied to the annual accounting amortization of the asset.

The actual percentage of the investment allowance depends on the type of investment. If the taxpayer at hand has insufficient tax capacity in a given financial year to fully utilise the investment deduction, the excess deduction can in most cases be carried forward without limitation in terms of time and amount. In addition, if conditions are met, an increased investment deduction is available for, amongst others, the following types of investments:

- Energy-saving investments;
- Environmental-friendly R&D investments;
- Investments in safety measures;
- Investments contributing towards the re-utilisation of the packaging of beverages and industrial products.

In the context of COVID-19, the Belgian government took various measures to encourage further investments. One of these measures, i.e. the so-called increased investment deduction, allows companies qualifying as a small or medium-sized enterprise for Belgian company law and tax purposes a 25% deduction on investments in qualifying assets made between 12 March 2020 and 31 December 2022.

### DEPRECIATION

Generally, all tangible and intangible business assets owned by the company and whose value diminishes over time, are depreciable for both Belgian GAAP and corporate tax purposes. As of 1 January 2020, degressive amortisation of newly obtained fixed assets is no longer allowed for tax purposes.

### STOCK / INVENTORY

Stocks should be valued at the lower of acquisition cost or year-end market value. The most common acceptable valuation methods are actual cost, FIFO and weighted average. The Belgian tax authorities require that the method chosen is justified and applied consistently.

### CAPITAL GAINS AND LOSSES

Capital gains are treated as ordinary business income and are therefore taxable at normal corporate tax rates. However, there are a few exceptions:

- Revaluation gains are tax-free provided that they remain recorded on a specific "intangible account" of the company's balance-sheet;
- As explained above, under certain conditions roll-over tax relief is granted for eligible realised gains on business assets;
- Realised capital gains on shares are tax-free if the underlying dividends qualify for the Belgian participation exemption (see below). There is however one exception to this rule: if the shares are not held for at least one year then 25% Belgian capital gains tax is due.

Capital losses are tax-deductible if they relate to fixed assets used for business purposes. Both unrealised (i.e. impairments recorded for Belgian GAAP purposes) and realised capital losses on shares are not tax-deductible. However, capital losses on shares realised upon the liquidation of a subsidiary are tax-deductible up to the value of the capital actually paid-up by the Belgian corporate shareholder.

### DIVIDEND INCOME - PARTICIPATION EXEMPTION

A corporate shareholder can apply a 100% Belgian participation exemption for a shareholding of at least 10% or with an investment value of at least EUR 2.5 million in the distributing company. Also, the Belgian shareholder needs to hold this minimum shareholding for an uninterrupted period of at least one year, before or after the dividend distribution date. In addition, the dividend distributing subsidiary should be subject to normal taxation. Subsidiaries based in the EU are deemed to anyhow meet this subject-to-tax test.

Note that the participation exemption cannot be applied if the dividend distributing company can deduct the distributed dividend amount from its taxable basis and if the overall business structure is "artificial", i.e. lacks relevant substance.

If the taxpayer at hand has insufficient tax capacity in a given financial year to fully utilize the participation exemption, the excess can be carried-forward without limitation in terms of time and amount.

## INTEREST DEDUCTIONS

At arm's length interest expenses are fully tax-deductible. However, Belgian tax law provides for three specific thin capitalisation rules:

- A 1:1 debt-equity ratio applies to loans granted by individual directors and shareholders to the company;
- A 5:1 debt-equity ratio still applies to loans granted by related companies prior to 17 June 2016 and by lenders based in a tax haven (this is the so-called thin-capitalisation rule). However, the 5:1 thin capitalisation rule does not apply in the event of a genuine "finance centre" transaction between related companies that are not based in a tax haven.
- As of tax year 2020, a 30% fiscal EBITDA rule or interest deduction limitation rule has become applicable. In this respect, any arm's-length "exceeding borrowing cost" is, as a rule, only deductible up to the higher of maximum 30% of the taxpayer's EBITDA or EUR 3 million. In case the company is related with other Belgian based group affiliates, the thresholds need to be considered on a consolidated basis.

## NOTIONAL INTEREST DEDUCTION (NID)

The notional interest deduction (NID) is a unique Belgian tax deduction. NID is a deduction for Belgian corporate tax purposes only and thus does not require any Belgian GAAP accounting entries or any cash-out cost. NID applies to basically all Belgian corporate taxpayers, regardless of the nature of their business. In essence, to have an equal treatment between the equity-funding and debt-funding of a Belgian company or permanent establishment, NID comes down to a corporate tax deduction of a "notional – i.e. fictitious – interest" expense that is deemed to arise for tax purposes only. The basis for the tax deduction is the average 5 year increase of the company's qualifying Belgian GAAP net equity while the interest rate is determined in function of the market interest rates. Small and medium-sized companies are entitled to an additional 0.5% NID rate. As market interest rates are currently low, the current (i.e. tax year 2022 – financial year 2021) NID of 0.340% is only applicable for small and medium-sized companies.

## INNOVATION DEDUCTION

The patent income deduction (PID) regime was a tax-attractive rule providing for an 80% corporate tax exemption of at arm's-length patent income.

Note however that the PID has been abolished with a phase-out period until 30 June 2021.

However, meanwhile the so-called Innovation Deduction tax regime has been introduced as an alternative for PID. The Innovation Deduction has the following features:

- In essence, the Innovation Deduction is an 85% corporate tax deduction of net income derived from qualifying IP whose underlying R&D activities were carried on by the Belgian taxpayer. Hence, the deduction is now based on net income instead of gross income.
- The scope of qualifying IP is much broader than for PID since also income derived from, amongst others, data and market exclusivity rights and eligible software is included;
- Non-utilised Innovation Deduction can be carried-forward to a subsequent financial year without limitation in time or amount;
- Also realised capital gains on the IP can benefit from Innovation Deduction tax relief;
- The Innovation Deduction can already be applied as of the financial year in which the IP approval request is filed.
- Finally, the 'Nexus' approach ensures that only income derived from qualifying IP for which R&D activities were performed by the Belgian company is eligible for the innovation deduction. Therefore, some companies might need to review their operational structure in order to make full use of this incentive.

## LOSSES

Tax losses can be carried forward indefinitely, i.e. without limitation in terms of time and amount. A carry-back of tax losses is in principle not allowed. However, tax losses may forfeit in the event of a purely tax-driven change of control at the level of the Belgian company with tax losses. Furthermore, when a Belgian company with tax losses is part of a tax-free business restructuring (like e.g. a merger), the tax losses carry-forward may only survive the tax-free reorganisation on a pro rata basis.

Furthermore, if a company or a permanent establishment has a taxable basis exceeding EUR 1 million, a maximum of 70% of the part of the taxable basis exceeding EUR 1 million can be offset against tax losses carried-forward, whereas 30% is effectively subject to corporate tax. However, there is no limit to the deduction of losses during the first 4 financial years of an SME.

## FOREIGN SOURCE INCOME

Belgian tax law comprises controlled foreign company (CFC) legislation as of 2019. However, CFC legislation only applies if the overall business set-up is deemed to be artificial, i.e. lacks genuine local substance and is not at arm's length.

## C. FOREIGN TAX RELIEF

The following Belgian foreign tax relief rules apply:

- Income derived from tax treaty sources (a permanent establishment or real estate based in a tax treaty country) is completely tax-free for Belgian corporate tax purposes;
- Definitive tax losses of permanent establishments situated outside Belgium, but within the EEA, are deductible from Belgian source profits (be it that a future claw-back rule may apply);
- Foreign-source dividend income can be eligible for the Belgian participation exemption (see above);
- Foreign-source interest and royalty income can be eligible for a Belgian foreign tax credit if that income was subject to foreign withholding tax or if a tax sparing clause laid down in a tax treaty concluded with Belgium applies.

## D. R&D TAX CREDIT

Companies that invest in patents and/or environment friendly research and development (R&D) investments can benefit from a tax credit. The tax benefit is not granted in the form of a deduction from the taxable result, but a tax reduction is applied to the corporate income tax payable. If an assessment year produces no or insufficient tax to offset the R&D tax credit, the non-offset tax credit shall be carried forward successively to the next four assessment years.

If after set-off against the tax of five consecutive assessment years, a portion of the R&D tax credit relating to that assessment year cannot be set off, this portion is reimbursed.

The rate is calculated on the basis of the investment deduction: this is the acquisition or investment value of the assets multiplied by the rate of the investment deduction. A distinction is made between the increased and the spread investment deduction. The calculation base is multiplied by the nominal corporate tax rate.



Companies that opt for the R&D tax credit can never again apply the investment deduction for patents and environment friendly investments in R&D (both one-off and spread).

## E. R&D WAGE WITHHOLDING TAX INCENTIVE

Universities, colleges, scientific institutions and companies can benefit from an exemption of 80% of the withholding tax on salaries of certain researchers employed in research or development projects or programmes. Companies can only benefit from this withholding tax incentive for their researchers who hold a master degree in certain scientific disciplines. Bachelor degrees in certain scientific disciplines also qualify. The total amount of the exemption for bachelors is limited to 25% of the amount of the exemption for master degrees within the company.

A company can deviate from this diploma requirement if it qualifies as a Young Innovative Company ("YIC"). A YIC is a small enterprise that exists for less than 10 years. It carries out research projects and has incurred expenses in the area of R&D that represent at least 15% of the total costs of the previous taxable period.

These YICs can make use of the exemption for academic staff. Scientific personnel is defined as researchers, research technicians and research and development project managers, excluding administrative and commercial personnel.

## F. CORPORATE GROUPS

As of 2019, Belgian tax law features group relief for corporate tax purposes. This regime makes it possible – between qualifying affiliated companies – to transfer profits from a profitable company to a loss-making company so that the loss of the latter company can be compensated. This is a mere fiscal operation.

However, in order to benefit from this scheme, strict conditions must be met:

- There must be a long-term relationship between the two companies. Consolidation is only possible between a parent company and a subsidiary company or between two sister companies of the same group. There must also be a direct participation of at least 90% (or via the parent company) for five uninterrupted years.
- There must be a loss in the current financial year. Therefore, no losses carried forward can be compensated.
- An agreement must be made between the affiliated companies. This agreement stipulates that the profitable company makes a group contribution to the loss-making company. The profitable company will pay a lower corporate tax. However, the profit-making company must still pay a compensation (its tax benefit) to the other company. This fee is not tax deductible, but obviously not taxable at the level of the loss-making company.
- Some companies are always excluded, such as investment companies.

## G. RELATED PARTY TRANSACTIONS

Transactions with group companies must be conducted on an arm's-length basis, i.e. the prices applied must be set as if the parties involved were genuine independent third-party companies, taking into account the normal market prices for similar transactions in identical or similar circumstances.

For Belgian tax purposes, transfer pricing documentation is only mandatory if the following conditions are satisfied in the hands of a group with a presence in various countries. Specifically, every Belgian tax resident affiliate of a multinational Group which exceeds one of the below criteria in the financial year preceding its most recently closed financial year according to its Belgian GAAP annual accounts on a non-consolidated basis should file both a Local File and a Master File in Belgium:

- Gross operational and financial turnover (excluding one-off transactions) exceeding EUR 50 million;
- Balance sheet total exceeding EUR 1 billion;
- Average personnel exceeding 100 full-time equivalents.

In summary, the Group Master File should give an overview of the multinational Group as such. The Local File shares more information about the nature and activities of the Belgian affiliate.

It should be noted that Belgium requires the Local File and Master File to be submitted in specific forms, which need to be submitted in XML format. The information to be included in the Local File form and the Master File form is to a large extent in line with the OECD recommendations. However, the Local File form requires additional information (e.g. segmented financials). It is also recommended to attach the Local File documentation to the Local File form to give further insight on the information provided in the Local File form.

In case the Group has a consolidated revenue exceeding EUR 750 million in the year prior to the reporting year, a Country-by-Country ("CbC") reporting obligation will have to be met. This CbC report will, in principle, have to be filed by the parent company of the Group in the country of which said parent company is a tax resident. However, in some cases, a Belgian tax resident company of the Group can be obliged to file the CbC report in Belgium. Every Belgian tax resident company of a "large" multinational Group will in any event have to inform the Belgian tax authorities of the identity of the company that will file the CbC report, i.e. by filing a CbC-notification form. A new CbC notification in Belgium is only required if the data laid down in a prior CbC-notification form changed.

## H. WITHHOLDING TAX

According to Belgian domestic tax law, in principle 30% withholding tax is due on dividend, interest and/or royalty income that is attributed or made payable by the company. However, Belgian tax law comprises numerous withholding tax exemptions, especially for corporations, banks and non-residents. Also, pursuant to tax treaty rules there may be Belgian dividend, interest and royalty withholding tax mitigation and relief. This includes:

- 0% Belgian dividend withholding tax if the shareholder resides in the EU or in a tax treaty country and has a minimum 10% shareholding for at least 1 year in the Belgian subsidiary;

- 0% Belgian interest or royalty withholding tax if the beneficiary resides in the EU and has a direct or indirect minimum 25% shareholding for at least 1 year in the Belgian company;
- 0% Belgian royalty withholding tax based on many tax treaties concluded by Belgium.

## I. EXCHANGE CONTROL

There are no exchange controls in Belgium.

## J. DAC 6: EU MANDATORY DISCLOSURE RULES

In light of the increased attention to address tax evasion at an international level, the EU introduced DAC 6 in relation to cross-border tax arrangements which came into force in Belgium as from 25 June 2018.

This directive envisages to tackle cross-border aggressive tax structures or "arrangements" and therefore to improve tax fairness and transparency. An arrangement should concern more than one EU Member State or an EU Member State and a third country.

These tax structures or arrangements must be identified to the government if certain conditions, the so-called "hallmarks", are met. In this respect, the hallmarks cover a wide range of arrangements and are classified into five categories:

- Category A: refers to confidentiality imposed on clients, contingent fee arrangements and mass marketed type arrangements;
- Category B: refers to planning for loss utilisation after acquisition of a loss-making company, converting income into an item that is exempt or taxed at a lower rate and circular or self-cancelling transactions;
- Category C: refers to cross-border payments where there is a deduction/non-inclusion outcome, a preferential tax treatment for the recipient and other transactions that exhibit a mismatch;
- Category D: refers to transactions intended to circumvent transparency-reporting rules or hide beneficial ownership;
- Category E: refers to the use of unilateral safe harbour rules, transfer of hard-to-value intangibles and transfer of assets/ functions/risks where a taxpayer's annual EBIT is reduced by at least 50%.

It should be noted that for certain categories also a 'main benefit test' is applicable. This test is met if it can be established – taking into account all relevant facts and circumstances – that the main benefit or one of the main benefits of entering into such an arrangement is to obtain a tax advantage.

The reporting obligations lie mostly with the intermediary. However, under specific circumstances, the obligation can fall on the taxpayer. In this respect, reporting should be made within 30 days.

Finally, non-compliance with a reporting obligation could result in certain penalties varying from EUR 1,250 to EUR 100,000 depending on the case at hand.

## K. PERSONAL TAX – EXPATRIATE TAX REGIME

An individual resident in Belgium is subject to progressive personal income tax rates (maximum 50%) on his worldwide income. There is no general capital gains taxation for individuals. Only in very specific circumstances can an individual be subject to capital gains taxation. A non-resident individual is subject to progressive personal tax rates on his Belgian-source income only. There is no asset tax under Belgian tax law.

However, Belgian tax practice includes a tax-efficient expatriate tax regime since 1983. This expatriate tax regime has been replaced by a new special tax regime as of 1 January 2022.The main objective of this new special tax regime is still to lower the overall payroll cost for the employer and to optimise the net-in-hand salary for the expatriate. If they meet all the conditions, an expatriate – although temporarily living with his/her family in Belgium – is considered to be a non-resident for Belgian personal income tax purposes. The benefits of the Belgian expatriate tax status are twofold:

- The 30% rule has been implemented meaning that on top of the base salary up to 30% of tax free allowances may be granted (at the moment of writing the exact definition of the 30% rule is not yet clarified).
- In addition to the 30% rule, three other types of expenses are accepted as reimbursement of expenses proper to the employer:
  - Costs of moving to Belgium;
  - Costs incurred for the furnishing of the residence in Belgium;
  - School costs (for children from school age, in a private or international school).

## L. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-treaty countries** | 0/15/30 | 0/30 | 30 |
| **Treaty countries:** | | | |
| Albania | 0/5/15 | 5 | 5 |
| Algeria | 0/15 | 0/15 | 5/15 |
| Argentina | 0/10/15 | 0/12 | 3/5/10/15 |
| Armenia | 0/5/15 | 0/10 | 8 |
| Australia | 0/15 | 10 | 10 |
| Austria | 0/15 | 0/15 | 10 |
| Azerbaijan | 0/5/10/15 | 10 | 5/10 |
| Bahrain | 0/10 | 0/5 | 0 |
| Bangladesh | 0/15 | 0/15 | 10 |
| Belarus | 0/5/15 | 0/10 | 5 |

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Bosnia-Herzegovina | 0/10/15 | 15 | 10 |
| Brazil | 0/10/15 | 0/10/15 | 10/15/20 |
| Bulgaria | 0/10 | 0/10 | 5 |
| Canada | 0/5/15 | 0/10 | 0/10 |
| Chile | 0/15 | 5/15 | 5/10 |
| China | 0/5/10 | 0/10 | 7 |
| Croatia | 0/5/15 | 0/10 | 0 |
| Cyprus | 0/10/15 | 0/10 | 0 |
| Czech Republic | 0/5/15 | 0/10 | 5/10 |
| Democratic Republic of Congo | 0/5/10 | 0/10 | 10 |
| Denmark | 0/15 | 0/10 | 0 |
| Ecuador | 0/15 | 0/10 | 10 |
| Egypt | 0/15/20 | 15 | 15/25 |
| Estonia | 0/5/15 | 0/10 | 5/10 |
| Finland | 0/5/15 | 10 | 5 |
| France | 0/10/15 | 15 | 0 |
| Gabon | 0/15 | 0/15 | 10 |
| Georgia | 0/5/15 | 0/10 | 5/10 |
| Germany | 0/15/25 | 0/15 | 0 |
| Ghana | 0/5/15 | 0/10 | 10 |
| Greece | 0/5/15 | 0/5/10 | 5 |
| Hong Kong | 0/5/15 | 0/10 | 5 |
| Hungary | 0/10 | 0/15 | 0 |
| Iceland | 0/5/15 | 0/10 | 0 |
| India | 0/15 | 10/15 | 20 |
| Indonesia | 0/10/15 | 0/10 | 10 |
| Ireland | 0/15 | 15 | 0 |
| Israel | 0/15 | 15 | 10 |
| Italy | 0/15 | 0/15 | 5 |
| Ivory Cost | 0/15/18 | 0/16 | 10 |
| Japan | 0/5/15 | 10 | 10 |
| Kazakhstan | 0/5/15 | 0/10 | 10 |
| Korea | 0/15 | 0/10 | 10 |
| Kosovo | 0/10/15 | 15 | 10 |
| Kyrgyzstan | 15 | 0/15 | 0 |
| Kuwait | 0/10 | 0 | 10 |
| Latvia | 0/5/15 | 0/10 | 5/10 |
| Lithuania | 0/5/15 | 0/10 | 5/10 |
| Luxembourg | 0/10/15 | 0/15 | 0 |
| Malaysia | 0/15 | 10 | 10 |
| Malta | 0/15 | 0/10 | 0/10 |
| Mauritius | 0/5/10 | 0/10 | 0 |
| Mexico | 0/10 | 0/5/10 | 10 |
| Moldova | 0/15 | 0/15 | 0 |
| Mongolia | 0/5/15 | 0/10 | 5 |
| Montenegro | 0/10/15 | 0/15 | 10 |
| Morocco | 0/6.5/10 | 0/10 | 10 |
| Netherlands | 0/5/15 | 0/10 | 0 |
| New Zealand | 0/15 | 10 | 10 |
| Nigeria | 0/12.5/15 | 12.5 | 12.5 |
| North Macedonia | 0/5/15 | 0/10 | 10 |

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Norway | 0/5/15 | 0/15 | 0 |
| Pakistan | 0/10/15 | 0/15 | 0/15/20 |
| Philippines | 0/10/15 | 0/10 | 15 |
| Poland | 0/10 | 0/5 | 5 |
| Portugal | 0/15 | 15 | 10 |
| Romania | 0/5/15 | 0/10 | 5 |
| Russia | 0/10 | 0/10 | 0 |
| Rwanda | 0/15 | 0/10 | 10 |
| San Marino | 0/5/15 | 0/10 | 5 |
| Senegal | 0/15 | 15 | 10 |
| Serbia | 0/10/15 | 15 | 10 |
| Seychelles | 0/5/15 | 0/5/10 | 5 |
| Singapore | 0/5/15 | 10 | 5 |
| Slovak Republic | 0/5/15 | 0/10 | 5 |
| Slovenia | 0/5/15 | 0/10 | 5 |
| South Africa | 0/5/15 | 0/10 | 0 |
| Spain | 0/15 | 0/10 | 5 |
| Sri Lanka | 0/15 | 0/10 | 10 |
| Sweden | 0/5/15 | 0/10 | 0 |
| Switzerland | 0/10/15 | 0/ 10 | 0 |
| Taiwan | 0/10 | 0/10 | 10 |
| Tajikistan | 0/15 | 0/15 | 0 |
| Thailand | 0/15/20 | 0/10/25 | 5/15 |
| Tunisia | 0/5/15 | 0/5/10 | 11 |
| Turkey | 0/15/20 | 0/15 | 10 |
| Turkmenistan | 0/15 | 0/15 | 0 |
| Ukraine | 0/5/15 | 0/2/10 | 0/10 |
| United Arab Emirates | 0/5/10 | 0/5 | 0/5 |
| United Kingdom | 0/10 | 0/10 | 0 |
| United States | 0/5/15 | 0/15 | 0 |
| Uruguay | 0/5/15 | 0/10 | 10 |
| Uzbekistan | 0/5/15 | 0/10 | 5 |
| Venezuela | 0/5/15 | 0/10 | 5 |
| Vietnam | 0/5/10/15 | 0/10 | 5/10/15 |

# BELIZE

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Belize City | Jose A. Bautista | +501 227 7428<br>jbautista@pkfbelize.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Belize |
| Capital: | Belmopan |
| Main languages: | English |
| Other languages | Spanish, Kriol, Garifuna, Maya (Kek'Chi), Maya (Mopan), Maya (Yucatec), Plautdietsch, Cantonese |
| Population: | 411,536 (2022 estimate) |
| Monetary unit: | Belize Dollar (BZD) |
| Internet domain: | .bz |
| Int. dialling code: | +501 |

## KEY TAX POINTS

- Income tax is levied on the gross revenue receipts (sales) of companies at rates set out from time to time in the Ninth Schedule to the Income and Business Tax Act.
- A general sales tax (GST) applies to the supply of goods and services at a standard rate of 12.5%. Certain supplies are exempted or zero-rated. Registered businesses can set off their input GST (GST paid to suppliers) against their output GST (GST charged to customers).
- Other local taxes apply including stamp duty, land and property taxes, customs duties, excise duties, environmental tax, vehicle licenses, and trade license.
- Personal income tax is chargeable at a flat rate of 25% on persons employed in Belize.
- Belize has double taxation agreements with the United Kingdom, Austria, and the countries of the Caribbean Community (CARICOM).

## A. TAXES PAYABLE

## COMPANY TAX

Income tax is imposed on the chargeable income of any person accruing in or derived from Belize or elsewhere. The definition of “person” in the Income and Business Tax Act includes a firm, a branch, an individual and any body of persons, whether incorporated or not.

As from 1 January 2020, income tax is not payable on the chargeable income of a company, other than a company engaged in petroleum activities. Business Tax less allowable foreign tax credits remains in effect for all other businesses.

Income tax is imposed at a rate of 0% on chargeable income. As from 1 January 2020, all companies, including international business companies (IBCs), are subject to business tax on their worldwide income in accordance with the rates of the ninth schedule, less allowable foreign tax credits.

Designated processing area (DPA) companies are subject to income tax of 1.75% on chargeable income exceeding BZD 3 million and 3% on income less than BZD 3 million.

**International Business Companies (IBCs)**

An IBC is a limited liability company incorporated under the International Business Companies Act. As from 1 January 2019, an IBC can carry on business with persons resident in Belize, hold an interest in real property situated in Belize including a lease and hold shares in locally incorporated companies.

The Income and business tax Act (IBTA) Amendments of December 2019 effectively abolish corporate income tax for all domestic companies and IBCs and impose a new business tax of 5% on passive foreign-source income, including dividends, interest, royalties and capital gains. Despite the lack of a corporate income tax, the business tax regime remains in effect for all domestic companies and IBCs, including any of an IBC’s receipts that are derived in Belize and those receipts not related to a trade, business, profession or vocation carried on in Belize. The business tax will not apply to an IBC provided that:

- it is a resident of a foreign country and that foreign country is not on the EU list of non-cooperative jurisdictions for tax purposes;
- it has no permanent establishment (PE) in Belize; and
- it files an Annual Information Return (AIR) in the prescribed manner with the Belize tax authority.

The AIR filed with the tax authority needs to include information about the country where the IBC is tax resident and its beneficial owners controlling 5% or more of the shares, as well as all direct and indirect legal and beneficial owners including information about their tax residency. Once the AIR has been received, the tax authority will exchange the information provided with the country where the IBC has its tax residency.

IBCs resident in Belize or in a foreign country that is on the EU list of non-cooperative jurisdictions for tax purposes and that have no PE in Belize will be subject to business tax on their worldwide income at the rate applicable to the type of business according to the ninth schedule of the IBTA.

## GENERAL SALES TAX

Effective 1 July 2006, the ‘sales tax’ which was in force was repealed and replaced by a general sales tax (GST). GST is effectively a value added tax, with tax becoming payable at each stage in the supply chain and with tax incurred on inputs being recoverable by offset against output GST (the tax charged by a business to customers on taxable supplies). For GST purposes, “business” has a very wide meaning and can include activities on which no profit is made. “Taxable supply” is a supply of goods and/or services made in the course or furtherance of any business. Therefore, where a supply is not specifically exempted, it will be considered a taxable supply.

Effective 1 April 2010, the rate of GST was increased from 10% to 12.5%. Exempt supplies of goods and services include:

- Certain financial services and gambling supply;
- Some supply of goods and services by an educational institution within the meaning of the Education Act;
- Medical, dental, hospital, optical and paramedical services, other than veterinary services and cosmetic surgery;
- Supply of residential accommodation or accommodation in a hotel or similar establishment;
- Public postal services, domestic public transport of passengers, lease of aircraft and maintenance services in connection with the supply of public air transport;
- International transport of passengers or goods;
- Some supplies of services provided to diplomatic missions, international and regional organizations; and,
- Goods and services provided to the Government of Belize.

Providers of exempt goods and services are not allowed to charge GST to customers and cannot recover any GST paid on inputs. Taxable supplies may be zero-rated (chargeable to tax at 0%) or standard-rated (chargeable to tax at 12.5%). Zero-rated items include:

- Exported goods and services;
- Some food items for human consumption, water supply (other than bottled water) and some medicines and medical supplies for human use;
- Some items and supplies for use in education; and,
- Some supplies connected with agriculture, livestock, birds and fish, crustaceans and molluscs.

Items not specifically exempted or zero-rated are considered to be standard-rated.

## OTHER LOCAL TAXES

These include:

- Stamp duty on certain transactions, including the transfer of property;
- Land and property taxes;
- Trade licence, motor vehicle licence and other taxes charged by local authorities; and,
- Customs, excise, environmental tax and other taxes charged by the Customs and Excise Department.

## B. WITHHOLDING TAXES

- 15%: Dividends paid to non-residents;
- 15%: Interest paid to non-residents;
- Royalties paid to a non-resident are exempt and therefore business tax must not be withheld;
- 25%: Management fees, rental of plant and equipment and charges for technical services paid to non-residents.

## C. FOREIGN EXCHANGE CONTROL

The Foreign Exchange Control Act provides that only the Central Bank of Belize and authorised dealers may deal in foreign currencies. A foreign exchange permit must first be obtained from the Central Bank for all remittances of foreign exchange, including the payment of goods and services procured outside Belize. Central Bank approval is also required to secure and repay a loan outside Belize denominated in a foreign currency.

## D. PERSONAL TAX

The rate of tax on chargeable personal income is a flat rate of 25%, with a standard tax credit deduction of BZD 100 available to all residents.

Belizean workers earning less than BZD 25,600 per year pay no personal income tax.

## E. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Belize has double taxation agreements with the United Kingdom, Austria, and the countries of the Caribbean Community (CARICOM). Tax information agreements have been signed with Mexico, Poland and South Africa. Belize enacted legislation in 2017 to give effect to the Convention on Mutual Administrative Assistance in Tax Matters to provide for the implementation of the obligations of Belize arising under the Convention with respect to the standard of automatic exchange of financial information in tax matters to give effect to the Multilateral Competent Authority Agreement, to give effect to the Common Reporting Standard and matters incidental thereto. The signatories to the Convention are the member states of the Council of Europe and member countries of the Organization for Economic Co-operation and Development (OECD).

| | Dividends[3] | | Interest[3] (%) | Royalties[3] (%) |
|---|---|---|---|---|
| | **Individuals, companies (%)** | **Qualifying companies (%)** | | |
| **Treaty countries:** | | | | |
| Austria | 15 | 5[2] | 0 | 0 |
| CARICOM[1] | 0 | 0 | 15 | 15 |
| Switzerland[4] | -- | -- | -- | -- |
| United Arab Emirates | 0 | 0 | 0 | 0 |
| United Kingdom | 0 | 0 | -- | 0 |

Notes:

1. Belize is a signatory to the 1994 CARICOM income tax treaty. Countries that have ratified the treaty: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago.
2. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
3. There is no withholding tax. However, business tax must be deducted on payments of dividends and interest on loans paid to non-residents at the rate of 15%. Royalties received by a non-resident are exempt and therefore business tax must not be withheld. Business tax must be withheld at a 25% rate on payments to non-residents of management fees, rental payments for plant or equipment and charges for technical services. However, business tax must not be withheld on commissions paid to non-residents.
4. The 1963 treaty between the United Kingdom and Switzerland was extended to Belize by an exchange of notes. It only applies to income tax and not to business tax. Also, certain articles of the treaty, including those applicable to interest and dividends, do not apply.

# BOLIVIA

## CORRESPONDENT FIRM

| City | Name | Contact Information |
|---|---|---|
| Santa Cruz/La Paz/Cochabamba | Mariela Garcia Rodriguez | +591 750 30412<br>mariela.garcia@pkfbolivia.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Plurinational State of Bolivia |
| Capital: | Sucre |
| Main languages: | Spanish, indigenous |
| Population: | 11.97 million (2022 estimate) |
| Monetary unit: | Bolivian Bolivianos (BOB) |
| Internet domain: | .bo |
| Int. dialling code: | +591 |

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

### COMPANY TAX

The tax base in Bolivia is territorial, i.e. tax is only due on business income derived from activities performed, property situated, or economic rights used in Bolivia, regardless of nationality, domicile or residence of those who take part in the operations. Therefore, business income realized through companies operating outside of Bolivia is not considered for Bolivian tax purposes.

The standard corporate income tax rate is 25% and the tax year-end is 31 December of each year. Annual tax returns and financial statements need to be submitted with the IRS and income tax paid within 120 days from tax year-end. Advance corporate tax payments need to be made.

### CAPITAL GAINS TAX

Capital gains derived from the sale of fixed assets immovable property and securities are normally included in gross income and are subject to the standard corporate income tax rate of 25%. However, capital gains derived from transactions on the Bolivian Stock Exchange are tax-exempt.

### BRANCH PROFITS TAX

Branches of non-resident companies are subject to the standard corporate income tax rate of 25%. However, a branch remittance tax applies at the rate of 25%, which is levied on 50% of the Bolivian-sourced profits distributed to the foreign head office, i.e. the effective rate is 12.5%. Branch profits are deemed remitted when the corporate income tax return is due (120 days after the end of the tax year, see higher).

### SALES TAX / VALUE ADDED TAX (VAT)

VAT is levied on taxable supplies of goods and services as well as on imports of taxable goods and services into Bolivia. Exports are zero-rated. Some specified transactions are exempt without credit for previously paid VAT.

The standard VAT rate is 13% while certain goods and services are tax-exempt:

- *bona fide* imports made by travellers arriving to the country;
- all transactions of public offer securities registered with the Stock Exchange Register (RMV) performed in Bolivia and having effect in the national territory;
- cession of goods and assets subject to procedures for issuing securities;
- goods imported by diplomatic service members;
- transactions involving the transfer of financing intermediation, insurance, pensions and stock exchange portfolios, whether resulting from sale or cession;
- the importation of printed books, newspapers and magazines.

### TRANSACTIONS TAX

Transactions tax is a tax on gross income arising from the performance of any economic or commercial activity (including non-profitable activities) at a rate of 3% on a monthly basis. Some exceptions may apply on the sale of investments and the sale of minerals, oil, and gas within the local market, as long as such sales will ultimately be exported.

Corporate income tax paid at the end of a fiscal year may be offset against future transactions taxes to be paid in the subsequent fiscal year.

### TAX ON SPECIFIC CONSUMPTION

Applies to sales of specific goods on the domestic market and imports of goods for final consumption:

- Cigarettes and tobacco.
- Refreshing drinks.
- Alcoholic drinks.

- Undenatured alcohols.
- Motor vehicles.

The payment varies depending on the good: percentage rates on the net sales price or specific rates on sales volumes are due expressed in litres or quantity expressed in units.

### FINANCIAL TRANSACTIONS TAX

A financial transactions tax is levied on bank transactions (deposit or transfer of funds), carried out within the domestic financial system, at a rate of 0.30% for fiscal years 2018 through 2023.

This tax is withheld by the relevant bank or financial institution. In addition, a corporate tax exemption is provided for creditors in relation to interest on public debt issued through securities in external capital markets.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is the income reported in the company's financial statements prepared in accordance with Bolivian GAAP, subject to certain adjustments for tax purposes. Generally, all expenses necessary to obtain income and to maintain the existence of the company are deductible. Donations and other gratuitous transfers to non-profit organizations that are exempt from income tax may be deducted up to a maximum limit of 10% of taxable income derived in the year of the donation or gratuitous transfer. Non-deductible items include, among others, income tax itself, penalties and fines and related surcharges, losses incurred in illegal activities, goodwill and gifts, except for those to qualifying recipients.

### DEPRECIATION

Fixed assets are generally depreciated using the straight-line method at rates specified by law. The following are some of the annual depreciation rates:

| Asset | Annual rate (%) |
|---|---|
| Industrial buildings and warehouses | 2.5 |
| Machinery, equipment and installations | 12.5 |
| Office furniture and equipment | 10 |
| Aircraft | 20 |
| Motor vehicles | 20 |
| Computer hardware | 25 |
| Intangibles | 5 |

### STOCK / INVENTORY

Inventories are valued at the lower of market value or replacement cost.

### CAPITAL GAINS AND LOSSES

Capital gains derived from the sale of fixed assets immovable property and securities are normally included in gross income and are subject to the standard corporate income tax rate of 25%. However, capital gains derived from transactions on the Bolivian Stock Exchange are tax-exempt. Capital losses resulting from "force majeure" or civil and criminal liabilities by third parties are deductible only to the extent that they are not covered by insurance or indemnity awards, as long as the taxpayer informs the tax authorities within a 15-day period following the relevant incident.

### DIVIDENDS

Domestic dividends received by a resident company are not subject to income tax at the level of the recipient and neither are these dividends subject to withholding tax. Dividends received from non-resident companies, including those paid by a foreign subsidiary to its parent company in Bolivia, are not subject to tax. A Bolivian company remitting profits to foreign shareholders or partners has to withhold 12.5% tax on the gross payment.

### INTEREST DEDUCTIONS

There are no thin capitalization rules as such in Bolivia. However, interest paid by a domestic company to its non-resident shareholders or partners that is considered excessive, i.e. higher than LIBOR + 3%, is treated as a non-deductible expense for the domestic company's income tax purposes. The excessive interest payment must be included in the domestic company's taxable income for tax purposes. Tax-deductible interest cannot exceed 30% of the total interest paid out by the enterprise to third parties in the reported period.

### LOSSES

Losses may be carried forward for 3 tax years, but may not be adjusted for inflationary effects. This period may be extended up to 5 years for the productive sector of mining and hydrocarbons. Losses may not be carried back.

### FOREIGN SOURCE INCOME

The corporate tax system is based on the territoriality principle, whereby tax is only due on income received or accrued from sources within or deemed to be within Bolivia.

## C. FOREIGN TAX RELIEF

As foreign-source income is not subject to corporate income tax (territoriality principle), no relief is granted for foreign taxes.

## D. CORPORATE GROUPS

There are no generally applicable group consolidation rules in Bolivia.

## E. RELATED PARTY TRANSACTIONS

A legal framework for transfer pricing was introduced in 2014, with effect from tax year 2015. The transfer pricing rules are based on the arm's length principle, established a new concept of related parties and introduced transfer pricing methods. In the case of income tax, the arm's length principle is applicable to commercial and/or financial operations performed between related parties.

Related parties are deemed to exist whenever one person takes part in the management, control, or administration, or possesses capital equity in another company, or whenever a third party directly or indirectly participates in the management, control, or administration, or possesses capital equity in two or more companies.

The tax administration is empowered to perform adjustments when the transaction values do not comply with the arm's length principle. For this purpose, the tax administration can use the following methods: comparable uncontrolled price, resale price, cost-plus, profit split, transactional net margin or notorious price in transparent markets (applicable to the import or export of commodities).

Furthermore, a formal transfer pricing obligation has been established. Taxpayers, within the scope of transfer pricing rules, are obliged to present transfer pricing documentation which includes a technical transfer pricing study.

## F. WITHHOLDING TAX

Bolivian-sourced dividends and other profit distributions by a domestic subsidiary to its non-resident parent company are subject to a 25% final withholding tax, which is levied on 50% of the Bolivian-sourced dividend, thus giving rise to an the effective tax rate of 12.5%.

Bolivian-sourced interest, royalties and fees paid to non-resident recipients are subject to a 25% final withholding tax, which is levied on 50% of the Bolivian-sourced income, thus giving rise to an effective tax rate of 12.5%. Rental income derived by non-residents from the leasing, subleasing or other exploitation of any Bolivian-situs real property is subject to a 25% final withholding tax, which is levied on 50% of the Bolivian-sourced rental payment, thus giving rise to an effective tax rate of 12.5%).

Bolivian-sourced capital gains derived by non-residents are subject to a 25% final withholding tax, which is levied on 50% of the Bolivian-sourced capital gain, thus giving rise to an effective tax rate of 12.5%.

## G. EXCHANGE CONTROL

No restrictions are imposed on foreign-exchange transactions, including the repatriation of capital and the remittance of dividends and royalties abroad. A system of free-floating exchange rates exists in Bolivia.

## H. PERSONAL TAX

Individuals are subject to tax on all items of income, unless expressly exempt. For income tax purposes, the term income means the total value or amount in cash or in kind derived from capital investments, dependent services or a combination of both.

The individual income tax liability is subject to tax at a rate of 25% on professional activities and at 13% on other activities.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 12.5/25[1] | 12.5/25[1] | 12.5/25[1] | 12.5/25[1] |
| Individuals | 12.5/25[1] | -- | 12.5/25[1] | 12.5/25[1] |
| **Treaty countries** | | | | |
| Argentina | --[2] | --[2] | --[2] | --[2] |
| Colombia | --[2] | --[2] | --[2] | --[2] |
| Ecuador | --[2] | --[2] | --[2] | --[2] |
| France | 15 | 10/15[3] | 0/15 | 15 |
| Germany | 15 | 15 | 15 | 15 |
| Peru | --[2] | --[2] | --[2] | --[2] |
| Spain | 15 | 10[4] | 0/15 | 0/15 |
| Sweden | 15 | 0[5] | 0/15 | 0/15 |
| United Kingdom | 15 | 10/15[3] | 0/15 | 0/15 |

Notes:

1. Payments made to non-residents are subject to a 25% final withholding tax, which is levied on 50% of the Bolivian-sourced income, thus giving rise to a 12.5% effective tax rate.
2. Domestic rate applies, no reduction under the tax treaty. Source state has exclusive right to tax.
3. The standard rate under the treaty is 15%. However, the application of a most favoured nation clause (items 5 and 4 of the Treaty's Protocol for France and the UK respectively) reduces the rate to 10% if the recipient company owns at least 25% of the capital of the dividend-paying company. The rate for such dividends under the Bolivia-Spain double tax treaty is 10%
4. The 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
5. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds at least 25% of the capital of the dividend-paying company.

# BOTSWANA



## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Gaborone | Tim Roddy | +267 3111362<br>tim@pkfbotswana.co.bw |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Botswana |
| Capital: | Gaborone |
| Main languages: | English, Setswana |
| Population: | 2.44 million (2022 estimate) |
| Monetary unit: | Botswana Pula (BWP) |
| Internet domain: | .bw |
| Int. dialling code: | +267 |

## KEY TAX POINTS

- Corporate income tax is levied at a single rate of 22%.
- Branches of non-residents companies are subject to 30% corporate income tax.
- The capital gains tax rate for companies is 22%, the same rate as the CIT rate.
- VAT is imposed comprehensively on an end-user basis at the rate of 14% on standard rated supplies.
- Extension of tax amnesty period to 30 June 2022.

## A. TAXES PAYABLE

## COMPANY TAX

Botswana's tax system is source-based. All companies registered in Botswana must also register for corporate income tax (CIT). CIT is levied at a single flat rate of 22%.

- **Manufacturing companies:**

  Manufacturing companies which have been approved by the Minister of Finance are taxed at a special rate of 15%.
- **International Financial Services Centre (IFSC)**

  Companies must obtain a certificate and engage in the specified activities only. Profits from an IFSC (approved services) are taxed at a flat rate of 15%. Other taxable income is taxed at 22%
- **Mining companies**

  Profits form mining activities, excluding profits from diamond mining, are taxed by applying the following formula: Annual tax rate = 70 minus (1,500/x).

  'x' in the above formula represents the taxable income as a percentage of gross income. Please note that the tax rate cannot be less than 22% (the CIT rate) and is normally a rate between 22% and 55%. Diamond mining is generally taxed in accordance with the terms of a specific agreement agreed with the Botswana government.

Other tax rates that apply to certain profits or income are as follows:

- The corporate income tax rate applying to non-resident companies (branches) is 30%;
- Foreign dividends are taxed at 15%;
- Other taxable income is taxed at a rate of 22%;
- Taxable income of an Accredited Innovation Hub (AIH) business is taxed at 15%.

| | |
|---|---|
| Standard rate | 22% |
| Approved manufacturing taxable income | 15% |
| Capital gains | 22% |
| Foreign dividends | 15% |
| Mining taxable income (excluding diamonds) | 22% - 55% |
| Accredited innovation hub business | 15% |
| IFSC company – approved service income | 15% |
| IFSC – other taxable income | 22% |
| Non-resident company (branch) | 30% |

### ADMINISTRATION - COMPANY

Companies must file an income tax return (Form ITA22) four months following the year end. Where a company's final tax liability exceeds BWP 50,000 it will be subject to quarterly self-assessment tax (SAT) payments. SAT payments are calculated to be no less than 80% of the final tax liability.

## CAPITAL GAINS TAX

The capital gains tax rate for companies is 22%, the same rate as the CIT rate. Where the gain arises from the sale of shares, only 75% of the amount realized is taxable. Gains from shares which are listed on the Botswana Stock Exchange will be tax exempt if the seller holds no more than 49% of the shares. However, gains from the disposal of IFSC shares are fully exempt from tax.

## BRANCH PROFITS TAX

Branches of non-residents companies are subject to 30% corporate tax. There is no branch remittance tax in Botswana.

## VALUE ADDED TAX (VAT)

VAT is imposed comprehensively on an end-user basis at the rate of 14% on standard rated supplies. Certain specified supplies are either zero rated or exempt from VAT. Registration is mandatory where turnover (12 months) is expected to be BWP 1,000,000 or more.

VAT is payable by the importer of services not utilised in the making of taxable supplies. Input tax includes Transfer Duty payable under the Transfer Duty Act and any tax deemed to have been paid in respect of the supply of second hand goods. Input tax claims should be made within the following time limits:

a) Where returns are filed every month, within a period of four months;

b) Where returns are filed every two months, within two tax periods;

c) For tax paid with respect of imports, within two tax periods.

Zero-Rated supplies include:

- Exports of goods and services;
- International transport services;
- Supplies of going concerns;
- Sorghum, maize meal, millet, wheat, sugar and flour for human consumption;
- Fertilizers for farming purposes, some pesticides and farming tractors;
- Supplies to the Head of State;
- First 5,000 litres per month of water supplied to a residential dwelling by the Water Utilities Corporation (with exceptions).

Exempt supplies include:

- Prescription drugs and condoms;
- Residential accommodation;
- Education at approved institutions;
- Public medical services;
- Non-fee based financial services;
- Passenger transport (excluding the transportation of tourists)
- Donations and grants;
- Farm implements.

VAT tax returns must be filed on or before the 25th of the month following the end of the tax period.

- Late VAT returns penalty: The greater of BWP 50 per day or 10% per month or part thereof of the tax due;
- Late payment of VAT: Compound interest at 1.5% per month or part thereof on both outstanding tax, penalties and interest charged;
- VAT refunds: Interest at 1% per month or part of a month is payable if the refund is not made within two calendar months from the due date of the return (1 month for IFSC companies, approved manufacturers and exporters).

## LOCAL TAXES

There are no local, provincial government or state taxes on income in Botswana.

## B. DETERMINATION OF TAXABLE INCOME

Income tax is charged on the gross income (i.e. the total amount in cash or otherwise, excluding exempt income or any amount of a capital nature) of all companies and businesses which is received or accrued from sources within Botswana or from sources deemed to be in Botswana, less any allowable deductions.

Normal business expenses wholly, exclusively and necessarily incurred in the production of assessable income are allowed as deductions for tax purposes.

## CAPITAL ALLOWANCES

Capital allowances are deductible as follows:

| | |
|---|---|
| Heavy plant or machinery used in construction | 25% |
| Motor vehicles and aircraft | 25% |
| Plant and machinery used directly in manufacturing or production | 15% |
| Other plant or machinery including farming equipment | 15% |
| Computer hardware | 25% |
| Computer software – off the shelf | 100% |
| Furniture and fittings including soft furnishings | 100% |

| | |
|---|---|
| Industrial buildings:<br>Initial allowance<br>Annual allowance | <br>25%<br>2.5% |
| Commercial buildings | 2.5% |
| Farm buildings, improvements, water suppliers and other farm capital works | 100% |

## DISALLOWED EXPENSES

Standard disallowable expenditure exists which is not deductible from taxable profits such as donations, general provisions, school fees, etc.

## CAPITAL GAINS AND LOSSES

Capital gains are taxed at a rate of 22%. Capital losses may be offset only against capital gains in the year in which the loss is incurred and in the following year. However, for farming businesses, unutilized losses from farming (excluding allowances granted in respect of development expenditure) in the year of disposal of the farm and the five preceding years are deductible in computing capital gains.

## LOSSES

Company tax losses (except farming, mining and prospecting losses) can only be carried forward for five years and if not utilised within five years they are lost.

## C. FOREIGN TAX RELIEF

Unilateral relief is available, the method being an ordinary credit, i.e. the lesser of the foreign tax paid and the tax charged under domestic income tax law. In other words, the foreign tax credit allowed is equivalent to the proportion of the domestic tax which the foreign-sourced income bears to the taxable income for the tax year. Treaty relief is mandatory.

## D. CORPORATE GROUPS

There are no generally applicable group consolidation rules in Botswana.

## E. RELATED PARTY TRANSACTIONS

Transfer Pricing regulations are now effective and are based on the Organisation for Economic Cooperation and Development (OECD) Transfer Pricing guidelines for multinational entities and tax administrators.

### Impact of the regulations

New regulations stipulate that relevant taxpayers now have an obligation to prepare and provide transfer pricing policies and procedures for documentation. The documentation should allow the tax administration to assess the arm’s-length nature of intra-group transactions.

### Relevant taxpayers

The regulations indicate that new obligations are applicable for all direct or indirect transactions with “connected persons”. The term connected persons is defined to refer to the following:

- at least two companies where either of the companies has control directly or indirectly, of the other, or if both companies are controlled, directly or indirectly, by the same person or persons; and
- any person that, singly or together with other connected persons, has control of the company.

The transfer pricing regulations exclude transactions between Botswana residents from the scope of transfer pricing adjustments except when one or both parties are subject to the IFSC tax regime.

### Documentation requirements

Documentation content requirements are in line with the elements recommended by the OECD and should include the following at a minimum:

- specific information about transactions that a taxpayer carries out with connected persons;
- information on all connected persons’ activities including relevant supporting agreements;
- overall transfer pricing policies of the group.

The transfer pricing regulations authorise the Commissioner General to obtain additional information as deemed necessary including requesting group information, in writing, when in a tax year the taxpayer’s transactions with a related party within a multinational entity (MNE) group exceed BWP 5 million (approximately USD 453,000).

### Transfer Pricing methods

The regulations specifically outline five acceptable Transfer Pricing methods of analysis and comparability analysis:

- Traditional methods: comparable uncontrolled price method (CUP), resale price method and cost plus method;
- Transactional methods: transactional net margin method (TNMM) and profit split method.

## F. WITHHOLDING TAX

| Payment | Resident rate | Non-resident rate | Final / Advanced |
|---|---|---|---|
| Interest | 10% | 15% | Final for residents / Advanced for non-residents |
| Dividends | 7.5% | 7.5% | Final |
| Commercial Royalties | - | 15% | Final |
| Management and consultant fees | - | 15% | Final |
| Entertainment fees | - | 10% | Final |
| Construction | 3% | 3% | Advanced |
| Mine rehabilitation | 10% | 10% | Final |
| Rent | 5% | 5% | Advanced |
| Brokerage or commission | 10% | 10% | Advanced |
| Sale of cattle | 4% | 4% | Advanced |

## G. EXCHANGE CONTROL

There are no exchange control restrictions.

## H. PERSONAL TAX

Botswana citizens are taxed on their worldwide income whereas non-citizens are only taxed on income generated in Botswana. Employment Income includes salaries, wages, terminal payments, directors and other fees, bonuses, commissions, allowances and the value of benefits. Employment income from, or deemed to be from a source within Botswana is taxable in Botswana All employment income, including benefits in kind, is subject to monthly withholding tax (PAYE).

**Exemption and Tax Free Benefits for Individuals:**

- The value of contractual travel benefits for employees and their families;
- Medical fund contributions and medical attention paid for by the employer;
- Contractual terminal gratuities payable to expatriate employees are exempt to the extent of one-third Bank and building society interest of BWP 7,800 per annum, for resident individuals;
- Severance pay and certain gratuities payable to citizen employees are exempt to the extent of one third;
- Investment of such payments directly into an approved pension or retirement annuity fund results in 100% exemption;
- Retrenchment package: one third or BWP 36,000 whichever is greater is exempt.

**Benefits Valuation:**

- Housing: 10% of municipal valuation or 8% of current capital valuation, (BWP 250 × floor area);
- Use of employer's furniture: 10% of the excess over BWP 15,000 of the cost to the employer;
- Loans: Difference between the concessionary rate interest and the prime lending rate announced by the Bank of Botswana on 1 July of the tax year;
- Other benefits such as school fees and utilities: Cost to the employer or market value, whichever is the greater.

**Business and employment income rates:**

| | |
|---|---|
| BWP 0 – BWP 36 000 | BWP 0 |
| BWP 36 001 – BWP 72 000 | BWP 0 + 5% of excess over BWP 36,000 |
| BWP 72 001 – BWP 108 000 | BWP 1,800 + 12.5% of excess over BWP 72,000 |
| BWP 108 001 – BWP 144 000 | BWP 6,300 + 18.75% of excess over BWP 108,000 |
| Over BWP 144 000 | BWP 13,050 + 25% of excess over BWP 144,000 |

Individuals are subject to a progressive capital gains tax rate up to a maximum rate of 25% applied to gains in excess of BWP 144,000.

| From (BWP) | To (BWP) | Tax liability |
|---|---|---|
| 0 | 18,000 | 0% |
| 18,001 | 72,000 | BWP 0 + 5% of excess over BWP 18,000 |
| 72,001 | 108,000 | BWP 2,700 + 12.50% of excess over BWP 72,000 |
| 108,001 | 144,000 | BWP 7,200 + 18.75% of excess over BWP 108,000 |
| 144,001 | --- | BWP 13,950 + 25% of excess over 144,000 |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) | Management, consultancy and technical fees (%) |
|---|---|---|---|---|
| **Domestic rates:** | | | | |
| Companies | 0/10[8] | 0/15[8] | 0/15[8] | 15 |
| Individuals | 10[9] | 15 | 15 | 15 |
| **Treaty countries:** | | | | |
| Barbados | 5/10[2] | 10 | 10 | 10 |
| China | 5 | 0/7.5 | 5 | 0 |
| Czech Republic[10] | 5 | 0/7.5 | 7.5 | 7.5 |
| France | 5/10[2] | 10 | 10 | 7.5 |
| India | 7.5/10[3] | 10 | 10 | 10 |
| Ireland | 5[5] | 7.5 | 5/7.5[1] | 7.5 |
| Lesotho[11] | 10[12] | 10 | 10 | 10 |
| Luxembourg | 5/10[14] | 7.5 | 7.5 | 7.5 |
| Malta[4] | 5/6[7] | 8.5 | 5/7.5[1] | 7.5 |
| Mauritius | 5/10[13] | 12 | 12.5 | 15 |
| Russia | 5/10[14] | 10 | 10 | 10 |
| Seychelles | 5/10[13] | 7.5 | 10 | 10 |
| South Africa | 10[3] | 10 | 10 | 10 |
| Sweden | 10[15] | 15 | 15 | 15 |
| United Kingdom | 5/10[16] | 10 | 10 | 7.5 |
| Zambia | 5/7[6] | 10 | 10 | 10 |
| Zimbabwe | 5/10[14] | 10 | 10 | 10 |

Notes:

1. The lower 5% rate applies to the use or the right to use industrial, commercial or scientific equipment, the higher 7.5% rate to other cases.
2. The 5% rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company. The domestic 10% rate applies in all other cases because the treaty rate (i.e. 12%) is higher than the domestic rate.
3. Under the treaty, a 10% reduced rate applies if the beneficial owner is a company which holds at least 25% of the capital of the dividend-paying company. However, the 10% rate applies across the board as the rate for non-qualifying dividends under the treaty (i.e. 15%) is higher than the 10% domestic rate.
4. The treaty is effective from 13 December 2018 (withholding taxes), 1 July 2019 (other taxes).
5. The treaty rate is lower than the domestic rate so the former prevails.
6. The 5% rate applies if the beneficial owner is a company which holds at least 25% of the capital of the dividend-paying company. The 7% treaty rate applies in all other cases as it is lower than the domestic rate so the former prevails.
7. The 5% rate applies if the beneficial owner is a company which holds at least 25% of the capital of the dividend-paying company. The 6% rate applies in all other cases.
8. Dividends paid by a Botswana company to a non-resident company are subject to a 10% withholding tax effective 1 April 2021 (previously the rate was 7.5%).

   Dividends, interest and royalty payments to non-resident companies are exempt from withholding tax if they are paid by a BITCC (Botswana Investment and Trade Centre company) or a tax-exempt collective investment undertaking.
9. Raised from 7.5% to 10% effective 1 April 2021.
10. Effective date: 1 January 2021 (Czech Republic); 1 July 2021 (Botswana).
11. Effective date: 29 February 2020 (withholding taxes); 1 April 2020 (other taxes) (Botswana): 1 July 2020 (other taxes) (Lesotho).
12. The 10% rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company. The domestic 10% rate applies in all other cases because the treaty rate (i.e. 15%) is higher than the domestic rate.
13. The 5% rate applies if the beneficial owner is a company which owns at least 25% of the capital of the dividend-paying company. 10% in all other cases.
14. The 5% rate applies if the beneficial owner is a company (other than a partnership under the Luxembourg treaty and the Zimbabwe treaty) which holds directly at least 25% of the capital of the dividend-paying company. 10% in all other cases.
15. The 10% domestic rate applies in all cases as the rate under the treaty (i.e. 15%) is higher than the domestic rate.
16. The 5% rate applies if the beneficial owner is a company which controls, directly or indirectly, at least 25% of the voting power in the dividend-paying company. The domestic 10% rate applies in all other cases because the treaty rate (i.e. 12%) is higher than the domestic rate.

# BRAZIL



## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| São Paulo/Rio de Janeiro/Teresina | Cleverson Lacerda | +55 11 3070 1000<br>+55 11 9 6746 5836<br>cleverson.lacerda@pkfbrazil.com.br |

## BASIC FACTS

| | |
|---|---|
| Full name: | Federative Republic of Brazil |
| Capital: | Brasilia |
| Main languages: | Portuguese |
| Population: | 215 million (2022 estimate) |
| Monetary unit: | Brazilian Real (BRL) |
| Internet domain: | .br |
| Int. dialling code: | +55 |

## KEY TAX POINTS

- Corporate income tax (CIT) is charged at a set rate of 15% plus a surcharge of 10% on profits over a set level, and there is also a social contribution tax on profits charged at a rate of 9% for legal entities in general or at 15% in case of legal entities considered to be financial institutions, private insurance and capitalization.
- Most companies with prior year revenue below a prescribed amount can, under certain circumstances, choose to pay income tax and social contributions calculated under the 'presumed profit method'.
- Other federal taxes include fringe benefits tax, social security contributions (COFINS), social integration program contribution (PIS), payroll tax including employer social security contributions (INSS), value added tax on sales and transfers of products manufactured in or imported into Brazil (IPI), financial operations tax (IOF), and rural real estate tax (ITR).
- Municipal taxes include Services Tax (ISS or ISSQN), and estate transfer tax (ITBI) payable at a rate of up to 4% on inheritances and donations of properties and rights, and a services tax is imposed by many cities, with rates varying substantially between municipalities.
- Profits and gains from foreign sources are taxable in Brazil. Tax credits are available to relieve double taxation subject to a maximum of the Brazilian tax payable on the income.
- Almost all remittances (except for dividends) to companies or persons domiciled abroad are subject to withholding tax.
- Taxes payable by individuals include personal income tax, social security tax and gift and inheritance tax.
- Brazilian resident individuals are taxable on their worldwide earnings, as well as gains on the disposal of worldwide assets and rights.
- Personal income tax is withheld at source (at progressive rates from 7.5% to 27.5%).
- Capital gains arising other than out of financial instruments are subject to income tax at 15%. As from 2019 tax rates applicable to capital gains are as follows:
  - o 15% up to BRL 5 million;
  - o 17.5% from BRL 5 million to BRL 10 million;
  - o 20% from BRL 10 million To BRL 30 million;
  - o 22.5% over BRL 30 million.

## A. TAXES PAYABLE

## CORPORATE TAX

There are three different methods to calculate corporate income tax (CIT): the actual profit method (*Lucro Real*), the presumed method (*Lucro Presumido*) and the arbitrated method (*Lucro Arbitrado*).

## ACTUAL PROFIT METHOD

The Actual Profit Method called "*Lucro Real*" is the method whereby the taxpayer pays CIT called "IRPJ" based on its actual taxable income, after computing all income, gains and tax deductible costs and expenses, including net operating losses of prior years. The taxpayer is required to maintain current and accurate accounting and tax books and records, and also corresponding supporting documentation. Failure to maintain accurate accounting and supporting documentation may lead to disallowance of an expense requiring it to be added back to taxable income.

In general, taxable income must be recognised monthly following the accrual basis criteria and subject to IRPJ. The tax return must be filed annually. Corporate taxable income is taxed under a unitary system whereby a single tax rate is applied. This rate is 25%, being 15% plus 10% on pre-tax profits over BRL 240,000 annually. Corporate income tax is generally computed on a calendar year basis. However, payments are made monthly on estimated advance taxes. Social Contribution on Net Profit called "CSLL" is another federal tax and is calculated on pre-tax profits. The rate is 9% computed on an annual or quarterly basis. Calculations and payments are made monthly as estimated advance taxes. Both taxes on profits add up to 34% (25% plus 9%).

## PRESUMED PROFIT METHOD

The Presumed Profit Method called "*Lucro Presumido*" is a simpler IRPJ calculation method that allows the taxpayer to pay income tax and CSLL based only on its quarterly gross revenues. That means that costs and expenses are irrelevant to determine IRPJ and CSLL liability at the end of the quarter. Due to its simplicity, *Lucro Presumido* is more suitable for small and medium-sized businesses not to mention the method's limitations and restrictions of use by large companies. Companies with prior year revenue of up to BRL 78 million can choose, under certain circumstances, to pay income tax and social contributions under the Presumed Profit Method, which is calculated as a percentage of the quarterly gross revenue on a cash basis.

Under *Lucro Presumido* IRPJ is calculated quarterly and, for most activities the presumed profit margin is 8% of monthly gross income corresponding to sales operational activities and 32% to services revenues, and depending on the specific industry other rates apply. Based on the presumed net income resulting from the application of the profit margins on gross income a 15% IRPJ rate applies while net income in excess of BRL 60,000 per quarter is subject to an IRPJ surtax of 10%, similar to the "estimated" calculation for *Lucro Real*.

## ARBITRATED PROFIT METHOD

*Lucro Arbitrado* applies to only a few situations, most of them related to inaccuracy or unreliability of the taxpayer's accounting records (under *Lucro Real*). It is an extreme tool used by the tax administration to determine unilaterally and ex officio the taxpayer's taxable income and IRPJ due. *Lucro Arbitrado* has also consequences for other federal taxes, in particular CSL, PIS and COFINS because they are determined based on the taxpayer's accurate gross income.

## FRINGE BENEFITS TAXATION

Companies participate mandatorily in different forms of social security obligations to federal agencies. These either directly or indirectly benefit pension programs, working time compensation, social work assistance and health programs, among others. All contributions are deductible for corporate income tax purposes.

## PROGRAM FOR SOCIAL INTEGRATION CONTRIBUTION (PIS)

PIS is a federal social contribution levied on taxpayers' monthly gross income. PIS has been subject to several changes, many of them creating separate PIS regimes depending on the taxpayer's business or income tax calculation method. There are two basic PIS regimes dependent on the corporate income tax method elected by the taxpayer (*Lucro Presumido* or *Lucro Real*): the cumulative and the non-cumulative regime.

These contributions are payable each month as a fund to employees. This is calculated based on 1.65% of monthly gross revenue. The PIS rate is generally 1.65% of the monthly sale, in a non-cumulative way. It means, deductions are allowed in respect of services and material costs applied in companies' operating activities. For companies that choose to be taxed by the Presumed Profit Method, PIS will be

0.65% of the monthly sale in a cumulative way, without the aforementioned allowed deductions.

## CONTRIBUTION FOR THE FINANCING OF SOCIAL SECURITY (COFINS)

COFINS is also a federal social contribution levied on the corporate taxpayer's monthly gross income. COFINS also has three basic tax regimes: the cumulative, the non-cumulative (created in 2004) and the single-phase regime. The COFINS tax rate under the cumulative regime is 3%, while the rate is 7,6% under the non-cumulative regime. Rates under the single-phase regime vary from business to business.

Although regulated by different laws, PIS and COFINS regimes, whether cumulative or non-cumulative, are almost identical. For cumulative COFINS the difference is basically the rate (3% for cumulative COFINS and 0.65% for cumulative PIS). Companies under the *Lucro Presumido* pay COFINS according to the cumulative regime, i.e. at the rate of 3% with no COFINS tax credit available.

## PAYROLL TAX

This is a monthly obligation for social security and other funds levied on payroll.

| Tax | Rate |
|---|---|
| Social Security (INSS) | 20% |
| Accident Insurance (SAT) | 1% to 3% |
| Employee Indemnity Guarantee Fund (FGTS) | 8% |
| Education Fund (SE) | 2.5% |
| Other | 3.3% |

Employees contribute monthly to the social security system at rates from 8% to 11% on a progressive-scale base salary taking into account a maximum base salary of BRL 5,531.31. Federal law obliges companies to distribute part of their annual net income to employees. Participation is negotiated by each company and disputes are settled by arbitration. Amounts distributed are deductible for corporate income tax purposes and not subject to social security.

The Brazilian Government changed the criteria for companies in some business sectors to calculate the collection of INSS. Basically, the law changed the basis for calculation of INSS from 20% under payroll salary to apply 4.5% or 2% under revenue generated monthly by the companies which are subject to the new rules. According to Law 12.546/2011 and 13.161/2015, companies that render IT services, technologies, and hotels will be subject to contribute 4.5% of their monthly gross revenue except for call centres that increase to 3%. Companies that manufacture fluids for hydraulic brakes, plastic, clothing and accessories, fur, leather, silk, wool, rugs and other coatings to floors, hats and artefacts of similar use, machinery and appliances, pressure reducing valves, among others will be subject to contribute 2,5% of their monthly gross revenue.

## LOCAL TAXES

### STATE VALUE ADDED TAX (ICMS)

ICMS is a near Value Added Tax on sales of most goods and certain services. It is payable to state governments upon imports of goods into Brazil and sales or transfers of goods within Brazil. It is also payable upon supply of electricity, the provision of interstate and inter-municipal transport services and communication services. ICMS is levied on the sale or physical movement of goods, freight, transportation, communications services and electric energy. Intrastate transactions are taxed at 18%, interstate transactions are taxed at 7% or 12%, and most imports are taxed at a rate between 18% and 25%. The lower rates are normally charged on transfers to less developed states. Some states offer rate reductions or later payment dates as a tax incentive for the installation of factories. Communication services are taxed at a rate between 13% and 25%.

As of 1 January 2013, the ICMS rate for interstate transactions involving imported goods is at 4% (instead of the standard 7% or 12%) subject to certain conditions. The new tax rate, established by Senate Resolution no 13/2012, aims to eliminate unfair competition among Brazilian states to encourage customs clearance (and, thus, ICMS revenues) of imported goods even when the goods are destined for another state.

### REAL ESTATE TRANSFER TAX (ITBI)

ITBI is the municipal real estate transfer tax that applies on most onerous transfers of real estate. The tax is payable upon each and every taxable transfer of real estate property. Rates vary according to the actual value of the relevant transaction, or the recipient party value of property (as determined by the municipal tax administration), whichever is higher. The Constitution allows ITBI rates to be progressive according to the value of the property. It also allows the application of different rates according to the location and destination of the relevant property average. The ITBI rate is 2% in most municipalities.

### SERVICES TAX (ISS OR ISSQN)

ISS is the municipal tax levied on the provision of services of any kind by taxpayers located within the jurisdiction of a given municipality. ISS can also include services rendered within the boundaries of a given municipality even though the services provider is located in another municipality.

The ISS rates vary from municipality to municipality, but rates cannot be lower than 2% and not exceed 5%. The minimum 2% tax rate for ISS was established businesses to their jurisdictions. But some municipalities bypass this minimum 2% rate by granting other incentives that reduce the ISS overall tax burden, such as tax base reductions. The tax applies to the taxpayer’s monthly services gross income and is payable on a monthly basis. The ISS also applies to imported services.

## OTHER TAXES

### TAX ON MANUFACTURED PRODUCTS (IPI)

IPI is a federal excise tax levied on manufactures products as they leave the plant where they have been manufactured. It also applies to imported products at the time of importation and the first resale of the imported product by the importer. IPI is not levied on exports. IPI tax rates vary depending on the products: the more essential the lower the rates. The rates are listed per tariff code in the IPI Table called “TIPI”, which uses the Mercosur Common Tariff (NCM) as a basis.

The exports (export of manufactured products) are exempt from IPI. Imports of goods (raw material and products) are normally taxed at the same rate as Brazilian-made products. Rates change frequently. For imported goods or products, the IPI (and other taxes due) must be collected upon customs clearance of the goods or products.

### IMPORT TAX

The import tax is a federal tax due upon customs clearance of the imported products, usually pursuant to an ad valorem tax rate. The tax rate varies according to the tariff classification of the imported goods under the Mercosur Common Tariff (NCM), as described above in section IPI (Tax on Manufactured Products). The tax base is the sales price shown in the commercial invoice issued in the country of origin. However, during customs clearance procedures, the administration has discretionary powers to reject the transaction price if there is evidence that it is not the market value. A review of the sales price is usually based on international customs valuation rules.

### FINANCIAL OPERATIONS TAX (IOF)

IOF is a federal tax that generally applies to different types of transactions such as loans and credit operations, insurance policies and foreign exchange operations for certain services rendered. IOF regulations are extensive and change constantly. The tax is mainly used as an instrument of economic policy to regulate the credit, currency exchange, insurance, and securities markets rather than to generate tax revenues.

### CONTRIBUTION FOR INTERVENTION IN THE ECONOMIC DOMAIN (CIDE)

The government introduced a special contribution in the year 2000. Brazilian legal entities that license, purchase or otherwise acquire technological knowledge must pay a special contribution of 10% on activities such as: trademarks, technical services assistance, administrative services and any royalty payments. Based on the law in force, CIDE must even be paid on activities that do not involve the transfer of technology.

### TAX ON FUEL (CIDE)

The CIDE will be paid monthly on the import and export of petroleum, derived and natural gas, and fuel alcohol. The rate will be based on the value in Reals of the cubic meters or tons of fuel.

### RURAL REAL ESTATE TAX (ITR)

Property taxation of rural and urban land receives a different tax treatment. Urban land is subject to the municipal real estate ownership tax called IPTU and rural land is taxable by ITR. The definition of land as rural or urban is then relevant because it determines the competent authority to levy tax on property ownership. Classification stems from exclusion: when land is considered to be urban it will be subject to IPTU while if it is not considered to be urban it will be treated as rural for tax purposes and will consequently be subject to ITR.

The basic rate is calculated annually based on certain premises on assessed property values and depending on the stage of use and exploration of the property. Very small properties are exempt and the maximum rate applied corresponds to 20% of the land value without any improvements.



## B. DETERMINATION OF TAXABLE INCOME

**IFRS - INTERNATIONAL FINANCIAL REPORTING STANDARDS**

Brazil adopted the IASB's International Accounting Standards in 2008 on a gradual basis and the full IFRS since 2010. As a consequence, there are several important changes to Brazilian accounting practices, the most important of which is that these new accounting practices are required not only in consolidated financial statements but also in the individual financial statements (Law 11638/07). These include the recognition of leasing transactions, depreciation treatment, the recognition of intangible assets, the impairment concept etc.

Taxable income is generally computed in accordance with accounting rules and tax legislation (i.e. accounting profits adjusted for tax purposes), subject to certain exceptions. Brazilian GAAP were adjusted in 2007 in order to be aligned with IFRS. Law 12.973/2014 of 13 May 2014 dealt with the tax effects arising from the changes to the new accounting standards (previously, a transitory regime applied, in which legal entities could use old accounting rules for tax purposes). According to this Law, as from 2015 legal entities must observe the new accounting standards also for tax purposes (and no longer apply the transitory regime), unless regulated otherwise by the law. In view of this, Law 12.973/2014 brought into force relevant changes to tax legislation concerning the assessment of CIT, PIS and COFINS, the tax treatment of dividends, interest on net equity, the equity pick-up (*método de equivalência patrimonial*) and tax amortization of goodwill, among other things.

### DEPRECIATION

Fixed assets shall be depreciated over their estimated useful lives for accounting purposes (IFRS). For tax purposes, the straight-line method is usually adopted, using the following annual rates: buildings 4%; machinery and equipment 10%; vehicles 20%; IT equipment 25% etc. Assets subject to depletion (mines, quarries, etc.) may be amortised proportionately to the units extracted in each period.

### STOCK / INVENTORY

The cost of goods sold for production is generally valued using the weighted average cost method, although the FIFO (first in, first out) basis may be elected. The method adopted determines the basis for the valuation of closing inventory.

### DIVIDENDS

Brazil follows a dividend exemption system. Amounts distributed to shareholders resident in Brazil or abroad (since the investment is registered at the Brazilian Central Bank (BCB)) are not subject to withholding tax.

### INTEREST DEDUCTIONS

There is a limitation on interest expenses to be deductible:

a. Loan from non-resident companies (thin capitalisation); and,

b. Loan from abroad must be registered at Central Bank of Brazil (transfer pricing).

Interest due must be at fair market value and necessary to business activities and will be subject to withholding tax on an accrual basis. The calculation of interest on a partner's or shareholder's capital (JCP) is allowed. The interest is deductible for income tax and social contribution purposes up to the limit of the official long-term interest rate (TJLP). Profits for the current period or previous periods must be at least double the value of the interest to be distributed. Interest is subject to a 15% withholding tax. Interest should be paid or possibly capitalized.

**Thin capitalisation**

Brazil has thin capitalization rules in force since 2010 that limit the ability for corporate taxpayers under "*Lucro Real*" to fully deduct interest expenses associated with loans contracted with foreign related parties or parties domiciled in low tax jurisdictions and/or under a favourable tax regime in a foreign location. Such law states a limitation for corporate income tax purposes related to deductible interest, accrued or paid, in favour of a foreigner not resident in a tax haven. Under the rules, interest paid to related parties that are not located in a tax haven jurisdiction or that do not benefit from a preferential tax regime may be deducted on an accrual basis for corporate income tax purpose only:

- If the expenses are necessary for the company's activities; and,
- Both of the following thresholds are met:
  a. The related party debt-to-equity ratio does not exceed 2:1 (calculated on the proportion of related party debt to direct equity investment made by related parties); and,
  b. The overall debt-to-equity ratio does not exceed 2:1 based on the proportion of total debt to total direct in investment made by related parties.

If the debt payable to the non-resident investor exceeds the above ratios, then the excess portion of the interest expense payable by the Brazilian subsidiary is not deductible for the purposes of corporate income taxes.

In addition, interest payable by a Brazilian entity to a non-resident creditor (related or not) domiciled in a low-tax jurisdiction or benefiting from a privileged tax regime may be deducted for the purposes of corporate income taxes only if the interest expense is necessary for the company's activities and the amount of the Brazilian entity's indebtedness to all entities located in low-tax jurisdictions or benefiting from privileged tax regimes does not exceed 30% of the equity of the Brazilian borrower.

If the debt payable to the non-resident creditor exceeds the above ratios, then the excess portion of the interest expense recognized by the Brazilian subsidiary is non-deductible.

Finally, thin capitalization rules also apply to transactions where a non-related financial institution is used as a mere intermediary between the Brazilian company and its related party domiciled abroad. However, loan transactions entered into between two Brazilian related residents are not subject to thin capitalization rules, even if the guarantor, attorney-in-fact or any intervening party is a related party domiciled abroad or a resident of a low-tax jurisdiction or of a country with a privileged tax regime.

### TAX LOSSES CARRIED FORWARD

Tax losses can be carried forward to offset against future profits of up to 30% of the real profits arising in each period (year). Losses that are offset may be carried forward indefinitely. There are restrictions on losses transferred as a result of a company merger or where there is a change in the control and activity of the loss generating company. Loss carry-back is not allowed.

### INCENTIVES

Brazil offers incentives through the reduction of domestic taxes or exemption from withholding tax in the forwarding of royalties or commissions on international financing. In addition to incentives for exports, there are incentives for the implementation of industrial units in specific regional areas.

### ROYALTIES AND TECHNICAL ASSISTANCE EXPENDITURES

Royalties are deductible expenses but are restricted to between 1 % and 5% of sales revenue for companies that make cross-border trademark and patent royalty payments. Expenditure incurred in the creation of patents and manufacturing formulas and processes are considered capital intangible assets and are amortised over the life of the asset. This is also true for trademarks, whereas copyright, software, and franchising are generally deductible from operational results if they are related to the activities of the company.

Technical, scientific and administrative expenditures and royalties paid to foreign companies which have direct or indirect control of the Brazilian company are deductible if the contracts are duly registered with the Brazilian Institute of Industrial Property (INPI) and with the Brazilian Central Bank (BCB). There are no restrictions for the remittance of these monies abroad. However, some remittances of funds abroad are subject to 15% withholding tax and 10% CIDE or only 25% withholding tax, depending on the case.

## C. FOREIGN TAX RELIEF

Unilateral relief is granted to corporate taxpayers by means of an ordinary foreign tax credit system.

Taxes paid abroad on income directly derived by the Brazilian resident taxpayer may be claimed as a credit against domestic tax liability. This foreign tax credit is limited to the amount of domestic tax that is imposed on the foreign-sourced income. For these purposes, the Brazilian tax liability includes both IRPJ and CSLL. The Brazilian tax administration holds the position that resident entities opting for the presumed profit regime of taxation (*Lucro Presumido*) and directly providing services abroad are not allowed to offset taxes paid abroad with taxes paid in Brazil. However, this exclusion does not apply if the service is provided within countries with which Brazil has signed a double tax treaty where the elimination of international double taxation is agreed upon through the use of the credit method, without restrictions connected to the taxation regimes opted by the taxpayer in Brazil.

An ordinary foreign tax credit is available in respect of the tax on profit distributions by foreign subsidiaries, if any, and the underlying tax paid by the distributing subsidiary in the jurisdiction where the foreign entity is located.

## D. CORPORATE GROUPS

For tax purposes, consolidation of affiliated companies is not allowed. Losses can only be offset against profits of the same company. However, Law 12.973/2014 introduced a special treatment applicable until 2022 where positive and negative results (excluding foreign exchange results) by foreign entities controlled by Brazilian legal entities may be consolidated for purposes of application of the Brazilian CFC rules, subject to certain conditions.

## E. RELATED PARTY TRANSACTIONS

Since 1997 Brazil has transfer pricing rules in place to prevent undue allocation of income in international transactions between related parties. The system adopted is one of determining the maximum amounts of deductible expenses, and the minimum amount of taxable income, for Brazilian companies engaged in transactions with related parties outside of Brazil or non-resident parties domiciled in a listed low-tax jurisdiction or under a listed favourable tax regime. Domestic transactions are not subject to transfer pricing regulations as they are governed by other anti-avoidance rules.

As opposed to other countries, where the arm's length principle and comparable prices are the rule, the Brazilian rules take another direction by basically establishing fixed formulas to determine the accepted transfer price. Although Brazil does not completely ignore comparable prices or the arm's length principle, it does limit its application by setting accepted standards for their application.

Brazil established a transfer pricing system for imports with affiliated companies of goods, services and rights acquired abroad. The prices are based on three methods: Comparative Independent Price (PIC), Resale Price Less Profit (PRL), or Production Cost Plus Profit (CPL) and Commodities Price Method (PCI). The same system applies to exports to non-resident related parties, with the following methods: Export Revenues Method - PVEx, Country Destiny Price of exports revenue Method - PVA and PW, Cost Acquisition or Manufacture plus Tax and Profit - CAP also known as Method of Price Under Quotation on Export ("PECEX"), which is briefly defined as the average amounts of the quotation of assets or rights subject to public prices in internationally recognised commodities and future exchanges.

Since the end of 2012, Brazil has been changing some of the methods applicable to Transfer Pricing on imports and also creating additional methods. Basically, PRL presumed profit margin was changed from 60% to 40%, 30% and 20% depending on the business sector in which companies operate. According to the Federal Law 12.715/2012, two new methods were established, one applicable to imports and other applicable to exports. In accordance with the method applied, the price is defined as the average daily amount of assets or rights subject to public prices in internationally recognised commodities and future exchanges.

The taxpayer must disclose transfer pricing methods in its annual tax return and eventually prove that the corresponding costs, expenses and charges that exceed the elected transfer pricing method must be added back as taxable income and be subjected to the IRPJ and CSLL.

**Country-by-Country Reporting (CbCR)**

Normative Instruction 1.681/2016 provides for the obligation of submitting CbCR by the ultimate holding of multinational groups which is a resident for tax purposes in Brazil and whose economic group has generated consolidated revenue exceeding BRL 2.26 billion or EUR 750 million in the tax year prior to the tax year of the report. Through the CbCR, the Brazilian tax authorities will have access to information aggregated by each jurisdiction in which the multinational group operates:

- consolidated revenues, segregating those obtained in transactions with related and unrelated parties;
- income or losses before income tax;
- income tax and, in the case of Brazil, also the amount of CSLL paid;
- retained earnings;
- capital stock;
- income tax due;
- number of employees, workers and other associates;
- tangible assets other than cash and cash equivalents.

In addition to this, the reporting entity shall identify each entity that is a member of the multinational group, its jurisdiction of residence for tax purposes, the place of incorporation (only when the tax residence does not correspond to the place of incorporation) and the nature of its main economic activities. Multinational companies that are obliged to submit CbCR must provide information from the economic group to the Brazilian tax authorities, who will exchange this information with the other countries under the Multilateral Agreement of Competent Authority Agreement on the Exchange of Country-by-Country Reports, which was signed on 21 October 2016.

## F. WITHHOLDING TAX

Almost all remittances (except dividends) to companies or persons domiciled abroad are subject to withholding tax. Interest, royalties and services paid to non-residents are generally subject to a 15% withholding tax unless when the beneficiary is resident of a low-tax jurisdiction in which case the rate is 25%.

## G. EXCHANGE CONTROL

The Central Bank allows the official exchange rate to float freely within periodically established bands but participation is restricted to authorised dealers. The bank intervenes when there are signs of speculative operations. There is an official tourist rate that ranges normally close to the commercial rate.

## H. PERSONAL TAX

Brazilian resident individuals are taxable on their worldwide income, as well as gains on the disposal of worldwide assets and rights. An individual is resident in Brazil if he:

- Has an habitual residence in Brazil;
- Works for a Brazilian government department or agency outside Brazil;
- Enters Brazil under a permanent visa;
- Enters Brazil under a temporary visa to work and remains in Brazil for more than 184 days within a 12-month period.

All personal income in general is subject to tax at progressive rates from 0% (monthly taxable income not exceeding BRL 1,903.98) to 27.5% (monthly taxable income exceeding BRL 4,664.68). Payments are made monthly and a personal income tax return is filed annually. Capital gains that do not arise from financial investments are subject to income tax at 15%.

## I. TREATY AND NON-TREATY WITHHOLDING RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 0 | 0 | 0/15/25 | 15/25 |
| Individuals | 0 | 0 | 0/15/25 | 15/25 |
| **Treaty countries:** | | | | |
| Argentina | --[1] | --[1] | --[1] | --[1] |
| Austria | 15 | 15 | 15[11] | 10/15/25[18] |
| Belgium | 15 | 10[3] | 10/15[11, 12] | 10/15/20[17] |
| Canada | --[1] | 15[4] | 10/15[11, 12] | 15/25[16] |
| Chile | 15 | 10[5] | 15 | 15 |
| China | 15 | 15 | 15[11] | 15/25[16] |
| Czech Republic | 15 | 15 | 10/15[11, 14] | 15/25[16] |
| Denmark | 25 | 25 | 15[11] | 15/25[16] |
| Ecuador | 15 | 15 | 15[11] | 15/25[16] |
| Finland | 10 | 10 | 15[11] | 10/15/25[17] |
| France | 15 | 15 | 10/15[11, 12] | 10/15/25[17] |
| Hungary | 15 | 15 | 10/15[11, 15] | 15/25[16] |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| India | 15 | 15 | 15[11] | 15/25[16] |
| Israel | 15 | 10[5] | 15[11] | 10/15[16] |
| Italy | 15 | 15 | 15[11] | 15/25[16] |
| Japan | 12.5 | 12.5 | 12.5[11] | 12.5/15/25[19] |
| Korea | 15 | 10/15[6] | 10/15[11, 12] | 10/15/25[20] |
| Luxembourg | 25 | 15[4] | 10/15[11, 12] | 15/25[21] |
| Mexico | 15 | 10[7] | 15[11] | 10/15[22] |
| Netherlands | 15 | 15 | 10/15[11, 12] | 15/25[16] |
| Norway | --[1] | --[1] | --[1] | 15/25[16] |
| Peru | 15 | 10[8] | 15[11] | 15 |
| Philippines | 25 | 15[2] | 15[11] | 15/25[21] |
| Portugal | 15 | 10[9] | 15[11] | 15 |
| Russia | 15 | 10[24] | 15 | 15 |
| Singapore[25] | 15 | 10[26] | 10/15[27] | 10/15[28] |
| Slovak Republic | 15 | 15 | 10/15 | 15/25[16] |
| South Africa | 15 | 10[5] | 15[11] | 10/15[16] |
| Spain | 15 | 10/15[6] | 10/15[11, 14] | 10/15[23] |
| Sweden | 25 | 25 | 15/25[11, 13] | 15/25[16] |
| Switzerland[25] | 15 | 0/10[29] | 10/15[27] | 10/15[28] |
| Trinidad and Tobago | 15 | 10[5] | 15 | 15 |
| Turkey | 15 | 10[10] | 15 | 10/15[16] |
| Ukraine | 15 | 10[5] | 15[11] | 15 |
| United Arab Emirates[25] | 15 | 5[30] | 10/15[27] | 15 |
| Venezuela | 15 | 10[5] | 15[11] | 15 |

Notes:

1. There is no reduction under the treaty, the domestic rate applies.
2. The lower 15% rate applies to dividends distributed to companies, including partnerships.
3. The lower rate applies to a direct participation of at least 10% of the capital.
4. The 15% rate applies to an equity percentage of at least 10%.
5. The 10% rate applies to participations of at least 25% of capital or voting power.
6. The general treaty rate is 15%, which is reduced to 10% for participations of at least 25% of capital under the application of a most favoured nation clause (Brazil-Israel treaty).
7. The lower 10% rate applies to participations of at least 20% of voting power.
8. The lower 10% rate applies when the beneficial owner is a company controlling directly or indirectly at least 20% of voting power.
9. The 10% rate applies to participations of at least 25% of capital held for an uninterrupted period of 2 years prior to distributing the dividends.
10. The 10% rate applies to participations of at least 25% of capital.
11. Interest paid to the government of the other contracting state, a political subdivision thereof or an agency (including a financial institution) wholly owned by that government or political subdivision is exempt from tax.
12. The 10% rate applies to interest on certain bank loans with a minimum term of seven years.
13. The 25% rate applies if the recipient is an individual or a partnership, 15% in all other cases.
14. The 10% rate applies to interest on certain long-term (at least 10 years) bank loans.
15. The 10% rate applies to interest on certain long-term (at least 8 years) bank loans.
16. The higher rate applies to trademark royalties.
17. The general rate under the treaty is 15%. The 10% rate applies to copyright royalties (including films, etc.). The 20% rate applies to trademark royalties (the rate was reduced from 25% to 20% by a protocol that entered into force on 1 January 2008).
18. The general rate under the treaty is 15%. The 10% rate applies to copyrights royalties (excluding films, etc.). The 25% rate applies to trademark royalties.
19. The general rate under the treaty is 12.5%. The 15% rate applies to copyright royalties of cinematograph films, etc., and the 25% rate applies to trademark royalties.
20. The rates under the treaty are 25% for trademark royalties and 15% for other royalties which are reduced under the application of a most favoured nation clause: the rates for royalties are reduced to 15% for trademark royalties and to 10% for other royalties (Brazil-Israel treaty).
21. The 25% rate applies to trademark royalties and royalties for the use, or right to use, films, tapes etc. while the 15% rate applies to general royalties.
22. The rate under the treaty is 15%, which is reduced under the application of a most favoured nation clause to 10% for any royalties other than those from trademarks (Brazil-South Africa treaty).
23. The rate under the treaty is 10% for copyrights royalties (including films, etc.) and 15% for all other royalties which are reduced under the application of a most favoured nation clause: the rates for all types of royalties with the exception of trademark royalties are reduced to 10% while the rate for trademark royalties remains at 15% (Brazil-Israel treaty).

24. The 10% rate applies if the beneficial owner holds directly at least 20% of the total capital of the dividend-paying company.
25. Effective date: 1 January 2022.
26. The reduced 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company throughout a 365-day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend).
27. The 10% reduced rate applies if the beneficial owner is a bank and the loan has been granted for at least five years for the financing of the purchase of equipment or of investment projects.
28. The 15% rate applies in case of royalties arising from the use or the right to use trademarks. The 10% rate applies in all other cases.
29. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company throughout a 365-day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a merger or divisive reorganisation, or from a change of legal form, of the company that holds the shares or that pays the dividend). The 0% rate applies if the beneficial owner is a pension fund (subject to conditions) or the Central Bank.
30. The 5% reduced rate applies if the beneficial owner is the UAE, any political subdivision or local government thereof or a government institution.



# BRITISH VIRGIN ISLANDS

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Road Town | Mead Malone | +1 284 499 4388<br>mmalone@mwmglobalhld.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | British Virgin Islands |
| Capital: | Road Town |
| Main languages: | English |
| Population: | 30,593 (2022 estimate) |
| Monetary unit: | USD |
| Internet domain: | .vg |
| Int. dialling code: | +1 |

## KEY TAX POINTS

- There is no corporate income tax, no capital gains tax, no branch profits tax and no VAT in the British Virgin Islands (BVI).
- Customs duties are levied on most goods imported into the BVI at ad valorem rates, expressed as a percentage of the value of the goods. These rates range from 5% to 20%.
- There is no withholding tax on interest, dividends or royalties paid by BVI companies.
- Payroll tax is charged on every employer who carries on business on the BVI. An employer must pay to the BVI Tax Authority 14% of the employee's remuneration over and above USD 10,000 per calendar year, split between the employee and employer at a rate of 8% for the employee (as a deduction from the employee salary) and 6% for the employer.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

### COMPANY TAX

Income tax is zero rated in the British Virgin Islands and as such there is effectively no corporate income tax.

### CAPITAL GAINS TAX

There is no capital gains tax in the British Virgin Islands.

### BRANCH PROFITS TAX

There is no branch profits tax in the British Virgin Islands.

### SALES TAX / VALUE ADDED TAX (VAT)

There is no VAT on the British Virgin Islands.

## OTHER TAXES

### HOTEL ACCOMMODATION TAX

Hotel Accommodation Tax is levied on all charges made to the person in respect of accommodation and all services rendered to the person by or on behalf of the proprietor. The tax base is the figure to which the tax rate is applied. The tax base is calculated by deducting the charges that are not associated with those made to the person in respect of accommodation, and all services rendered to the person by or on behalf of the proprietor from the gross amount collected for the month. The tax rate is 10%.

## STAMP DUTY

Instruments to which stamp duty would typically apply include share transfers, charges over and transfers of real estate. The amount of stamp duty payable on a particular instrument will depend on the nature of the instrument.

## CUSTOMS DUTY

Customs duties are levied on most goods imported into the British Virgin Islands at ad valorem rates, expressed as a percentage of the value of the goods. These rates range from 5% to 20%. Goods are valued at the open market price. Some categories of imports are exempt from customs duties, such as personal effects of returning residents and diplomatic personnel, specified drugs and medical equipment and aircraft servicing equipment and fuel, and certain raw materials for local manufactures.

## REAL ESTATE TAX

The Property Tax Act establishes an annual tax on real property which is either, or a combination of, land tax and a building or house tax. British Virgin Islanders are liable for land tax at USD 10 for the first acre and at USD 3 for each additional acre.

Rates for expatriates are as follows: USD 50 on one half acre or less, USD 150 on more than one half acre but not exceeding one acre and USD 50 on each additional acre or part thereof exceeding one acre.

## PAYROLL TAX

Payroll Tax is charged on actual remuneration paid, given or assessed by any employer or self-employed person, to every employee and deemed employee, plus any benefits derived by the employee, deemed employee or self-employed person as a result of his/her employment, whether paid in cash or kind. Payroll tax rates are as follows:

- The Class 1 employer and the class 1 self-employed person pay at a rate of 10% of the tax base.
- The Class 2 employer and the class 2 self-employed person pay at a rate of 14% of the tax base.

Effective 2007 employment income up to USD 10,000 is tax free.

## SOCIAL SECURITY

Social security is deducted from all employment income to a maximum of USD 44,500 (insurable earnings) as follows:

- Private employees: 8.5% of insurable earnings (employers contribution 4.5% and employee 4%);
- Civil servants: 7.5% of insurable earnings (employers contribution 4% and employee 3.5%);
- Self-employed persons: 8.5% of insurable earnings;
- Voluntary contributors: 7% of earnings by the Board.

## NATIONAL HEALTH INSURANCE

Employers are required to from insurable income (wages or salary) contribution rate of 7.5% (employer 3.75% and employee 3.75%). The maximum amount on which NHI premiums will be assessed, is two times the upper wage limit for social security contributions, which presently equals USD 7,500 per month. Therefore, the maximum amount payable per month by employees and employers would be USD 281.25 each.

## VARIOUS LEVIES

The following annual fees are levied on BVI companies. The fees vary by authorised share capital and by type of licence.

| Details | Annual Fees |
|---|---|
| Up to USD 50,000 or Foreign currency equivalent or authorised to issue up to 50,000 shares | USD 450 effective 1 January 2018 |
| Exceeding USD 50,000 or foreign currency equivalent or authorised to issue more than 50,000 shares | USD 1,200 effective 1 January 2018 |
| General banking licence | USD 125,000 to USD 250,000 |
| Restricted Class I bank licence | USD 75,000 to USD 150,000 |
| Restricted Class II banking licence | USD 75,000 to 150,000 |
| Insurance company licence | Up to USD 10,000 |
| Class I trust licence | USD 16,000 |
| Class II trust licence | USD 14,000 |
| Class III trust licence | USD 12,000 |
| Restricted trust licence | USD 5,000 |

## B. DETERMINATION OF TAXABLE INCOME

Not applicable.

## C. FOREIGN TAX RELIEF

Not applicable.

## D. CORPORATE GROUPS

Not applicable.

## E. RELATED PARTY TRANSACTIONS

The British Virgin Islands do not have anti-avoidance legislation in force.

**Country-by-Country reporting**

The BVI International Tax Authority (ITA) has announced that, with effect from March 2020, it is accepting electronic filings for Country-by-Country Reporting.

An MNE Group is a group that, with respect to any fiscal year, includes:

- Two or more enterprises which are tax resident in different jurisdictions; or
- An enterprise that is resident for tax purposes in one jurisdiction and is subject to tax through a permanent establishment in another jurisdiction and, in either case, has a total consolidated group revenue of equal to or more than EUR 750 million for its preceding fiscal year.

Any Constituent Entity of an MNE Group that is resident for tax purposes in the BVI must register with the ITA no later than the last day of the reporting fiscal year of the relevant MNE Group.

A Constituent Entity of any MNE Group which fails to register with the ITA within the applicable timeframe will be liable on conviction to a fine not exceeding USD 100,000.

CbC Reports must be filed within 12 months after the last day of the reporting fiscal year of the relevant MNE Group.

## F. WITHHOLDING TAX

There is no withholding tax on interest, dividends or royalties paid by BVI companies. However, the BVI (like other dependent territories) applies the European Union (EU) Savings Directive effective since 1 July 2005.

## G. EXCHANGE CONTROL

Not applicable.

## H. PERSONAL TAX

As income tax in the British Virgin Islands is zero rated, there is effectively no personal income tax in the British Virgin Islands.

Payroll tax is charged on every employer who carries on business on the British Virgin Islands in respect of:

- remuneration paid by him to every employee; and
- deemed remuneration paid by him to every deemed employee for services rendered by the employee or deemed employee wholly or mainly on the British Virgin Islands, whether or not the remuneration is paid on the British Virgin Islands. In addition, a self-employed person is liable to payroll tax on his deemed remuneration.

An employer must pay to the British Virgin Islands Tax Authority 14% of the employee's remuneration over and above USD 10,000 per calendar year. The 14% tax liability is split between the employee and employer at a rate of 8% for the employee (as a deduction from the employee salary) and 6% for the employer.

A self-employed person is deemed to employ himself and to pay himself "deemed remuneration", which is the greater of his actual remuneration or his "notional remuneration". A self-employed person is an individual who carries on business, otherwise than as an employee, and benefits from income of the business, otherwise than by way of being paid actual remuneration.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The British Virgin Islands have concluded double tax treaties with Australia, Denmark, Finland, New-Zealand, Norway, Sweden and the United Kingdom.

In addition, the BVI has entered into tax information exchange agreements with 28 countries: Aruba, Australia, Canada, China, Curaçao, Czech Republic, Denmark, the Faroe Islands, Finland, France, Germany, Greenland, Guernsey, Iceland, India, Ireland, Isle of Man, Japan, the Netherlands, New Zealand, Norway, Poland, Portugal, St. Maarten, South Korea, Sweden, the United Kingdom and the United States.

# BRUNEI

## CORRESPONDENT FIRM

| City | Name | Contact Information |
|---|---|---|
| Brunei Darussalam | Lee Yun Chin | +673 223 7905<br>yunchin@lr-brunei.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Brunei Darussalam |
| Capital: | Bandar Seri Begawan |
| Main languages: | English, Malay |
| Population: | 445,073 (2022 estimate) |
| Monetary unit: | Brunei Dollar (BND) |
| Internet domain: | .bn |
| Int. dialling code: | +673 |

## KEY TAX POINTS

- Income tax in Brunei is governed by the Income Tax Act (Chapter 35) and Income Tax (Petroleum) Act (Chapter 119), Laws of Brunei.

- Resident and non-resident companies are liable for corporate income tax on income accrued in, derived from or received in Brunei from outside Brunei.
- Companies with Gross Sales or Turnover that does not exceed BND 1 million are exempted from corporate tax or taxed at zero rate. Audited financial statements are not required for the submission of tax return.
- The period of assessment is on a preceding year basis. Year of assessment is based on a calendar year ending 31 December.
- Dividends received from a corporation taxable in Brunei are exempt from tax.
- There is no capital gains tax in Brunei.
- There is no goods and services tax in Brunei.
- Tax exemption is available for pioneer industry companies between 5 to 20 years, depending on certain criteria being met.
- There are various tax exemptions and incentives to encourage trading and investment in Brunei.
- Up to a certain amount, chargeable income (CI) of new companies is tax-exempt for the first 3 tax years of assessment. There are also exemptions on 75% of the first BND 100,000 of CI and on 50% of the next BND 150,000 of CI.
- Transactions involving related resident and non-resident entities must be conducted on an arm's length basis. There are no thin capitalisation or controlled foreign company (CFC) provisions.
- Dividends are not subject to withholding tax in Brunei. Interest, royalty and certain other payments by Bruneian companies to non-resident companies are, however, subject to withholding tax.
- There is no personal income tax in Brunei.

## A. TAXES PAYABLE

### COMPANY TAX

Resident and non-resident companies are taxed on income accruing in or derived from Brunei as well as on foreign income received (actual or deemed) in Brunei. Remittance of foreign income (dividends, branch profits, services income) may be tax exempt when remitted by a resident company under certain conditions.

A company, whether incorporated locally or abroad, is considered to be resident in Brunei for tax purposes if the control and management of its business are exercised in Brunei. The control and management of a company are vested in its directors and a company is normally regarded as resident in Brunei if, among other things, its directors' meetings are held in Brunei.

A resident company is taxed on its worldwide income to the extent of the income derived or accrued outside Brunei that is (actually or deemed) to be received in Brunei, whereas a non-resident company is taxed solely on income that has a source in Brunei or on profits from businesses in Brunei operated through a branch or permanent establishment.

The standard corporate tax rate for non-oil and gas related companies is 18.5% with effect from the 2015 year of assessment. The corporate tax rate for companies that are engaged in the exploration and production of oil and gas is 55%.

A partial tax exemption is given for the first BND 250,000 of chargeable income (CI). Under this scheme, 75% of the first BND 100,000 of CI is tax exempt and 50% of the next BND 150,000 of CI is tax exempt. Qualifying newly incorporated Bruneian companies may enjoy a separate tax exemption scheme for their first 3 consecutive years of assessment. This scheme allows qualifying new companies to enjoy a tax exemption on the first BND 100,000 of CI and on 50% on the next BND 150,000 of CI.

A 50% COVID-19 tax discount applies to any tax payable by companies for financial year 2021 (Year of Assessment 2022) in selected sectors such as tourism, hospitality (including registered hotels and lodging houses), restaurants and cafes, and sea and air passenger transportation services.

The tax year, referred to as the year of assessment (YA), runs from 1 January to 31 December of each year. Income for the YA is computed based on the income derived in the preceding calendar year (known as the basis year) from all sources. For businesses with a non-31 December accounting year-end, the Collector of Income Tax of Brunei (CIT) accepts the accounting year as the basis year instead of the calendar year. Under such circumstances, tax is assessed for each YA on the income for the accounting year preceding that YA.

A company is required to file an estimate of its CI along with the estimated tax payment within 3 months after the end of its financial year. The annual corporate income tax return must be filed along with payment of tax by 30th June of the YA. All completed returns will be accepted under self-assessment and any tax adjustments must be submitted separately to the tax authority.

Failure to file returns is an offence against the Income Tax Act. Upon conviction, offenders are liable to a fine of BND 10,000, and in default of payment, can be sentenced to imprisonment for up to 12 months.

Books of accounts including complete and accurate records of opening and closing inventories, purchases, sales, receipts, invoices and all other documents relating to the business are to be kept for 7 years from the YA the income relates to.

### GOODS AND SERVICES TAX (GST)

There is no GST in Brunei.

### STAMP DUTY

Stamp duties are levied at fixed or ad valorem rates on various business documents.

## B. DETERMINATION OF TAXABLE INCOME

Brunei-incorporated companies are required to prepare their financial accounts according to International Financial Reporting Standards (IFRS) for Public Interest Entities and Brunei Darussalam Accounting Standards (BDAS) for Non-Public Interest Entities.

The accounting profits are adjusted in accordance with Brunei tax rules to arrive at the taxable income.

Companies whose financial accounts are prepared with non-Brunei dollar functional currency are required to furnish their tax computation in Brunei dollar. Expenses must be incurred wholly and exclusively for the production of income in order to be tax deductible unless specifically disallowed or restricted (e.g. non-commercial motor vehicles, entertainment, expenses of a capital nature, donations and gifts).

B

## INTEREST DEDUCTIONS

Interest expenses are tax deductible unless they are incurred in respect of non-taxable income or are regarded to be of a capital nature. There are no thin capitalisation rules in Brunei.

## STOCK / INVENTORY

There are no prescribed valuation methodologies under domestic income tax law. As such, the CIT will generally accept the valuation methodology under the IFRS and BDAS.

## CAPITAL GAINS AND LOSSES

There is no capital gains tax in Brunei. Gains of a capital nature are not subject to income tax. Similarly, expenses of a capital nature are not deductible for income tax purposes. The tax authority will look at the facts and circumstances of the transaction to determine whether the gain is capital in nature or a trading gain which is subject to income tax.

## DIVIDENDS

Dividends accrued in, derived from or received in Brunei by a corporation are included in taxable income. However, dividends received from a corporation taxable in Brunei are exempt from tax.

Dividends received in Brunei from the United Kingdom or from Commonwealth countries are grossed up in tax computations, and credit is claimed against the Brunei tax liability for tax suffered either under the double tax treaty with the United Kingdom or the provision for Commonwealth tax relief.

## CAPITAL ALLOWANCE

Capital allowances, instead of accounting depreciation, are granted for plant and machinery acquired and used in trade or business. Most plant and machinery qualify for three-year straight line tax depreciation. Low cost items (costing not more than BND 2,000 per item) may be tax depreciated in full, subject to a total claim of BND 30,000 for each YA. Automation equipment qualifies for 100% tax depreciation in the year of acquisition.

Capital expenditure incurred for the construction or acquisition of an industrial building qualifies for the Industrial Building Allowance (IBA) if the building is used for qualifying purposes.

Effective from YA 2015, 150% capital allowance is given to companies in the manufacturing sector that have their plant and machinery installed from 1 January 2014 to 31 December 2019.

Unutilised capital allowances can be carried forward indefinitely but must be set off against income from the same trade.

## TAX LOSSES

Losses that are incurred by a company can be carried forward for a maximum of 6 years and set off against future income.

## TAX INCENTIVES

Full tax exemption is granted for pioneer status companies between 5 to 20 years, dependant on certain criteria being met.

| **Pioneer Status Companies** |
|---|
| Exempt from Corporate Income Tax |
| Exempt from import duties on machinery |
| Exempt from import duties on raw materials |
| Tax exemption for up to 11 years |
| |
| **Expansion of Established Enterprise** |
| Exempt from Corporate Income Tax |
| Minimum capital expenditure of BND 500,000 |
| Additional tax exemption for up to 9 years |
| |
| **Foreign Loans for Productive Equipment** |
| Exemption from withholding tax for interest paid |
| Minimum amount BND 200,000 |

Companies dealing with exports can choose to pay tax at a fixed rate of 1% on approved exports, in lieu of corporate tax. The total turnover of the exporter is treated as exports if local sales do not exceed 20% of total turnover.

## C. FOREIGN TAX RELIEF

Brunei has signed Avoidance of Double Taxation Agreements (DTA) with 18 countries. Brunei will grant a tax credit for foreign tax suffered in the treaty country. The tax credit granted is limited to the lower of the foreign tax suffered and the Brunei tax payable on that income.

Apart from these DTAs, Brunei has also signed Exchange of Information Agreements with 11 countries. Brunei has also signed the Convention on Mutual Administrative Assistance in Tax Matters (MAC), which allows Brunei Darussalam to exchange information on tax matters with its signatory countries.

## D. CORPORATE GROUPS

Group taxation is not permitted. The grouping of corporations has no tax implications as the tax laws treat each corporation in isolation.

B

## E. RELATED PARTY TRANSACTIONS

Related party transactions have to satisfy the arm's length principle.

## F. WITHHOLDING TAX

Withholding tax will arise if the following payments are made and such expenses are borne by a person resident in Brunei or having a permanent establishment in Brunei or which are deductible against any income accruing in or derived from Brunei:

| | Nature of payment | Withholding tax rate |
|---|---|---|
| 1. | Interest, commission, fee or other payment in connection with any loan or indebtedness | 2.5% |
| 2. | Royalties, lump sum payments or otherwise for the use of movable properties | 10% |
| 3. | Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information | 10% |
| 4. | Payment for rendering assistance or services in connection with the application or use of scientific, technical, industrial or commercial knowledge or information | 10% |
| 5. | Payment for the management or assistance in the management of any business | 10% |
| 6. | Rent or other payments for the use of movable property | 10% |
| 7. | Non-resident directors' remuneration | 10% |

Branch profits being remitted and payment of dividends to non-resident are not subject to withholding tax.

## G. EXCHANGE CONTROLS

Since 1967, the local currency has been at par and interchangeable with the Singapore dollar. There are no restrictions on currency movements or exchange controls; however, in line with international practice to deter money laundering, money brought in and out of the Brunei exceeding the equivalent of BND 15,000 must be declared.

## H. PERSONAL TAXATION

There is no personal tax on individuals in Brunei (residents and non-residents).

There are no social security taxes in Brunei. However, all citizens and permanent residents of Brunei must contribute 5% of their salary to a State managed provident fund, Tabung Amanah Perkerja (TAP). The employer will have to also contribute the same amount for its employees to the provident fund.

In addition to the above, all citizens and permanent residents of Brunei must also contribute 3.5% of their salary to a Supplemental Contributory Pension Scheme (SCP). The employer will have to also contribute the same amount (subject to a minimum of BND 17.50) for its employees to the Scheme. However, both the employer's and employee's monthly contributions are capped up to a salary of BND 2,800 per month.

## TREATY WITHHOLDING TAX RATES

The chart shows the withholding tax rates applicable under the tax treaties that are currently in force. Brunei adopts a refund method on DTA reliefs to ensure that the non-resident are entitled to the treaty benefits. The domestic withholding tax will apply when the payments are made to non-resident. The non-resident may claim treaty benefit for reasons such as having no Permanent Establishment in Brunei.

- Brunei does not levy any withholding taxes on dividend payments.
- Interest and royalties paid by resident companies to non-resident companies are subject to respectively a 2.5% and 10% final withholding tax.

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Treaty countries:** | | | |
| Bahrain | 0 | 5 | 5 |
| Cambodia | 10 | 10 | 10 |
| China | 5 | 10 | 10 |
| Hong Kong | 0 | 5/10[1] | 5 |
| Indonesia | 15 | 15 | 15 |
| Japan | 5/10[2] | 10 | 10 |
| Kuwait | 0 | 0 | 15 |
| Laos | 5/10[3] | 10 | 10 |
| Luxembourg | 0/10[4] | 10 | 10 |
| Malaysia | 10 | 10 | 10 |
| Oman | 5 | 10 | 10 |
| Pakistan | 10 | 15 | 15 |
| Qatar | 0 | 0 | 5 |
| Singapore | 10 | 5/10[5] | 10 |
| South Korea | 5/10[6] | 10 | 10 |
| United Arab Emirates | 0 | 0 | 5 |
| United Kingdom | 0 | --[7] | --/0[8] |
| Vietnam | 10 | 10 | 10 |

Notes:

1. 5% applies to interest payments to any bank or financial institutions; and 10% of interest payments in all other cases.
2. 5% applies if the beneficial owner is a company that has owned directly or indirectly, for the period of 6 months ending on the date on which entitlement to the dividends is determined, at least 10% of the voting shares of the paying company; and 10% of gross dividends in all other cases.
3. 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; and 10% of gross dividends in all other cases.
4. 0% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; and 10% of gross dividends in all other cases.
5. 5% applies to interest payments to any bank or financial institutions; and 10% of interest payments in all other cases.
6. 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; and 10% of gross dividends in all other cases.
7. No reduction under the treaty; the domestic rate applies.
8. The exemption does not apply to royalty payments in respect of the operations of mines, quarries or exploitation of natural resources. These payments are subject to the domestic rate; no reduction under the treaty.

# BULGARIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Sofia | Yulia Peeva | +359 2 439 42 41<br>yulia.peeva@pkf.bg |
| Varna | Venzi Vassilev | +359 887 854 668<br>venzi.vassilev@pkf.bg |

## BASIC FACTS

| | |
|---|---|
| Full name: | Bulgaria |
| Capital: | Sofia |
| Main languages: | Bulgarian |
| Population: | 6.86 million (2022 estimate) |
| Monetary unit: | Bulgarian Lev (BGN) |
| Internet domain: | .bg |
| Int. dialling code: | +359 |

## KEY TAX POINTS

- Corporate Income tax in Bulgaria is a 10% flat rate on the taxable profit.
- The standard VAT rate is 20%. There is a reduced rate of 9% for hotel accommodation services.
- Withholding tax is due on dividends, interest, royalties and various other types of income, when distributed to a non-resident entity.
- Bulgarian tax residents are taxed on their worldwide income. Non-residents are taxed only on their Bulgarian-sourced income.
- An inheritance received by the surviving spouse, children and their descendants is exempt. Various rates of inheritance tax apply to other relatives.

## A. TAXES PAYABLE

## COMPANY TAX

Corporate income tax in Bulgaria is levied at a 10% flat rate on taxable profits. Taxable entities are:

- Companies and partnerships established under Bulgarian law; and,
- Permanent establishments of non-resident entities in Bulgaria.

The taxable profit is the financial result adjusted for tax purposes. Accounting and reporting rules usually apply IFRS or use local Bulgarian GAAP (for small and medium-sized enterprises). The annual corporate tax return has to be submitted from 1 March to 30 June of the following year. The tax year is the calendar year. Quarterly or monthly advance corporate tax instalments are due during the year. The corporate tax is due by 30 June after deducting the advance corporate tax paid.

A separate tax declaration for Advance Corporation Tax (ACT) instalments is filed from 1 March to 15 April. The ACT payments are calculated on the basis of net sales revenue for the year before the previous one. For example, the ACT payments for year 2022 are based on year 2020 net sales revenue.

Newly incorporated entities do not make ACT instalments for the year of establishment and for the subsequent year.

The deadlines that are introduced are:

- Changing the ACT instalment amount - to be determined by 15 November of the current year;
- Payment of the last ACT instalment (monthly or quarterly) – 1 December of the respective year.

The allowable excess of the overall Corporation Tax over the ACT instalments paid for the corresponding year is 25%. In case the excess is higher than 25%, penalty interest is calculated on the excess amount for the period from 16 April until 31 December.



**Possibility to file a corrective annual corporate income tax return**

Taxpayers are able to file a one-off corrective corporate income tax return in case of errors identified after 30 June of the following year and the submission of the regular corporate income tax return. The corrective tax return should be filed by 30 September.

**Mandatory electronic submission of tax returns**

Taxpayers are obliged to submit all returns under the Corporate Income Tax Act electronically.

## ONE-OFF TAX ON CERTAIN EXPENSES

Certain expenses paid to employees, or on behalf of employees, are subject to a one-off tax. Expenses subject to the one-off tax are:

- “representative” expenses;
- social expenses provided in-kind to the employees (e.g. fringe benefits) except for food vouchers up to BGN 80 and voluntary insurance contributions (social, health and life insurance) up to BGN 60 per employee per month;
- expenses related to personal use of company assets.

The one-off tax rate is 10% on the above expenses. Both the respective expense and the applicable one-off tax are deductible for corporate income tax purposes. The taxes are due by 30 June of the following year.

## CAPITAL GAINS TAX

Capital gains of companies are treated as ordinary trading income and are taxed at the corporate tax rate of 10%.

## BRANCH PROFITS TAX

Branch offices of foreign registered companies are taxed as domestic entities.

There is no branch remittance tax in Bulgaria.

## VALUE ADDED TAX (VAT)

The Bulgarian VAT legislation is based on the EU VAT rules and Directive 2006/112/ EC. The VAT rates are:

- 20% for domestic supplies, intra-community acquisitions and importation from non-EU countries; and,
- 9% for hotel accommodation services
- The 9% reduced VAT rate which was implemented in response to the COVID-19 crisis will continue to be applicable until the end of 2022 for the following taxable supplies:
  - sale of books (including e-versions);
  - restaurant and catering services;
  - baby foods and products;
  - the use of certain sport facilities;
  - tour operator services, including bus excursions.

**Exemptions:**

- With the right to deduct input VAT - intra-community supplies, export to non-EU countries, international transport of goods and passengers, certain supplies related to international transport, sale of duty-free goods under certain conditions, certain transactions related to international trade, specific supplies under international treaties, etc.
- No right to deduct input VAT - transfer or rental of land or rights over land (except for building land and land adjacent to new buildings), the transfer of old buildings or parts thereof, rental for residential purposes to individuals (an option to tax these transactions is available); financial and insurance services; gambling; certain services related to health, education, religion, culture, etc.; other specific supplies (e.g., importation of certain goods and up to a certain limit).

**VAT Registration:**

Entities are obliged to register for Bulgarian VAT purposes if they have performed:

- Transactions with a place of supply in Bulgaria for which VAT should be charged by the supplier exceeding BGN 50,000 (approximately EUR 25,600) for the last 12 months;
- Intra-community acquisitions exceeding BGN 20,000 (approximately EUR 10,200) during the calendar year; or,
- If two or more related parties carry out in succession similar business in the same commercial premises; or,
- Businesses that are providing telecommunications, broadcasting and electronic services have to register for local VAT purposes if their customers are established in Bulgaria, subject to certain conditions. This is in accordance with the provisions of Directive 2008/8/EC, which establishes the rules concerning the place of supply of telecommunications, broadcasting and electronic services rendered to non-taxable persons within the EU.

Foreign taxpayers who have no place of business in Bulgaria but make local taxable supplies, for which the reverse charge mechanism does not apply, should register for VAT purposes in Bulgaria no later than seven days prior to the date on which the tax in respect of their first supply in Bulgaria becomes due.

Entities established in an EU Member State performing supply of goods with installation in Bulgaria to customers non-registered for VAT purposes are obliged to register irrespective of their taxable turnover. Foreign entities which receive services with a place of supply in Bulgaria for which the recipient has to self-charge Bulgarian VAT are also obliged to register irrespective of their taxable turnover. Any entity may apply for voluntary VAT registration. However, if voluntarily registered, such entity will not be able to deregister for one year following the year of registration.

**Distance sales of goods:**

New rules will apply for the EU scheme and the non-EU scheme respectively, which gives taxpayers the opportunity to report and pay VAT in a single Member State regardless of where the VAT is due.

Since 1 July 2020 the threshold for distance sales for all Member States is EUR 10,000 (excluding VAT) per annum.

Distance sales of imported goods, where the importation of non-excisable goods have a value below EUR 150, are exempt from VAT at import. The VAT should be settled by persons applying this scheme in the respective Member State of registration.

The scope of the non-EU scheme is extended and covers all services performed by non-EU suppliers to non-taxable persons in the EU (B2C). Examples of such services that were not covered by the scheme until now are accommodation services, access to events, transport services, car rentals, etc.

The scope of the EU scheme applies to intra-Community distance sales (including domestic distance sales) performed by EU suppliers and non-EU suppliers. The scheme also applies to B2C services supplied to non-taxable persons by EU suppliers established in a Member State different from the one of the customer.

**VAT returns and payment:**

Monthly VAT returns are filed and the tax is due by the 14th of the following month. The tax period is a calendar month. European sales list (VIES) returns have to be filed monthly by the same deadline if intra-community supplies of goods or certain services have been performed during the respective month.

**VAT refund:**

VAT can be refunded through a VAT return within:

- 2 months (period for carry forward and offsetting of input VAT against output VAT) and 30 days of filing the last VAT return (period for effective refund); or,
- 30 days of filing the VAT return for entities which have performed certain zero-rated supplies exceeding 30% of the total turnover from taxable supplies for the last 12 months.

An investor in a large investment project which has received authorization by the Ministry of Finance can receive a refund within 30 days. The investor can also apply reverse charge for VAT on import of goods (without effective cash outflow). EU based foreign entities which are not registered and established for VAT purposes in Bulgaria can receive a refund of the local input VAT incurred for goods and services used for supplies with a place of supply outside Bulgaria. A specific procedure with the authorities of the EU Member State of establishment has to be followed. Non-EU based entities may be entitled to a refund on a reciprocal basis (i.e., if their country of tax residence provides the right to a VAT refund to Bulgarian entities).

**Pro-rata VAT deduction in specific cases:**

VAT-registered persons will be obliged to claim a pro-rata VAT credit for the acquisition of long-term assets, which will be used both for business and personal use. A VAT credit can be claimed only for the part used for economic activities. The pro-rata should be determined based on an allocation key, which guarantees the most precise calculation of the VAT which can be deducted.

The pro-rata deduction above is different from the existing proportional (partial) deduction. The latter applies when the acquired goods or services are used both for taxable and exempt services. For example, if the part of the long-term asset used for the economic activity of the entity is utilized both for taxable and exempt supplies, the taxable person will be entitled to claim a pro-rata VAT deduction, as well as a proportional (partial) VAT deduction.

The definition of long-term assets for VAT purposes includes real estate, vehicles and other goods and services, which are or would have been long-term assets under the Corporate Income Tax Act with a value of BGN 5,000 (EUR 2,550) or greater.

Taxable persons will be able to claim a pro-rata VAT credit for the acquisition of goods and services, which are not or would not have been long-term assets, if these goods and services are used partially for personal needs or VAT exempt supplies. In this case, the taxable person could claim a VAT credit only for the part used for taxable supplies. This part should be determined based on a reasonable method. If the taxable persons decide to use this option, they will not have to observe the rules for proportional (partial) deduction in respect of the same goods and services, when these are also used for exempt supplies.

## LOCAL TAXES

## REAL ESTATE TAX

Real estate tax is levied between 0.01% and 0.45% annually on the higher of the gross book value and the tax value of the immovable property (on the tax value for residential property). The exact rate is determined by the municipality in which the real estate is situated.

## TRANSFER TAX

Transfer tax is levied between 0.1% and 3% on the higher of the sales price and the tax value of the transferred real estate/the insurance value of cars. The exact rate is determined by each municipality.

## VEHICLE TAX

Vehicle tax is levied depending on the type and characteristics of the vehicle. It applies to cars, ships and airplanes. The tax rate is determined by each municipality within the ranges stipulated in the law.

## DONATION TAX

Donation tax is levied between 3.3% and 6.6% on the value of the donation. The exact rate is determined by each municipality. Lower rates and exemptions apply to donations between relatives.

## INHERITANCE TAX

An inheritance received by a surviving spouse, their children and their descendants is exempt. The tax is between 0.4% and 0.8% on an inheritance exceeding BGN 250,000 (approximately EUR 128,000) in favour of brothers, sisters and their descendants (between 3.3% and 6.6% for other heirs). The exact rate is determined by each municipality.

## TOURIST TAX

Tourist tax is levied between BGN 0.2 and 3 (approximately EUR 0.1 and 1.5) per night. The exact rate is determined by the municipality in which the accommodation facilities are located.



## B. DETERMINATION OF TAXABLE INCOME

Profits include all income and capital gains. The taxable basis is the accounting profit adjusted for prescribed items. Broadly, expenses incurred wholly and exclusively for business purposes are deductible. The accounting profit is adjusted in accordance with the rules of the corporate income tax legislation, the most important of which are listed below.

## DEPRECIATION

For tax purposes, the straight-line method is normally adopted. Assets purchased during the year should have the depreciation time apportioned.

| Asset | Annual rate of depreciation (%) |
|---|---|
| Buildings, industrial facilities, communication devices and lines, electricity grid | 4 |
| Machinery, fittings and manufacturing equipment | 30/50* |
| Vehicles, excluding automobiles; roads and airplane runways | 10 |
| Computers, software and rights of using software | 50 |
| Automobiles | 25 |
| Assets with limited term of use under contract or under legal obligations | 100/years of use; not more than 33 1/3 |
| All other depreciative assets | 15 |

* Possibility to be 50% when new investment is made and the equipment is brand new.

## INVENTORY

Inventory is generally valued at the lower of cost or market value. Cost may be determined on the basis of FIFO or average cost method.

## CAPITAL GAINS AND LOSSES

In general, capital gains and losses are included in the trading income of companies, and in normal income for individuals, and taxed accordingly with the normal rates of corporate or personal income tax.

## DIVIDENDS

Subject to 5% withholding tax when distributed to individuals, resident non-profit entities and non-residents (except for EU/EEA entities). Dividends distributed to resident companies are not included in their taxable income except for dividends distributed by:

- Special purpose investment companies; and,
- Non-EU/EEA foreign entities.

## INTEREST DEDUCTIONS

Interest paid by a company is treated as an ordinary business expense unless it falls under the provision of thin capitalisation. Under the thin capitalization rules, if the debt-to-equity ratio of the company exceeds 3:1 (some of) the interest expense may not be tax deductible in the current year.

If the threshold of EUR 3 million borrowing costs per year is reached, the excess interest costs will be deductible up to 30% of the taxpayer's EBITDA.

If the borrowing costs are under EUR 3 million per year, then a modified version of the existing thin capitalisation regime will be applied in parallel to the new interest limitation rules where the conditions therefore are met. The existing 5-year limitation for carry forward of the non-deductible interest expenses under the thin capitalisation rule has been abolished.

## LOSSES

Corporate tax losses can be carried forward over the next five consecutive years. Losses cannot be carried back against profits of previous years.

## FOREIGN SOURCED INCOME

The Bulgarian tax authorities levy taxes on resident companies on all profits arising from foreign sources in the same way as income from local sources.

## INCENTIVES - TAX HOLIDAY

The amount of the annual corporate income tax due by entities on their profits from manufacturing, including toll manufacturing, may be partly or fully reduced. The application of the tax holiday is subject to certain limitations and conditions, including EU state aid restrictions.

## EXEMPTIONS FROM CORPORATE TAX

Special purpose investment companies, collective investment schemes authorized for public offering in Bulgaria and national investment funds are not subject to corporate income tax.

## C. FOREIGN TAX RELIEF

Bulgaria has concluded some 70 international treaties for avoiding double taxation (see table below and comments in the "Withholding Tax" section below). Foreigners may also be exempt from social security contributions in Bulgaria or the contributions they make can be recognised in their home country under an applicable bilateral or multilateral social security agreement.

## D. CORPORATE GROUPS

There is no group taxation for corporate income tax or for VAT purposes in Bulgaria.



## E. RELATED PARTY TRANSACTIONS AND TRANSFER PRICING RULES

Although Bulgarian legislation requires entities to prove the arm's length principle in related party transactions, there is no Act with legislative power that obliges the multinational entities to publish Local and Master files, unless specifically required by the tax authorities. The OECD Transfer Pricing Guidelines are generally followed in such cases. However, Country-by-Country reporting is mandatory.

The taxpayers required to prepare annual transfer pricing documentation are the entities which at 31 December of the prior year exceed two of the following thresholds:

- Net book value of assets: BGN 38 million; or
- Net sales: BGN 76 million; or
- Average number of employees during the reporting period: 250.

The Bulgarian transfer pricing rules require that taxpayers apply arm's length prices in their related party transactions. Bulgarian transfer pricing rules envisage five methods for determining arm's length prices:

- The Resale Minus Method;
- The Comparable Uncontrolled Price Method;
- The Cost Plus Method;
- The Transactional Net Margin Method; and,
- The Profit Split Method

A taxpayer is obliged to prove the arm's-length character of its related party transactions during a tax audit by applying one of the above methods.

## F. WITHHOLDING TAX

Withholding tax is due on the following types of income when distributed to a non-resident entity:

- Dividends and liquidation quotas;
- Interest, royalties, franchising and factoring fees; exemptions apply to interest on bonds issued by EU/EEA entities, traded on regulated markets, and loan interests for loans provided by EU/EEA entities to local entities, where the EU/EEA entity has issued bonds in order to provide the loan, and these bonds are traded on an EU/EEA regulated market;
- Technical (including consultancy) and management services fees;
- Income from hiring out movable or immovable property;
- Capital gains from transfer of real estate;
- Capital gains from disposal of financial assets issued by resident entities or the State and municipalities (exemption for capital gains from disposal of shares on a regulated Bulgarian/EU/EEA market);
- Penalty or damages payments (except for insurance compensation) distributed to entities tax resident in low tax jurisdictions.

### Withholding Tax Rates

- 5% on the gross amount of dividends and liquidation quotas (0% for distributions to EU/EEA entities);
- 0% on interest and royalties distributed to related party legal entities resident in the EU (subject to certain conditions);
- 10% on the gross amount for all other taxable income.

The withholding tax rates may be reduced under an applicable double tax treaty.

### Refund Opportunities

Entities resident in the EU/EEA may declare tax deductible expenses and claim a corresponding refund of the withholding tax paid on a gross basis. The claim is annual and should be filed by 31 December of the following year.

### Payment

The tax should be withheld by the resident payer and remitted to the budget within one month following the quarter of accrual of the income. In case of capital gains, it is their recipient which should remit the withholding tax due within the term indicated above.

### Tax Treaty Application

If available, double tax treaty relief may be applied by the income recipient directly if the income accrued for the calendar year does not exceed BGN 500,000 (approximately EUR 255,000). In all other cases a non-resident can benefit from tax treaty relief if an advance clearance is obtained from the Bulgarian tax authorities under a specific procedure.

## G. EXCHANGE CONTROLS AND LIMITATIONS OF PAYMENTS IN CASH

There are no exchange controls in Bulgaria. The limit for cash payments is BGN 10,000.

## H. PERSONAL TAX

The personal income tax rate is a flat rate of 10% on the taxable income for individuals and 15% for the taxable income of sole traders. In general, individuals are considered Bulgarian tax residents if:

- They have stayed in Bulgaria for more than 183 days in any 12-month period;
- The centre of their vital interests is in Bulgaria (determined in view of their personal and economic ties to the country, e.g. factors like permanent address in Bulgaria, family, employment, possession of property, etc.).

Generally, taxable income includes monetary income, as well as benefits received in-kind (except for non-taxable items and "in-kind social expenses"). Bulgarian tax residents are taxed on their worldwide income, while non-residents are taxed only on their Bulgarian-sourced income.



## EXEMPT INCOME

Certain types of income are exempt from taxation, including capital gains from the disposal of shares on a regulated Bulgarian/EU/EEA market, income from disposal of certain real estate, etc.

## DEDUCTIONS

Tax deductions apply in some cases, including:

- Mandatory social security and health insurance contributions;
- Statutory deductions for freelancers, for rental income, etc.;
- Voluntary personal insurance up to certain limits;
- Certain donations and other specific situations (e.g. disabilities).

**Tax relief for children and children with disabilities:**

- BGN 4,500 for one child;
- BGN 9,000 for two children;
- BGN 13,500 for three or more children;

The amount of the tax relief for disabled children is BGN 9,000 Tax relief for payments for labour for improvements and/or repair works in one residential property is introduced. The amount of the tax relief is up to BGN 2,000, subject to conditions that should be simultaneously met.

## LUMP-SUM TAXATION

Lump sum taxation is applicable to certain sole traders with annual turnover of less than BGN 50,000 (approximately EUR 25,000).

## FILING PERSONAL TAX RETURNS

The annual personal income tax return has to be submitted by 30 April of the following year (the tax year coincides with the calendar year). The tax has to be paid by the same deadline. A 5% reduction of the outstanding tax can be applied if:

- The annual tax return is filed electronically and the tax is paid before 31 March of the following year; and,
- The taxpayer currently has no outstanding liabilities towards the Budget.

Individuals who fulfil the above requirements may utilise the 5% discount from their outstanding tax liability, but no more than BGN 500 (EUR 256). Individuals are generally not obliged to file annual tax returns if they have received only employment income for which the full tax due has been withheld by the employer on a 'pay as you earn' basis, non-taxable income and/or income subject to one-off tax.

Individuals will be allowed to file a corrective tax return once until 30 September of the following year if they find an error in their submitted annual tax return. Certain types of foreign-sourced income under Art. 38 of the PITA (e.g. dividends, interest, etc.), which was previously subject to quarterly reporting and taxation by Bulgarian tax residents is now reported and taxed with the individual's annual Bulgarian tax return for the respective year.

Successors will be able to file annual tax returns for the income of deceased individuals. If one of the successors submits a tax return, the others are exempted from this obligation.

## ONE-OFF TAXATION OF CERTAIN INCOME

One-off tax is due on income received by non-resident individuals from:

- Dividends and liquidation quotas distributed by a Bulgarian resident company;
- Management and technical services fees;
- Interest, royalties, franchising and factoring fees;
- Income from hiring out movable and immovable property;
- Capital gains from disposal of real estate and financial assets; and,
- Certain other income.

One-off tax is due on dividends and liquidation quotas distributed to a Bulgarian resident by a Bulgarian or by a non-resident entity. EU resident individuals may declare deductible expenses and claim a corresponding refund of the one-off tax paid on a gross basis under certain conditions.

## ONE-OFF TAX RATES

- 0% for capital gains from the disposal of shares on a regulated Bulgarian/EU/EEA market by EU/EEA residents;
- 5% for dividends and liquidation quotas;
- 7% for income from voluntary life insurance received after the termination of the insurance policy (if the policy term is more than 15 years);
- 10% for all other income.

The one-off tax rates may be reduced under an applicable double tax treaty.

## SOCIAL SECURITY AND HEALTH INSURANCE

## MANDATORY INSURANCE CONTRIBUTIONS

Between 32.7% and 33.4% paid by both the employer and the employee according to 55:45 ratio. This includes:

- 14.8% - pension fund;
- 5% - universal pension fund;
- 0.4% - 1.1 % - occupational accident and professional disease fund (rate depending on the field of activity); The range is unchanged, although the rates for certain economic activity groups have been adjusted with effect from 1 April 2022;
- 3.5% - general illness and maternity fund;
- 1 % - unemployment fund; and,
- 8% - health insurance fund.

The social security base is the gross remuneration less statutory deductions in some cases and is capped at BGN 3,400 (approximately EUR 1,700) monthly.

Minimum income for social security purposes has also been increased, namely:

- The minimum monthly taxable income for self-employed is increased from BGN 650 to BGN 710 from 1 April 2022; and
- The minimum monthly taxable income for registered farmers is increased from BGN 420 to BGN 710 from 1 April 2022.

## I. BULGARIA DOUBLE TAX TREATIES AND RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Treaty countries:** | | | |
| Albania | 5 | 10 | 10 |
| Algeria | 5 | 10 | 10 |
| Armenia | 5 | 10 | 10 |
| Austria | 0 | 0 | 0 |
| Azerbaijan | 8 | 7 | 5/10 |
| Bahrain | 5 | 5 | 5 |
| Belarus | 5 | 10 | 10 |
| Belgium | 0 | 10 | 5 |
| Canada | 5 | 10 | 10 |
| China | 5 | 10 | 7/10 |
| Croatia | 5 | 5 | 0 |
| Cyprus | 0 | 7 | 10 |
| Czech Republic | 0 | 10 | 10 |
| Denmark | 0 | 0 | 0 |
| Egypt | 5 | 10 | 10 |
| Estonia | 0/5 | 5 | 5 |
| Finland | 0 | 0 | 0/5 |
| France | 0 | 0 | 5 |
| Georgia | 5 | 10 | 10 |
| Germany | 0 | 0 | 5 |
| Greece | 0 | 10 | 10 |
| Hungary | 0 | 10 | 10 |
| India | 5 | 10 | 10 |
| Indonesia | 5 | 10 | 10 |
| Iran | 5 | 5 | 5 |
| Ireland | 0 | 5 | 10 |
| Israel | 5 | 5/10 | 7.5 |
| Italy | 0 | 0 | 5 |
| Japan | 5 | 10 | 10 |
| Jordan | 10 | 10 | 10 |
| Kazakhstan | 5 | 10 | 10 |
| Korea (D.P.R.K.) | 5 | 10 | 10 |
| Korea (R.O.K.) | 5 | 10 | 5 |
| Kuwait | 0/5 | 5 | 10 |
| Latvia | 0 | 5 | 5/7 |
| Lebanon | 5 | 7 | 5 |
| Lithuania | 0 | 10 | 10 |
| Luxembourg | 0 | 10 | 5 |
| Malta | 0 | 0 | 10 |

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Moldova | 5 | 10 | 10 |
| Mongolia | 5 | 10 | 10 |
| Morocco | 5 | 10 | 10 |
| Netherlands | 0 | 0 | 0 |
| North Macedonia | 5 | 10 | 10 |
| Norway | 0 | 0 | 0 |
| Pakistan | 12.5 | 10 | 10/12.5 |
| Poland | 0 | 10 | 5 |
| Portugal | 0 | 10 | 10 |
| Qatar | 0 | 3 | 5 |
| Romania | 0 | 10 | 10 |
| Russia | 5 | 10 | 10 |
| Saudi Arabia | 5 | 5 | 5/10 |
| Serbia | 5 | 10 | 10 |
| Singapore | 5 | 5 | 5 |
| Slovakia | 0 | 10 | 10 |
| Slovenia | 0 | 5 | 5/10 |
| South Africa | 5 | 5 | 5/10 |
| Spain | 0 | 0 | 0 |
| Sweden | 0 | 0 | 5 |
| Switzerland | 0 | 10 | 0 |
| Syria | 5 | 10 | 10 |
| Thailand | 5 | 10 | 5/10 |
| Turkey | 5 | 10 | 10 |
| Ukraine | 5 | 10 | 10 |
| United Arab Emirates | 0/5 | 2 | 5 |
| United Kingdom | 0 | 0 | 0 |
| United States | 5 | 0/5/10 | 5 |
| Uzbekistan | 5 | 10 | 10 |
| Vietnam | 5 | 10 | 10 |
| Zimbabwe | 5 | 10 | 10 |

## CAMBODIA

| City | Name | Contact Information |
|---|---|---|
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| Phnom Penh | Lim Ai Chen | +603 6203 1888<br>aichen@pkfmalaysia.com |

### BASIC FACTS

| | |
|---|---|
| Full name: | Cambodia |
| Capital: | Phnom Penh |
| Main languages: | Khmer (Official), English |
| Population: | 17.14 million (2022 estimate) |
| Monetary unit: | 1 USD = 4,000 Riels (KHR) |
| Internet domain: | .kh |
| Int. dialling code: | +855 |

## KEY TAX POINTS



- **General overview**

  Most business activities and investments in Cambodia will be affected by the following taxes:
  - Corporate income tax/Tax on income
  - Minimum tax
  - Withholding tax
  - Value added tax
  - Tax on salary of employees
  - Fringe benefit tax

  There are various other taxes that may affect certain activities in specific industries, including:
  - Specific tax on certain merchandise and services (excise tax)
  - Custom duty
  - Public lighting tax
  - Other taxes
- **Cambodian tax system**

  Cambodia's tax system is a self-declaration regime. The estimated and simplified regimes were eliminated in 2016, and the term 'real regime' has been replaced by the term 'self-declaration regime'. Taxpayers under the self-declaration regime are classified into three categories:
  1. Small taxpayer is any sole proprietorship or partnership that has:
     - annual turnover from KHR 250 million to KHR 1,000 million (approximately USD 62,500 to USD 250,000) for agricultural, service and commercial sectors; or
     - annual turnover from KHR 250 million to KHR 1,600 million (approximately USD 62,500 to USD 400,000) for the industrial sector; and
     - turnover of at least KHR 60 million (approximately USD 15,000) for any three-month period ending in the current fiscal year; and
     - expected turnover for the next three-month period to be at least KHR 60 million (approximately USD 15,000); and
     - participate in any bidding or quotation for the supply of goods or services, including market stall management.
  2. Medium taxpayer includes any sole proprietorship or partnership that has:
     - annual turnover from over KHR 1 billion to KHR 4 billion (approximately USD 250,000 to USD 1,000,000) for the agricultural sector, or
     - annual turnover from over KHR 1 billion to KHR 6 billion (approximately USD 250,000 to USD 1,500,000) for service and commercial sectors; or
     - turnover from over KHR 1.6 billion to KHR 8 billion (approximately USD 250,000 to USD 2,000,000) for the industrial sector.

     A medium taxpayer also includes:
     - enterprises that have been incorporated as a legal entity, representative office; or
     - national and subnational government institutions, all types of organisations or associations, including non-governmental organisations; or
     - foreign consulates and embassies, international organisations, and technical cooperation agencies of other countries.
  3. Large taxpayer includes any sole proprietorship, partnership or legal entity that has:
     - annual turnover exceeding KHR 4 billion (approximately USD 1 million) for the agricultural sector; or
     - annual turnover exceeding KHR 6 billion (approximately USD 1.5 million) for service and commercial sectors; or
     - annual turnover exceeding KHR 8 billion (approximately USD 2 million) for the industrial sector.

     A large taxpayer also includes:
     - Branches of foreign companies;
     - subsidiaries of multinational companies;
     - Enterprises registered as Qualified Investment Projects ("QIPs") approved by the Council for the Development of Cambodia.

Under Prakas 009 the GDT now has the authority to re-determine the classification of a taxpayer if the declared turnover does not reflect actual turnover. In this circumstance a taxpayer will be classified using the value of their assets (current and non-current) as follows:

1. Small taxpayer is any sole proprietorship or partnership that has:
   - assets valued at KHR 200 million to KHR 1,000 million (approximately USD 50,000 to USD 250,000) for agricultural, service and commercial sectors; or
   - assets valued at KHR 200 million to KHR 2,000 million (approximately USD 62,500 to USD 500,000) for the industrial sector.
2. Medium taxpayer includes any sole proprietorship, partnership or legal entity that has:
   - assets valued at KHR 1 billion to KHR 2 billion (approximately USD 250,000 to USD 500,000) for agricultural, services and commercial sectors, or
   - assets valued at KHR 2 billion to KHR 4 billion (approximately USD 500,000 to USD 1,000,000) for the industrial sector.
3. Large taxpayer includes any sole proprietorship, partnership or legal entity that has:

- assets valued above KHR 2 billion (approximately USD 500,000) for agricultural, services and commercial sectors; or
- assets valued above KHR 4 billion (approximately USD 1 million) for the industrial sector.

Anyone falling within one of the above categories is required to begin the tax registration process within 15 working days of commencing business activities or incorporating. One of the main hurdles in registering for tax is the General Department of Taxation's ("GDT") requirement that one of the principals of the entity appear in person at the GDT at the time of registration.

A taxpayer's classification will determine the amount of patent tax that must be paid. Additionally, small taxpayers have fewer requirements when it comes to record-keeping. Small taxpayers are permitted to use a simplified accounting system, whereas medium and large taxpayers are expected to keep proper accounting records and books in line with Cambodian Accounting Standards.

Currently, Cambodia does not have a comprehensive personal income tax system that requires individuals to file and pay tax to the GDT directly.



- **Tax service agents**

  On 12 April 2013, Prakas on Tax Service Agents No. 455 SHV.PrK was issued requiring that those who offer tax services for entities other than their own employer must be licensed as a tax service agent ("TSA"). With the GDT's issuance of Notification No. 17509 GDT on 18 October 2016 advising that TSA licenses had been issued to 34 companies, this requirement is now being enforced.

  For taxpayers, this means that they may continue to file their own monthly and annual returns and represent themselves at the GDT. However, if they hire outside tax service assistance, a licensed TSA must be engaged, and they must provide a written power of attorney for the TSA to act as their tax representative.

  As of 1 January 2017, individuals or companies that do not have a TSA license are not allowed to provide tax services, or act as a taxpayer representative. Those found to be in breach of this provision will be penalised and taxpayers who engage unlicensed TSAs will be subject to a fine of KHR 5 million.

- **Tax Audits**

  Taxpayers may be subject to tax audits at the discretion of the GDT. These may be conducted up to 10 years after the initial filing of a tax return.

  There are three kinds of tax audits:

  1. Desk audit: This level of control is designed to verify the accuracy of declared information by cross-checking it with the tax return or other information requested by the tax administration.
  2. Limited audit: This audit is more extensive. The tax auditors will use all available resources, including visits to the taxpayer's place of business, to verify the accuracy of the taxpayer's returns.
  3. Comprehensive tax audit: In practice, this is the same as a limited audit, only more extensive and thorough. The important distinction between a comprehensive audit and a limited audit is that once the audit has been completed, and any resulting tax reassessments have been paid, all tax years covered by the audit will be closed.

Although a comprehensive tax audit is normally final, if the tax administration has reason to believe a taxpayer has committed tax evasion or fraud, they may re-open the case. Taxpayers achieving Gold or Silver Compliance Status are exempt from desk audits, and may be subject to other audits on a less frequent basis.

## A. TAXES PAYABLE

## CORPORATE INCOME TAX (CIT)/TAX ON INCOME (TOI)

### Scope of taxation

All foreign companies registered in Cambodia fall under the self-declaration regime. Unless otherwise noted, the content of this publication applies to self-declaration regime taxpayers only.

### Residency and source of income

Resident taxpayers are subject to tax on their worldwide income while non-residents are taxed on Cambodian-sourced income only. Residents earning foreign-sourced income can receive credits for foreign taxes paid, as Cambodia unilaterally accepts foreign tax credits.

Resident taxpayers include companies organised, managed or having their principal place of business in Cambodia. A non-Cambodian national will become a resident if they have their residence or principal place of abode in Cambodia, or are present in Cambodia for more than 182 days in any 12-month period ending in the current tax year.

A permanent establishment (PE) is subject to tax on its Cambodian-sourced income only.

### Tax rates

| Type of supply | Rate |
|---|---|
| Standard rate | 20% |
| Oil and gas, and certain mineral exploitation activities | 30% |
| General risk (non-life) insurance activities | 5% (on gross premium income) |
| Resident individuals | 0% to 20% |
| Tax exemption (tax holiday) | 0% |

### Prepayments

A monthly prepayment of TOI ("PTOI"), equal to 1% of monthly turnover including all taxes except VAT, must be paid by the 20th day of the following month. The PTOI can be offset against the annual TOI liability or the minimum tax liability. If the PTOI exceeds the annual TOI liability or minimum tax liability, the excess PTOI can be carried forward indefinitely to offset against a future TOI liability.

If a taxpayer is not subject to minimum tax, monthly PTOI must still be made. But unused PTOI from prior years can be offset against the PTOI due in the current tax year and there may not be any physical payment required.

A company that has been granted a tax holiday, and is therefore subject to 0% TOI is not required to pay PTOI on turnover derived from the project that has been granted tax incentives. But the entity must still prepare the TOI return and submit it to the tax authority.

On 29 January 2020, The Ministry of Economy and Finance (MEF) has issued Prakas No. 098 MEF.Prk to redefine the PTOI in a way that 1% PTOI is applied to income from both principal business activities and subsidiary income. Subsidiary income refers to rental income from immovable property, immovable property given for free use to a third party (the income is at market price), immovable property given for free use to staff (the income is at market price) unless it is in accordance with the labour law, royalty, sale of scrap, rental of business equipment, income from packaging.



**Tax holidays**

Foreign investors seeking to make significant investments into Cambodia outside of the sectors restricted by law may apply to the Council for the Development of Cambodia ("CDC") for QIP status in order to become entitled to a tax holiday. The tax holiday period is composed of:

1. the trigger period, which begins upon issuance of the Final Registration Certificate and ends either upon the first year of profit or three years after revenue is first derived;
2. a three-year period; and
3. the priority period, which is between 0 and 3 years, depending on the industry and level of investment.

Most QIP companies benefit from a tax holiday during which investment activity income is exempt from both TOI and PTOI. However, as later at distribution, any income generated during this time will be subject to the additional dividend distribution tax ("ADDT"), which taxes income not previously subject to TOI at the usual rate of 20%.

**Calculation of taxable income**

Taxable income is essentially the difference between total taxable revenue, whether from a domestic or foreign source, and deductible expenses incurred to carry on the business, plus other passive income such as interest, royalties and rent.

Taxpayers must prepare an annual TOI return which includes a section for making adjustments to accounting profit to arrive at the taxable profit and tax payable.

**Deductible expenses**

As a general rule, expenses are deductible if they are paid or incurred in a tax year to carry on the business of the taxpayer. There are further provisions which disallow specific types of expenses, as follows:

| Type of expenses | Deductibility |
|---|---|
| Personal expense | Non-deductible |
| Donations and grants (not including charitable contributions) | Non-deductible |
| Tax payments, tax penalties, and interest on penalties | Non-deductible |
| Loss on sale of property between related parties | Non-deductible |
| Expense not related to the business, extravagant expense of little use to the business | Non-deductible |
| Amusement, recreation, or entertainment expense | Non-deductible |
| WHT, TOS, and FBT paid on behalf of recipients | Non-deductible |
| Expense pertaining to previous or subsequent periods | Non-deductible |
| Provisions | Generally non-deductible, with some exceptions |
| Depreciation | Deductible when calculated using the method set out in the tax law |
| Unpaid expense due to unrelated parties | Deductible if it is a genuine liability |
| Unpaid salary | Deductible if paid within 60 days after the end of the tax year |
| Related party expense that is not salary | Deductible if paid within 180 days after the end of the tax year |
| Interest expense | Deduction is limited to an amount equal to 50% of adjusted income without taking into account any interest income or expense, plus the interest income |
| Charitable contribution | Deduction limited to an amount equal to 5% of taxable income, without taking the charitable contribution deduction |

There is a further limitation on the deductibility of interest expenses with regard to related parties. For loans from a related party, the interest rate cannot exceed the market interest rate; while for those from an unrelated party, the allowed interest rate is up to 120% of the market interest rate.

The market interest rate is determined and announced on an annual basis by the GDT and is an average of the interest rates of at least five large commercial banks. For 2019, the market interest rate was 8.35% per annum for USD and 9.44% for KHR.

**Utilisation of losses**

If a company sustains a loss, this can be offset against future income and can be carried forward for up to five years.

The accumulated tax losses can be carried forward if all of the following conditions are met:

- There is no change in the business activities of the entity;
- There is no change in the ownership of the entity;
- The loss is recorded in the tax return that has been submitted to the tax administration within the period of time as specified in the tax provisions; and
- The GDT has not issued a unilateral tax assessment for any of the tax years in question.



## MINIMUM TAX

Minimum Tax ("MT") is a separate and distinct tax from TOI, and is calculated at 1% of annual turnover. Turnover is not defined under the LOT, but is inclusive of all taxes excluding value added tax ("VAT").

A taxpayer will be subject to either TOI or MT, whichever is greater. If only MT is due, this should have already been paid in advance by way of the PTOI payments, which are also calculated at 1% of turnover.

Note that QIPs are not subject to PTOI, but will still be required to pay MT.

Newly-introduced legislation allows for an exemption from MT for all taxpayers maintaining proper accounting records, imposing MT only on taxpayers found to have "improper accounting records".

Prakas 638 details what are considered improper accounting records, and states that a GDT committee will evaluate taxpayers' accounting records based on the criteria detailed in the Prakas. This evaluation will take place every two years. At the time of publication, the committee had not yet been formed. However, the GDT has indicated that taxpayers with audited financial statements, or those having Gold

Compliance Status may be assumed to have proper accounting records.

## VALUE ADDED TAX

### Overview

VAT is applicable on the taxable supply of goods and services. An entity registered under the VAT provisions is required to charge VAT on all sales of taxable supplies (output VAT). Such entities can offset the VAT paid on purchases (input VAT) against their output VAT.

### Scope of application

Taxable supplies are the supply of goods, services or imports for taxable sale or for use in producing taxable supplies. Taxpayers must charge and collect VAT on taxable supplies. The supply of goods includes the transfer of the rights to movable property; meaning all property except land or money.

### Sale of land and buildings

As per Notification No. 1728 dated 9 October 2013, the GDT has confirmed that for the sale of land with buildings, registered taxpayers are required to charge VAT on the building component (but not on the land component).

### Non-taxable goods and services

In order to promote the provision of certain key public services, specific taxable supplies have been exempted from VAT. The following is a list of non-taxable supplies under the LOT:

- Public postal services
- Hospital, clinic, medical and dental services, and the sale of medical and dental goods incidental to the performance of such services
- Transportation of passengers by a wholly state-owned public transportation system
- Insurance services
- Primary financial services
- Imported articles for personal use that are exempt from customs duty
- Non-profit activities in the public interest that have been recognised by the Ministry of Economy and Finance
- Education services
- The supply of electricity and clean water
- Unprocessed agricultural products
- Services related to the collection and/or cleaning of solid or liquid waste

If a business makes non-taxable supplies only, it will not be able to claim any input VAT; the VAT on purchases must be borne as a cost. If a business makes a mix of non-taxable and taxable supplies, it will be able to claim a portion of input VAT based on the portion of taxable supplies.

### Registration

Compulsory VAT registration applies to any self-declaration taxpayer who makes taxable supplies. Further, all companies, import/export businesses and QIPs must register for VAT. Other taxpayers are required to register as VAT taxpayers if they meet certain turnover thresholds. Other businesses not compelled to register by law may register voluntarily.

### Tax rates

Taxable supplies made in or imported into Cambodia are subject to VAT at one of two rates:

| Type of supply | Rate |
|---|---|
| Standard rate | 10% |
| Zero-rated supplies, which include:<br>• Exported goods<br>• Exported services<br>• The supply of international transportation services<br>• Services in support of the supply of international transportation<br>• Other specific sectors, including supporting industries that supply the export-oriented garment, textile and footwear industries; the supply of rice; and the import and supply of certain goods for agricultural purposes. | 0% |

Zero-rated supplies are not the same as non-taxable supplies, as it is possible for entities providing zero-rated supplies to claim input VAT credit.

**Administration**

Taxpayers must file VAT returns to declare and pay VAT each month. Payment must be made by the 20th day of the following month or the 25th day of the following month by e-filing. In the event that the deadline falls on a Saturday, Sunday, or public holiday, it will be extended to the next working day. VAT on imports is paid to the General Department of Customs and Excise at the time of import.

If the taxpayer's input VAT exceeds the output VAT for a period of three months or longer, the taxpayer can then apply for a refund from the tax authorities.

There are detailed rules about invoicing and record-keeping obligations. There are also specific requirements for invoices based on whether the invoice is issued to a VAT-registered taxpayer or a non-registered person. The GDT will seek to deny expense deductions or input VAT claims if they are not supported by proper VAT invoices.

## Specific Tax on Certain Merchandise and Services

**Overview**

Specific Tax on Certain Merchandise and Services (ST) is a form of excise tax imposed on the importation or domestic production and supply of certain goods and services. Tax is levied once only: for imports, this is at the inward checkpoint, and for domestic goods, it is upon the sale from the factory

if the products are locally produced.

We expect that, in light of the reduction in import duty tariffs as noted in the Customs Duty section, greater emphasis will be placed on excise tax in the future. Accordingly, it is likely that there will be a number of changes to the calculation and collection of ST.

**Tax rates**

The ST amount due is calculated by applying the applicable rate to the applicable tax base, as per the table below (not an exhaustive list):

| Goods/services | Rate |
|---|---|
| Local and international air tickets sold in Cambodia | 10% |
| Entertainment services | 10% |
| Locally produced or imported cigarettes and cigars (excluding beer) | 20% |
| Locally produced or imported beer | 30% |
| Certain locally produced carbonated and similar non-alcoholic beverages | 10% |
| All types of locally produced or imported wine products | 35% |
| Lubricant, brake oil, raw material for producing engine oil (imported) | 10% |
| Local and international telecommunications services | 3% |

**Basis of taxation**

For locally supplied goods, ST is calculated on the "ex-factory selling price", which is defined as 90% of the selling price excluding VAT and ST. For locally supplied services, the tax base is the invoice price of the services supplied.

For imported goods, ST is calculated inclusive of customs duty and the cost, insurance and CIF value, excluding VAT.

## CUSTOMS DUTY

**Import duties**

There are a number of goods on which import duty applies when they are brought into Cambodia, with some exemptions, including goods temporarily imported into Cambodia, goods for personal use, goods exempted by international treaty, humanitarian aid, and imports for use by a QIP. Exemptions from import duty may also be granted by the CDC for specific industries.

Customs duty is levied on goods entering Cambodia at rates ranging from 0% to 35%. Cambodia is part of ASEAN and therefore party to the ASEAN Free Trade Agreement and Common Effective Preferential Tariff scheme. This requires ASEAN Member States to offer preferential tariff rates on a broad range of products originating from other ASEAN countries.

Accordingly, the customs duty rates in Cambodia have been reduced so that now many goods coming from other ASEAN countries have a maximum 5% import duty imposed.

**Export duties**

There are no export duties other than on a limited list of restricted products at rates of 2% to 10% as follows:

- Natural rubber
- Uncut precious gemstones
- Processed wood
- Fish, crustaceans, mollusks and other aquatic products.

## OTHER TAXES



### Tax on property rental

House and land rental tax is set at 10% of gross rental income from the lease of buildings and land, when the lessor is an individual.

### Fiscal stamp tax

A fiscal stamp tax is due on advertising leaflets and banners, levied at different bands of rates, based on the dimensions of the advertising item, the number of letters and whether the lettering is Khmer only or includes a foreign language.

### Patent tax

Patent tax is a registration tax that is paid by all business enterprises upon establishment of a business and by 31 March on an annual basis thereafter. Patent tax ranges from KHR 400,000 to KHR 5,000,000 (approximately USD 100 to USD 1,250) depending on the taxpayer's classification, and must be paid for each separate business activity, and for each branch located in a different province.

### Registration tax

Also referred to as seal tax or stamp duty, registration tax is a tax imposed on the transfer of ownership or possession of certain types of property.

It is payable by the person who receives the ownership and is applied to the transfer value at rates as follows:

| Applied on | Tax rate |
|---|---|
| Transfer of ownership of all immovable property, including buildings and other structures, and land, which also includes the contribution of immovable property as capital in kind into a Cambodian company | 4% |
| Transfer of ownership of all means of transportation, including passenger vehicles | 4% |
| Transfer of ownership or possession of shares in a Cambodian company | 0.1% |
| Registration of "government contracts related to the supply of goods or services" | 0.1% |
| Certain legal documents | KHR 1 million |

There are certain exemptions and relief available on the transfer of immovable property between relatives.

The tax base used to calculate the registration tax on the transfer of immovable property is the value set by the Ministry of Economy and Finance for all cities and provinces in Cambodia.

### Unused land tax

Land is determined to be unused if it does not have any structure on it or there is a structure, but it is unused. Unused land tax is levied on an annual basis at a rate of 2% on the market value per square meter, with the market value determined by the Unused Land Valuation Commission. The unused land tax is paid annually by the landowner. Since the introduction of property tax, it was understood that ifproperty tax is paid on a piece of land, then unused land tax no longer applies. This was codified under Article 12 of the 2015 Law on Financial Management dated 18 December 2014.

### Accommodation tax

Accommodation tax ("AT") is an indirect tax imposed on the supply of accommodation services at a rate of 2%. AT must be charged by hotels, hotel apartments, motels, lodges, guesthouses, campgrounds and similar, but does not include the rental of houses or apartments.

### Public lighting tax

Public lighting tax ("PLT") is an indirect tax imposed on sales of alcohol and cigarettes at all stages of supply, on both imports and domestically-produced goods, at a rate of 3%. All types of cigarettes, including e-cigarettes, and alcohol are subject to PLT, including beer, grape wine and spirits, with the exception of palm wine. In late 2017, the method of calculating PLT was amended such that for importers and producers the tax base remains the selling price, but for distributors, the tax base was reduced to 20% of the selling price.

### Property tax

Property tax is a direct tax imposed on the value of immovable property, including land and buildings, on property valued above KHR 100 million (approximately USD 25,000) at a rate of 0.1%. The property value is as per the valuation issued by the Property Evaluation Commission.

Property taxpayers may be individuals or companies. Owners, possessors or "final beneficiaries" of immovable property may be liable for the property tax. A final beneficiary includes those with the right to use the property, and so includes long-term lessees.

### Capital gains tax

Effective 1 January 2022 and possibly subject to delay until 1 January 2024 pending announcement from the GDT, capital gains tax will be levied at a flat 20% rate on income from the sale or transfer of taxable capital, less allowed deductions. The tax applies to resident individuals and non-resident individuals and legal entities. Taxable capital includes:

- Immovable property, including land, buildings, and other constructions on land;
- Investment assets, including shares, bonds, and other securities issued by private companies;

- Lease agreements, including subleases;
- Goodwill, including licences, customer lists, and brand names;
- Intellectual property, including patents, literary and artistic works, logos, and pictures and drawings used for commercial purposes; and
- Foreign currency, including any currency other than KHR.

Regarding deductions, taxpayers are generally required to use the actual expense method to calculate the capital gain. However, with respect to immovable property, taxpayers may opt to use the actual expenses method or a determination-based deduction equal to 80% of income received without having to provide supporting documentation for expenses. Where a capital gain subject to tax is made, a prescribed return is required to be filed within three months, with payment.



**Administration**

| Type of tax | Filing and payment date |
|---|---|
| Tax on income | TOI must be paid and filed within 3 months of the end of the tax year, which is normally 31 December unless an application to amend the tax year is approved. |
| Prepayment of tax on income | PTOI must be paid and filed by the 20th of the following month or the 25th of the following month for e-filing. |
| Minimum tax | MT must be paid at the same time the annual TOI return is due, that is, 3 months after the end of the tax year. |
| Withholding tax | WHT must be paid to the GDT by the 20th of the following the month or the 25th of the following month for e-filing in which the payment is made or accrued. |
| Additional dividend distribution tax | ADDT must be paid and declared on the PTOI return, by the 20th of the following the month or the 25th of the following month for e-filing the dividend was paid out. |
| Value Added Tax | VAT is to be paid on the 20th of the following month or the 25th of the following month for e-filing for the VAT liabilities accrued during the previous month. VAT on imported goods is collected by the customs administration at the time of import. |
| Tax on salary | TOS and FBT are deducted by the employer and remitted to the GDT by the 20th of the month following the month that the salary and fringe benefits were provided to the employee. |
| Specific tax on certain merchandise and services | ST on domestic sales must be paid and declared on the PTOI return, by the 20th of the following month or the 25th of the following month for e-filing on the time of supply.<br>ST on imported goods is due at the time of import, and is collected by the customs administration along with VAT and customs duty. |
| Customs duty | Customs duty is collected by the customs administration at the time of import. |
| Patent tax | Patent tax is payable by 31st March each year. |
| Fiscal stamp tax | Signboard tax is payable by 31st March each year. |
| Registration tax | Registration tax is due within 3 months of the transfer |
| Unused land tax | Unused land tax is due on an annual basis by 30 September each year. |
| Accommodation tax | AT is declared in the PTOI return, due with payment by the 20th of the month following the time of supply. |
| Public lighting tax | PLT is declared in the PTOI return, due with payment by the 20th of the month following supply. |
| Property tax | Property tax is due on an annual basis by 30th September each year. |
| Capital gains tax | Capital gains tax is due when there is sale of property effective 1 January 2022 and may be delayed until 1 January 2024 pending announcement from the GDT. |

## B. DETERMINATION OF TAXABLE INCOME

### TAX DEPRECIATION

Under Cambodian tax law, depreciation rates and methods are specified based on the asset class, and therefore, only the depreciation expense allowed under the rate for the asset's particular class may be deducted in calculating taxable income.

| | Asset | Depreciation rate | Depreciation method |
|---|---|---|---|
| **Intangible assets** | Having no specific useful life | 10% | Straight Line |
| | Having a specific useful life | Over the useful life of the property | Straight Line |
| **Tangible assets** | Class 1: Buildings and basic components | 5% | Straight Line |
| | Class 2: Computers, electronic information systems, data handling | 50% | Declining Balance |
| | Class 3: Automobiles, trucks, office furniture and equipment | 25% | Declining Balance |
| | Class 4: All other tangible assets | 20% | Declining Balance |

## SPECIAL DEPRECIATION

A QIP is entitled to 40% special depreciation of assets in the first year of purchase or the first year the assets are used. Special depreciation only applies to assets used in 'manufacturing and processing' (not defined) and only if the taxpayer has elected not to use a tax holiday. A claw-back provision exists for assets held for less than four years.

## C. RELATED PARTY TRANSACTIONS



**Transfer pricing**

In October 2017 the Royal Government issued Prakas 986 concerning the allocation of income and expense between related parties. This Prakas (the "TP Prakas") is consistent with OECD guidelines, and requires that transactions between related parties should be at arm's length values, as determined under one of the five acceptable methods listed in the TP Prakas. The five acceptable methods are:

- Comparable Uncontrolled Price
- Resale Price Method
- Cost Plus Method
- Transactional Net Margin Method
- Profit Split Method.

The TP Prakas also requires that taxpayers having related party transactions have a transfer pricing report with the following content:

- Corporate Background – including a description of the company, the corporate and ownership structure, the nature of the business, and summary financial information;
- Business Analysis – including the competitive environment, the market and its trends, added value, and unique selling points;
- Overview of Related Party Transactions – describing the nature and volume of such transactions and the pricing method used;
- Functional Analysis – describing the activities performed by each party to the related party transactions;
- Economic Analysis – including a discussion and justification of the appropriate transfer pricing method, and an analysis of comparable prices for the related party transactions;
- Conclusion – including an identification of the acceptable range of "arm's length" prices.

Although not stated in the TP Prakas, the GDT has confirmed that the transfer pricing report must be available at the time the 2018 TOI return is filed.

## D. WITHHOLDING TAX

**Scope of withholding taxes**

Withholding Tax (WHT) needs to be withheld on certain payments (in cash or in kind) made by residents. In practice, only self-declaration regime taxpayers are required to withhold tax. The withheld tax constitutes a final tax.

The following types of payments are subject to withholding tax:

*Payments to residents:*

- Rental: 10%
- Services: 15% (except payments to a registered taxpayer supported by proper tax invoices)
- Royalties: 15%
- Interest: 15% (except payments to a bank in Cambodia)
- Interest on fixed-term deposits: 6% (for payments from a bank in Cambodia only)
- Interest on non-fixed term savings deposits: 4% (for payments from a bank in Cambodia only).

*Payments to non-residents:*

A resident taxpayer including permanent establishment making payment of Cambodian-sourced income to a non-resident is required to withhold 14% WHT. This withholding tax does not apply to payment of premium for reinsurance of property or other risks in Cambodia.

Withholding tax is due when the expense is paid. An expense is considered paid when it is recorded in the accounting records as an expense or when it is physically paid. Withholding tax must be remitted by the 20th day of the following month.

On 5 April 2019, the Ministry of Economy and Finance issued Prakas No. 372 to replace Prakas No. 518 MEF.BrK of 2017 on the guidelines for implementation of withholding tax on dividend distributions as stated in the new Articles 26 and 33 of the Law on Taxation. Notable points of the new Prakas:

1. The conversion of retained earnings to share capital is not considered a dividend distribution if the conversion is approved by the company's board of directors and the relevant competent authorities.
2. If a resident taxpayer has undistributed retained earnings, any reduction of share capital is considered a dividend distribution and subject to 14% withholding tax on the portion distributed to non-residents. The amount considered distributed dividends subject to withholding is capped at the amount of undistributed retained earnings of the company in the balance sheet.
3. If shareholders sell all or a portion of the shares of a resident company, the retained earnings attributable to the disposed shares are considered a dividend distribution at the time of the share disposal, regardless of whether the retained earnings were previously converted to share capital.

The retained earnings that are subject to withholding tax as noted above will not be subject to withholding tax again when the company distributes retained earnings as dividends to shareholders in future. Prakas No. 518 MEF.BrK is cancelled.

On 29 January 2020, The Ministry of Economy and Finance (MEF) has issued Prakas No. 098 MEF.Prk that became effective on 29 January 2020:

- Withholding Tax (WHT) exemption additionally includes the following transactions:
  - o Software payments to a VAT registered company for shrink-wrap software, site license, downloadable software, and software bundled with computer hardware, provided that a valid VAT invoice is obtained from the VAT registered company;
  - o Service payments for taxi, tuk tuk and motorcycle, worth less than KHR 50,000 (approximately USD 12.5);
  - o Rental payments to a VAT registered company, provided that a valid VAT invoice is obtained from the VAT registered company.
- Non-resident WHT
  - o Among other listed items classified as Cambodian source income, Prakas 098 also includes “gain from financial or investment assets or capital gains from sale of direct shares in a Cambodian enterprise” as Cambodian source income.
  - o The terms “management service” and “technical service”, with regards to Cambodian source income, have also been further defined as follows:
    - The term “management service” refers to all services, which are management in nature, performed to function in the management of business such as recruiting staff, training or managing sale agents; and
    - The term “technical service” refers to all services, which are technical in nature, required to have technical skill or knowledge in the development or creation of inputs in the business such as services in science, physics, medicine, dentistry, pharmacology, legal, hydraulics, physiology, art, education, engineering, architecture, research study, accounting, economy, welfare, nuclear power including consultation services, etc. The term “consultation service” refers to consultations by skilled or professional persons relating to the technical services.

**Deductibility of withholding taxes**

If a taxpayer fails to withhold taxes from suppliers or employees, the taxpayer is not allowed to gross up the base to calculate those taxes. Any withholding taxes borne by the taxpayer are not deductible for TOI purposes.

## E. PERSONAL TAX

Prior to 2020, there was no personal tax in Cambodia. Instead, a monthly salary tax was imposed on individuals who derive income from employment.

However, the Law on Financial Management (LoFM) provides that the progressive Tax on Income rates for physical persons and the monthly Tax on Salary rates for employees can now be set by the Ministry of Economy and Finance through a Sub-Decree giving the Ministry more flexibility with respect to how and when it sets these rates.

Sub-Decree No. 09 dated 13 February 2020 provides the tables of taxable thresholds for the Annual Progressive Tax on Income rates for physical persons as outlined below:

**Progressive Tax on Income rates for physical persons:**

| Annual taxable income (KHR) | Equivalent to USD | Tax rate |
|---|---|---|
| 0 – 16,000,000 | 0 – 4,000 | 0% |
| 16,000,001 – 24,000,000 | 4,000 – 6,000 | 5% |
| 24,000,001 – 102,000,000 | 6,000 – 25,500 | 10% |
| 102,000,001 – 150,000,000 | 25,500 – 37,500 | 15% |
| Over 150,000,000 | 37,500 | 20% |

It should be noted that while the income threshold is updated yet again, there is still no official mechanism or procedure for individual persons to declare their income for the annual ToI yet. We expect the MEF or the GDT to issue instructions on the procedure and forms for this sort of individual income tax when they are ready to implement it.

## TAX ON SALARY

**Overview**

Employers are liable to deduct Tax on Salary (“TOS”) from payments of salaries, wages, and other remuneration made to all employees. Employees that are tax residents of Cambodia are taxed on their worldwide employment income at progressive rates, whereas non-residents are taxed only on their Cambodian sourced employment income at a flat rate.

**Residency**

An individual is considered a resident for tax purposes if they fulfil any one of the following criteria: (i) their residence is in Cambodia; or (ii) their principal place of abode is in Cambodia; or (iii) they are present in Cambodia for more than 182 days in any period of 12 months ending in the current tax year.

**Taxable salary**

Salary as defined by the LOT includes “remunerations, wages, bonuses and overtime, compensations, and fringe benefits which are paid to an employee, or which are paid for the direct or indirect advantage of the employee for the fulfilment of employment activities” and is taxed at TOS rates.

Payments that are exempt from TOS include reimbursements of business expenses incurred by the employee on a work assignment, indemnity payments upon employee dismissal up to a limit, social security contributions, and uniforms and equipment required for the performance of employment duties.

**Deductions**

Deductions for dependent family members reduce the monthly taxable base on which TOS is calculated. A deduction of KHR 150,000 per month (approximately USD 37.50) may be deducted for each minor dependent child under 14, or under 25 and in full-time education, and a deduction for the same amount for one non-working spouse.

**Tax rates**

Non-residents are subject to TOS only on their salary income at a flat rate of 20%.

Residents are taxed at progressive rates effective February 2020 accordance to Sub-Decree No. 09 dated 13 February 2020 as follows:

| Taxable part of the monthly salary | | |
|---|---|---|
| **From – to (KHR)** | **Equivalent to USD** | **Tax rate** |
| 0 – 1,300,000 | 0 – 325 | 0% |
| 1,300,001 – 2,000,000 | 325 – 500 | 5% |
| 2,000,001 – 8,500,000 | 500 – 2,125 | 10% |
| 8,500,001 – 12,500,000 | 2,125 – 3,125 | 15% |
| Over 12,500,000 | 3,125 | 20% |

*Using an exchange rate of KHR4,000:US$1

## FRINGE BENEFITS TAX

Employers may also provide employees with additional cash or in-kind employee benefits, such as home leave air tickets or private use of motor vehicles. These fringe benefits are subject to a flat Fringe Benefit Tax ("FBT") of 20% on the market value of the fringe benefits provided to an employee.

The Ministry of Economy and Finance issued Circular No. 011 on 6 October 2016 which allows for certain benefits provided to all employees to be exempt from FBT. These include items such as meal allowances or transportation allowances.

Although the circular does not specify that this applies only to Cambodian employees, the practice thus far is that it does not apply to expatriate employees. In order to access this exemption, an employer must provide notification to the GDT.

## F. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest[6] (%) | Royalties (%) | Technical fees (%) |
|---|---|---|---|---|
| **Domestic rates** | | | | |
| Companies | 14 | 14 | 14 | |
| Individuals | 14 | 14 | 14 | |
| **Treaty countries:** | | | | |
| Brunei[1] | 10 | 10 | 10 | 14 |
| China[1] | 10 | 10 | 10 | 10 |
| Hong Kong[3] | 10 | 0/10[7] | 10 | 10 |
| Malaysia[4] | 10 | 10 | 10 | 10 |
| Singapore[2] | 10 | 10 | 10 | 10 |
| Thailand[2] | 10 | 10/15[5] | 10 | 10 |
| Vietnam[3] | 10 | 10 | 10 | 10 |

Notes:

1. Effective date: 1 January 2019.
2. Effective date: 1 January 2018.
3. Effective date: 1 January 2020.
4. Effective date: 1 January 2021.
5. The 10% reduced rate applies if the interest is received by any financial institution (including an insurance company).
6. Certain treaties provide for an exemption for certain types of interest (not considered in this column), e.g. interest paid to the state, local authorities, the central bank, export credit institutions or in relation to sales on credit.
7. A 0% rate applies if the beneficial owner of the interest is the Hong Kong SAR Government, the Hong Kong Monetary Authority, the Exchange Fund, or a financial establishment appointed by the Hong Kong SAR Government and mutually agreed upon by the competent authorities of the contracting parties. For all other cases, a 10% rate applies.

# CAMEROON

## CORRESPONDENT FIRM

| City | Name | Contact Information |
|---|---|---|
| Douala / Buea | Christopher Awungjia | +237 676548777<br>+237 696859024<br>cawungjia@acncoaccountants.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Cameroon |

| | |
|---|---|
| Capital: | Yaoundé |
| Main languages: | English, French |
| Population: | 27.77 million (2022 estimate) |
| Monetary unit: | Central African CFA franc (XAF) |
| Internet domain: | .cm |
| Int. dialling code: | +237 |



## KEY TAX POINTS

- Cameroon operates a declarative tax system in which the taxpayer declares and pays monthly tax collections to the taxation authorities. False declarations are punishable by penalties and interest on late payments.
- In Cameroon, there are two types of income taxes:
  - o Income tax on individuals;
  - o Income tax on entities.
- There is a tax on turnover, borne by the final consumer known as the value added tax.

## A. TAXES PAYABLE

### COMPANY TAX

Income tax in Cameroon is imposed on undertakings deemed to be operating in Cameroon, which are the following:

- Undertakings headquartered in Cameroon or with an effective management office in Cameroon;
- Undertakings that have a permanent establishment in Cameroon;
- Undertakings that have a dependent representative in Cameroon.

The profits of undertakings that do not fulfil the conditions referred to above are taxed in Cameroon if they carry out activities that form a full business cycle in Cameroon.

**Tax rates**

The regular corporate income tax rate is 30% (plus a 10% additional council tax) but for medium-sized companies with a turnover of less than or equal to XAF 3 billion the rate of the income tax is reduced to 28% applicable as from 1 January 2021 (article 17bis PFL). For companies operating under the real earnings tax regime, the minimum tax payable is 2% (plus 10% additional council tax) of monthly gross sales (turnover). The minimum tax payable is higher for companies under the simplified tax regime (3.3% for non-importing traders, and 5.5% for producers, service providers and importation traders). The minimum tax is creditable against corporate tax due for the current financial year.

- The annual summary declaration of the income of non-professional persons must be made no later than 30 June at the tax centre of their place of residence. (or the declaration of the remaining professionals due by 15 March);
- Companies falling under the real scheme or belonging to an approved management centre which recruit a young person under 35 years of age as part of a first job are exempt from tax and employer charges on the salaries paid to these young people;
- Companies that precede the admission of their ordinary shares to the Central African Stock Exchange benefit from the application of a reduced corporate tax rate of 25% and reduced deposit rate of 1.5%. Companies that issue securities on the BVMAC bond markets benefit from a reduced CIT rate of 25%; companies that make a public offering and admit and exchange their equity and debt securities listed on BVMAC benefit from a reduced IS rate of 25%;
- Companies in the agricultural sector are exempt from VAT.

Innovative start-ups in the field of information and communication techniques:

- Tax exemption during the incubation period (5 years maximum);
- At the end of the incubation phase, exempt from the business licence, employer tax burden on wages, reduced IS rate of 15%, 50% allowance on the IS deposit (5 years);
- For more than 5 years: application of the common law tax regime.

Introduction of the obligation for investors to use raw materials produced in an economic disaster area in order to benefit from tax incentives granted for the rehabilitation of the said area. Introduction of a tax credit of 30% for enterprises that invest in the reconstruction of their production facilities in an economic disaster area. The tax credit is capped at XAF 100 million and chargeable to taxable income for the three years following the year of investment, by taxpayers approved by the tax authorities. (Finance Law 2019).

The 2018 Finance law enshrines the option, already provided by the 2017 Finance Law Circular, between the income tax instalment on turnover and that on the gross margin (article 21 of the CGTC). The tax rate on gross margin being 14% while the rates on turnover remain the same as above.

### CAPITAL GAINS TAX

Capital gains include gains on the sale of real estate, corporate shares and business assets.

With respect to the Finance law 2019, there is a reduction of the withholding tax due on capital gains earned on the disposal of real property from 10% to 5%. Also, interest on savings not exceeding XAF 50 million is exempt.

### BRANCH PROFITS TAX

Profits realised in Cameroon by branches of foreign companies are presumed to be distributed and are consequently subject to a branch withholding tax of 16.5% on after-tax income. This rate is subject to reduction by a double tax treaty.

## SPECIAL INCOME TAX (SIT)

Subject to the application of a double tax treaty, Special Income Tax (SIT) shall be applicable to remunerations paid by Cameroonian companies to foreign companies at the general rate of 15%, average rate of 10% and reduced rate of 3%:

- The general rate of 15% applies to remunerations paid abroad in respect of certain services provided and used in Cameroon;
- The average rate of 10% applies to remunerations for one-time supplies of services paid to non-resident companies having a PE in Cameroon that have waived the obligation to file a tax return;
- The reduced rate of 3% applies to remunerations for all types of services provided to oil companies during the research and development phase, to remunerations paid by maritime transport companies governed by Cameroonian law for the rental and chattering of ships, the rental of space on foreign ships and for commissions paid to port agents abroad, and commissions paid to money transfer agencies abroad after deduction of the share due local partners.

**Exemption from SIT**

Holders of petroleum contracts and their subcontractors shall be exempted from the Special Income Tax, in the research and development phase, with respect to remunerations for assistance, rental of equipment and material, and other services rendered to them in connection with oil operations by foreign providers.

Notwithstanding the provisions stated above, holders of petroleum contracts and their subcontractors in the research and development phase may opt for an abated rate of special income tax of 3% if they are not compliant with the required conditions (i.e. the contractors should offer their services at actual market prices and not have a PE in Cameroon).

## EXPORT TAX

- Exports are no longer zero-rated as before though certain essential goods are still exempt;
- Banana, industrial products manufactured in Cameroon, and domestic products of animal, plant or mineral origin produced or processed in Cameroon as finished products are exempt from export duty.
- Imposition of export duties at a rate of 2% on cash crops (cotton, rubber, palm oil, banana, beans and pineapple) previously excluded from this levy by the 2017 Finance law (now tax free);
- 1% Export duty on semi-finished products;
- Imposition of export duties at a rate of 10% on the following local products: Gum arabic, rice, palm oil, chilli, kola nut, millet, sorghum, pepper, vegetable (Gnetum Africanum / Eru Ekok);
- Taxation of timber exported in logs at a rate of 35% of the taxable value of each gasoline and no longer at a rate of 30% of the FOB value of each gasoline.
- There is an imposition on the exit duties of the worked and semi-worked timber of tariff headings 44.06, 44.07 and 44.09 at a rate of 10% of the FOB value of their volume;
- Also, an imposition of the import of arms on excise duties except for the one imposed by the general government as well as customs, software, licenses, royalties regardless of the means of entry into Cameroon.

There is however an abolition of customs duties at the reduced rate of 5% on imports of capital goods intended for investment.

## SALES TAX / VALUE ADDED TAX (VAT)

The effective standard VAT rate is 19.25% (a 17.25% VAT and 10% surcharge). All corporate businesses with taxable turnover are required to register. Non-resident VAT payers are required to appoint a solvent resident representative to be jointly responsible for the payment of VAT and the discharge of other VAT obligations.

E-commerce platform operators are henceforth required to collect VAT on their sales and pay on behalf of their suppliers.

VAT returns (and any tax payable) are due by the 15th of each month. Late payment incurs interest penalties at a rate of 1.5% per month up to a maximum of 50% of the principal liability. Fines are levied for various omissions in discharging VAT obligations. For taxable transactions of at least XAF 100,000, the right to deduction may be authorised only where they have been carried out through bank transfers.

There is a list of basic necessities that are exempted from VAT in the general tax code, also the following are exempted from VAT: real estate transactions of all kinds realised by non-professionals, consumption of water and electricity by households when these do not exceed 20 m³ per month for water and 220kw per month for electricity. Contracts and commissions on life insurance products with a savings component are also exempt from VAT.

It should be noted that only companies under the actual regime with a turnover equal to or above XAF 50 million are eligible for invoicing VAT in Cameroon.

- Production companies in the agriculture, livestock and fishing sectors benefit from tax advantages such as: exemption from VAT on the purchase of pesticides, fertilizers and inputs, as well as equipment and materials for agriculture, livestock and fishing;
- Material services that can be located in Cameroon are taxable in Cameroon at the general rate provided for in Article 142 of the CGJ regardless of the place of establishment of the lessee (article 130 para. 2 Finance Law);
- Intangible services are taxable at the place of establishment or residence of the policyholder (article 130 para. 3 Finance Law);
- Notwithstanding the provisions of para. 3 above, intangible services are taxable in Cameroon at the general rate provided for in article 142 of the CGJ, when the lessee is not subject to VAT (article 130 Finance Law).

## NOT-FOR-PROFIT ORGANISATIONS

Subject to the new finance law 2022, Not-for-Profit Organisations (NPO) shall be liable to:

- VAT at the rate of 19.25% on their acquisition of goods and services;
- Registration and stamp duties;
- Income tax at a preferential rate of 16.5% on the share of commercial activities carried out by the NPO. A monthly instalment of 1.1% on the turnover of commercial activities shall be paid to the tax centre under which they fall;
- The withholding taxes for which they are legally liable.

**Other obligations**

NPOs shall also be subject to the following:

- Monthly declaration of the taxes for which they are liable;
- Annual DSF declaration submitted in accordance with the OHADA accounting system by 15 March of each year;
- Production at the end of each fiscal year of a detailed statement of all amounts paid to third parties during the past fiscal year.



## LOCAL TAXES

No local taxes are payable in respect of income of companies.

## OTHER TAXES

**Business licence tax**

New enterprises shall be exempt from the payment of the business licence tax during the first year of operation. After this first year the enterprises shall be liable to a business licence tax. The business licence tax is paid annually and shall be calculated by applying a rate to the turnover of the previous financial year-ended as follows:

- 0.159% on the turnover of large companies (those under the jurisdiction of the large taxpayers unit), for a minimum contribution of XAF 5 million and a maximum contribution of XAF 2.5 billion.
- 0.283% on the turnover of medium-sized companies (those under the jurisdiction of the Medium Size Taxpayers Centre, Specialised Tax Centre, and Specialised Tax Centre for Liberal Professions and Real Estate), for a minimum contribution of XAF 141,500 and a maximum contribution of XAF 4.5 million.
- 0.494% on the turnover of small-sized companies (those under the jurisdiction of the divisional tax centres), for a minimum contribution of XAF 50,000 and a maximum contribution of XAF 140,000.

## FRINGE BENEFITS TAX (FBT)

Fringe benefits are considered to be a part of the salary paid to an employee: they are subject to social security and personal income taxes. Taxable fringe benefits are evaluated on the basis of their market value and there is a maximum amount that can be taxed.

## REGISTRATION DUTY

Registration duty on rent contract for commercial use is 10% of annual rent and 5% of annual rent when it is for residence use. Government Contracts are 4% of the contract amount.

## REAL ESTATE WITHHOLDING TAX

Withholding tax on rent is 15% of annual rent retained and paid by the tenant.

## B. DETERMINATION OF TAXABLE INCOME

General - Taxable income is based on financial statements prepared according to generally accepted accounting principles and the OHADA (Organisation for the Harmonization of Business Law in French-speaking Africa) standard statements.

Business expenses are generally deductible unless specifically excluded by law or by the provisions of an international convention. Expenses that are not deductible include the following:

- Head office overhead, research costs and technical, financial and administrative assistance fees paid to residents or non-residents that exceed any of the following:
  - 5% of taxable profits for ordinary law companies before their deduction;
  - 2.5% of turnover for public works projects;
  - 7.5% of turnover for design and engineering services.
- Royalties from patents, brands, models or designs paid to a non-CEMAC corporation participating directly or indirectly in the management of, or owning shares in, the Cameroonian corporation are deductible up to an overall limit of 2.5% of taxable income before the deduction of the expenses.
- Rent expense for movable equipment paid to a shareholder that manages the company in fact or by right and holds, directly or indirectly, more than 10% of the capital.
- Losses related to bad debts that do not comply with the enforcement measures provided for in the OHADA Uniform Act relating to the organization of simplified procedures for collection and enforcement.
- Liberalities, gifts and subsidies exceeding 0.5% of the turnover of research, philanthropic, development, educational, sports, scientific, social and family institutions or bodies.
- Gifts and subsidies exceeding 5% of turnover of clubs participating in official national competitions and the bodies in charge of organizing these competitions.
- Interest paid to shareholders in excess of the central bank annual rate plus two points. Under the 2014 Financial Law, the deductibility of interest paid to shareholders owning directly or indirectly at least 25% of the capital or voting rights of the company is subject to the following two cumulative conditions:
  - o Interest paid may not exceed one and one-half of the amount of real capital for all shareholders;
  - o Interest paid to such affiliates may not exceed 25% of the income before income tax and deduction of such interest and depreciation.
- Commissions and brokerage fees for services on behalf of companies located in Cameroon that exceed 5% of purchased imports and sales of exports.
- Remuneration granted to wage earners that are excessive in comparison to the services rendered and that do not correspond to effective work and conventional norms.

- Amounts set aside for self-insurance.
- Certain specific charges (such as contributions other than those for retirement paid to a foreign social security organization, which are deductible up to a limit of 15%, and premium insurance paid to companies located in Cameroon for employees' retirement indemnities), gifts, subsidies and penalties (to some extent).
- Expenses paid in cash of XAF 500,000 or more. The XAF 500,000 limit is assessed with respect to the total amount of specific expenses recorded in the expenditures account. Accordingly, splitting an expense worth XAF 500,000 into two equal parts of XAF 250,000 each and paying them in cash does not result in the deductibility of the expenses. Under the 2014 Financial Law, all reimbursements of loan advances to shareholders paid in cash are treated as dividends and are accordingly subject to dividend withholding tax.
- Expenses paid to local suppliers without reference to a Cameroonian tax identification number and without an invoice that complies with the standard requirements for the deductibility of expenses.
- Remuneration paid to liberal professionals in violation of the regulations governing their respective professions.
- Expenses for services and certain purchases paid to natural persons or non-resident legal entities established in territories or states considered to be tax havens.
- Disbursements from tax havens invoiced to local companies by other companies located in or outside tax havens.
- Losses resulting from irregularities, misappropriation or fraud within an enterprise where the irregularities, misappropriation or fraud is directly or indirectly attributable to the directors, shareholders or partners.



## CAPITAL ALLOWANCES

Land and intangible assets, such as goodwill, are not depreciable for tax purposes. Other fixed assets may be depreciated using the straight-line method at rates specified by the tax law. Small equipment and other items that have a value not exceeding XAF 500,000 without tax are directly accounted for as charges and considered deductible expenses.

## DEPRECIATION

The Cameroon General Tax code specifies allowable depreciation rates: any deviation is disallowed for tax purposes.

## STOCK / INVENTORY

Inventory is normally valued at the acquisition cost or at the lower of cost or market value. Cost must be determined on a weighted average cost-price method. The first-in, first-out (FIFO) method is also generally acceptable.

## CAPITAL GAINS AND LOSSES

Capital gains are taxed at a rate of 16.5%, subject to tax treaties. Capital gains realised in Cameroon or abroad from the direct or indirect transfer of stocks, bonds and other capital shares of enterprises located in Cameroon are subject to tax. If the business is totally or partially transferred or discontinued (such as in the event of a merger, liquidation or sale of the business), only ½ of the net capital gain is taxed if the event occurs less than five years after the start-up or purchase of the business, and only ⅓ of the gain is taxed if the event occurs five years or more after the business has begun or been purchased.

Capital gains realised on the Cameroon stock market are exempt from corporate income tax and the tax on movable capital. However, under the 2014 Finance Law, capital gains realised in Cameroon or abroad that are derived from the sale of shares by an individual or corporate entity holding an exploitation or exploration permit for natural resources extracted from the Cameroonian subsoil are subject to income tax on the gains.

## DIVIDENDS

Dividends paid to residents in Cameroon are subject to a 16.5% withholding tax (15% plus the 10% council surtax). Resident recipients must include the gross dividend in taxable income, but they receive a corresponding 16.5% tax credit to prevent double taxation. Dividends paid to non-residents are subject to a 16.5% withholding tax, which is a final tax.

A parent corporation may exclude up to 90% of the dividends received from a 25%-owned subsidiary if the parent company and the subsidiary have their registered office in a Central African Economic and Monetary Community (CEMAC) country (Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon). In this case, however, no withholding tax credit is allowed. Instead, the tax can be offset against any withholding tax due on its own dividend distributions.

## INTEREST DEDUCTIONS

Interest paid to shareholders in excess of the central bank annual rate plus two points. Under the 2014 Financial Law, the deductibility of interest paid to shareholders owning directly or indirectly at least 25% of the capital or voting rights of the company is subject to the following two cumulative conditions:

- Interest paid may not exceed one and one-half of the amount of real capital for all shareholders.
- Interest paid to such affiliates may not exceed 25% of the income before income tax and deduction of such interest and depreciation.

## LOSSES

Losses may be carried forward for four years. Losses attributable to depreciation may be carried forward indefinitely. Losses may not be carried back.

## FOREIGN SOURCED INCOME

Generally, foreign tax credits are not allowed. Foreign-source income is taxable after deduction of any related foreign tax. Bilateral relief is provided under Cameroonian double tax treaties. Non-resident legal entities are taxable only on their Cameroon-sourced income.

## TAX INCENTIVES

The law of 18 April 2013 introduced investment incentives, which are summarized below.

**Installation phase:**

Incentives that are available during the installation phase (five years after the issuance of the approval) include exemption from registration duties, transfer duties, customs duties and VAT for certain items.



**Operational phase:**

Incentives available during the operational phase (10 years for all companies qualifying for the incentives) include exemptions or reductions with respect to minimum tax, corporate tax, customs duties on certain items and other specified taxes and fees.

In the first year of operation, the company is exempt from the tax on the business license. In addition, companies may carry forward losses to the fifth year following the year in which the losses are incurred.

## C. FOREIGN TAX RELIEF

In general, foreign tax credits are not allowed; income of residents and non-residents subject to foreign tax that is not exempt from Cameroonian tax under the territoriality principle is taxable, net of the foreign tax.

The French tax treaty, however, provides a tax credit that corresponds to withholding tax on passive income.

## D. CORPORATE GROUPS

The Cameroon tax code does not provide for taxation of local group companies: each company is evaluated and taxed independently.

## E. RELATED PARTY TRANSACTIONS

In 2012, Article M19bis in Book II of the General Tax Code on Manual of Tax Procedures was introduced to increase the regulation and control of transfer pricing. Under the new rules, if in the course of an accounts audit, the administration has evidence that a company has indirectly transferred profit, it may request that the company provides information and documents with respect to certain items, including the following:

- Relationships between the company and one or more companies or groups established outside Cameroon.
- The pricing method for industrial, commercial or financial operations in which the company engages with the related parties mentioned in the first bullet and justification for this method and the agreed consideration in these operations.
- The activities carried out by the related parties mentioned in the first bullet.
- The tax treatment for the company and related parties mentioned in the first bullet with respect to the operations performed with the related parties.

The 2014 Finance Law requires *"a detailed statement of transactions with companies which control or which are controlled by them up to 25%, in addition to other existing disclosure and documentation requirements."* Companies in the large taxpayer unit must transmit the following information to the tax authorities by 15 March of each year at the same time as the filing of the annual tax return:

- A statement of their shareholdings in other companies if the holdings exceed 25% of the share capital;
- A detailed statement of intergroup transactions.
- TP documentation as per the 2018 Finance law.

Non-compliance with the above deadline after formal notice or the communication of false information or incomplete information exposes the taxpayer to penalties provided for in Article L104 of the CGTC, i.e. the application of a fixed fine that may go up to 50 million FCFA.

The Finance Act for the 2018 financial year strengthens the mechanism to combat indirect transfers of profits by extending the notion of transfer pricing to transactions with unrelated companies established in tax havens. A tax haven within the meaning of Article 8ter of the CGTC is considered to be a State or territory whose income tax rate is less than one-third of that practiced in Cameroon, or considered as non-cooperative in terms of transparency and exchange of information for tax purposes by the international financial institutions or the tax affairs committee of the OECD or the Economic and Social Committee of the European Union. Non-cooperative jurisdiction means any state or territory whose laws and practices are found to be in non-compliance with the transparency and exchange of information standards for tax purposes established by the OECD.

## F. WITHHOLDING TAX

| Description | Rate (%) |
|---|---|
| Dividends | 16.5 (a) |
| Interest | 0/16.5 (b) |
| Rents | 15 |
| Royalties from Patents, Know-how, etc. | 15 |
| Fees for Technical Services, Digital Services and Professional Activities | 15 (c) |
| Specific Payments to Resident Individuals or Companies | 5.5 (d) |
| Branch Remittance Tax | 16.5 |

a) This withholding tax also applies to directors' fees, non-deductible expenses and adjustments of profits following a tax audit. The withholding tax also applies to allowances granted to members of commissions, ad hoc or permanent committees and to members of public, semi-public, regional or local bodies and apply as well to residents and non-residents.

b) Interest on savings of up to XAF 10 million is exempt from withholding tax. Interest on state bonds is exempt from corporate income tax and the tax on movable capital (this tax is withheld at a rate of 16.5% from income on shares and negotiable bonds and from certain other income). The 2014 Finance Law confirms that interest on loans paid to non-resident lenders or creditors is exempt from withholding tax. Special income tax applies to all types of deliveries that are part of public contracts or orders and that are paid for by state, regional or local authorities, public institutions, public corporations or semi-public companies, or that are paid for through external financing. The rate is 15%, which is withheld at source.

c) This withholding tax applies to non-residents. The 2012 Finance Law provides that this tax also applies to "software," which is defined as computer applications and programs relating to the operation or functioning of an enterprise.

d) This withholding tax applies to fees, commissions, emoluments and remuneration for services that are paid to resident individuals or companies. These payments include the following:

- Payments made to persons in the self-employed professions, such as consultants, experts, architects, physicians, auditors in charge of damages, trade intermediaries and salesmen;
- Payments made to magistrates and representatives of the law (attorneys, bailiffs and notaries);
- Payments made to forwarding agents, customs brokers, stevedores, accounting firms and internet service providers.

The withholding tax does not apply to payments made for services related to transport, bank interest, insurance premiums and commissions, air ticket expenses and commissions, and water, electricity and telephone expenses. The 10% surtax applies to the withholding tax rate of 5%, resulting in a total withholding tax rate of 5.5%.

e) Withholding tax on purchases

The following companies shall be subject to advance payment:

- Imports by traders, including those under the flat-rate tax;
- Purchases made by traders from manufacturers, farmers, importers, wholesalers, semi wholesalers, forest exploiters;
- The purchase of oil products by service station operators and commodities by exporters;
- The operations carried out by enterprises without a taxpayer's card.

The advance payment rate shall be fixed at:

- 14% on the gross margin for the purchase of goods with regulated prices;
- 10% of the amount of transactions, for taxpayers not registered with a taxation centre and for taxpayers subject to the flat rate tax;
- 5% of the amount of transactions carried out, for traders subject to the simplified tax system and for taxpayers subject to discharge tax;
- 2% of the amount of transactions, for traders subject to the actual earnings tax system.

## G. EXCHANGE CONTROL

All transfers of funds outside the CEMAC, including loans obtained by resident companies abroad and the solicitation of foreign securities in the CEMAC Zone must be declared and are subject to special control measures for statistical purposes. Transfers of amounts in excess of XAF 5 million must be lodged with an authorised intermediary (i.e. a bank authorised by the Central Bank). Documentation must be submitted to the authorities for currency transfers in settlement of imports in excess of XAF 100 million. Expatriate employees may apply for authorisation to repatriate their net earnings on a regular basis. Any savings accumulated by expatriates may be repatriated upon departure from Cameroon. All foreign direct investment exceeding XAF 100 million is subject to prior notification to the Ministry of Finance and a post notification after realisation.

## H. PERSONAL TAX

| Income tax rates for individuals (XAF) | | |
|---|---|---|
| **Taxable income** | | **Rate** |
| Up to | 2,000,000 | 10% |
| 2,000,001 | 3,000,000 | 15% |
| 3,000,001 | 5,000,000 | 25% |
| Over | 5,000,000 | 35% |

Progressive rates are imposed from 10% to 35%. A surcharge of 10% of the principal tax is also levied on the rates (for additional council tax).

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Domestic rates** | | | |
| Companies | 11/16.5 | 0/5.5/11/16.5 | 5/10/15 |
| Individuals | 16.5 | 0/16.5 | 15 |
| **Treaty countries:**[8] | | | |
| Canada | 10/12/20[1] | 10/20[2] | 10/20[3] |
| Central African Republic | --[5] | --[5] | --[6] |
| Chad | --[5] | --[5] | --[6] |
| Congo | --[5] | --[5] | --[6] |
| Equatorial Guinea | --[5] | --[5] | --[6] |
| France | 15 | 15 | 7.5/15[7] |
| Gabon | --[5] | --[5] | --[6] |
| South Africa | 10/15[4] | 10 | 10 |
| Tunisia | 12 | 15 | 15 |

Notes:
1. The rate for dividends under the treaty is 20%. However, by virtue of a most favoured nation clause (under the Cameroon-South Africa and Cameroon-Tunisia treaty the qualifying dividend and general rates are 10% and 12% respectively) the rate is reduced to 10% if the beneficial owner is a company which holds at least 25% of the capital of the company paying the dividends and 12% in all other cases.
2. The rate for interest under the treaty is 20%. However, by virtue of a most favoured nation clause (under the Cameroon-South Africa treaty the rate is 10%) the rate is reduced to 10%.
3. The rate for royalties under the treaty is 20%. However, by virtue of a most favoured nation clause (under the Cameroon-South Africa treaty the rate is 10%) the rate is reduced to 10%.
4. The 10% reduced rate applies if the beneficial owner is a company which holds at least 25% of the capital of the dividend-paying company.
5. No limitation under the treaty. The domestic WHT rate is applicable.
6. No WHT is imposed if the income is subject to tax in the state of the recipient.
7. The 7.5% rate applies to payments for studies, technical, financial or accounting assistance. The 15% rate applies to other royalties.
8. Next to Cameroon, the CEMAC tax treaty was signed by the Central African Republic, Chad, Congo (Rep.), Equatorial Guinea and Gabon.



# CANADA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Calgary | Erkin Atakhanov | +1 403 375 9955<br>erkin@pkfantares.com |
| Calgary | Ruslan Cebotari | +1 403 375 9955<br>ruslan@pkfantares.com |
| Toronto | Cetin Yurt | +1 403 375 9955<br>cetin@pkfantares.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Canada |
| Capital: | Ottawa |
| Main languages: | English, French |
| Population: | 38 million (2022 estimate) |
| Monetary unit: | Canadian dollar (CAD) |
| Internet domain: | .ca |
| Int. dialling code: | +1 |

## KEY TAX POINTS

- Companies pay federal, provincial, and municipal taxes. The combined federal and provincial or territorial corporate tax rates vary depending upon the province or territory where a corporation conducts business and the nature of its operations.
- There is a 25% branch tax on non-resident companies carrying on business in Canada, payable on notional distributions of branch profits to the foreign head office. The rate of tax is subject to reduction when there is a tax treaty between Canada and the corporation's country of residence.
- The federal government imposes a Goods and Services Tax (GST) of 5% on a wide range of goods and services. (5% GST in Alberta, British Columbia, Manitoba, Northwest Territories, Nunavut, Quebec, Saskatchewan, and Yukon.) Exemptions are provided for basic foods, health care and education. Also zero-rated goods and services are taxable at a 0% rate. However, in some provinces or territories the HST (harmonised sales tax) rate is 13%. In Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island, the HST rate is 15%.
- No provision is made for filing consolidated tax returns for corporate groups. However, loss utilisation among members of a corporate group is often implemented by amalgamation or merger of group members.
- Non-resident withholding tax applies to many types of income paid or credited to non-residents including dividends, interest, royalties, pension payments and rents. The statutory rate of withholding is 25% but this may be reduced or eliminated by treaty provisions.
- Canadian Residents are subject to tax on their worldwide income. Non-residents are subject to tax in Canada on Canadian-sourced employment income and business income only. However, if Canada and the country of residence of the taxpayer have concluded a tax treaty, then the tax rate might be reduced; 50% of the capital gain from the disposal of certain Canadian assets and 100% of the capital gain on disposal of certain property such as resource property or certain life insurance policies.

## A. TAXES PAYABLE

### FEDERAL TAXES AND LEVIES

Legal entities subject to corporate income tax include the following:

- all corporate residents in Canada; and
- non-resident corporations, but only to the extent of income from certain Canadian sources.

The corporate income tax rate depends on the type of income earned, the status of the corporation, and the Canadian province or territory in which the income is earned. The general federal tax rate on corporations is 38%. A 10% rebate applies to the extent the income has been earned in a Canadian province, bringing the federal rate down to 28%. The tax rate on corporate income that is earned in a Canadian province and that does not currently benefit from a preferential tax treatment is further reduced by a general rate reduction of 13. This makes the general rate 15%. Various types of corporate income currently benefit from a preferential treatment and do therefore not qualify for the reduced rate, including Canadian manufacturing and processing income, investment income earned by a Canadian-controlled private corporation (“CCPC”), income from non-renewable natural resource activities and income earned by mutual fund corporations, mortgage investment corporations and investment corporations.

A non-resident company is subject to a 25% branch profits tax on taxable income earned in Canada (after deduction of federal and provincial income tax and after deduction of an allowance for investments in certain types of Canadian property), which may be reduced under a double tax treaty.

The appropriate provincial income tax rate is added to the federal rate (general or reduced) to get the effective combined tax rate. The rates of provincial income tax vary. The following are the combined general federal and provincial tax rates effective 1 January 2022:

| | A | B | C | D | E | F |
|---|---|---|---|---|---|---|
| **Province** | **General rate (%)** | **General reduced rate (%)** | **General Rate Reduction (A-B)** | **General Rate or M&P reduction** | **Manufacturing & Processing M&P rate (%) (15% + D)** | **CCPC active rate (%)** |
| Alberta | 38 | 25 | 13 | 8 | 23 | 11 |
| British Columbia | 40 | 27 | 13 | 12 | 27 | 11 |
| New Brunswick | 42 | 29 | 13 | 14 | 29 | 11.5 |
| Manitoba | 40 | 27 | 13 | 12 | 27 | 9 |
| Northwest Territories | 39.5 | 26.5 | 13 | 11.5 | 26.5 | 11 |
| Newfoundland | 43 | 30 | 13 | 15 | 30 | 12 |
| Nunavut | 40 | 27 | 13 | 12 | 27 | 12 |
| Nova Scotia | 42 | 29 | 13 | 14 | 29 | 11.5 |
| Prince Edward Island | 44 | 31 | 13 | 16 | 31 | 11 |
| Saskatchewan | 40 | 27 | 13 | 10 | 25 | 11 |
| Quebec | 39.5 | 26.5 | 13 | 11.5 | 26.5 | 13 |
| Yukon Territory | 40 | 27 | 13 | 12 | 17.5 | 11 |
| Ontario | 39.5 | 26.5 | 13 | 10 | 25 | 12.2 |

Notes:

- Alberta changed its rate to 8% effective 1 January 2020;
- British Columbia changed its rate to 12% effective 1 January 2018;
- Nova Scotia changed its rate to 12% effective 1 April 2020.

Corporate income taxes exceeding the CAD 3,000 threshold are payable in monthly instalments with the balance due by the end of each month during the tax year or quarterly for some eligible CCPC corporations. Returns must be filed no later than six months after year-end, with no extensions available. For CCPCs that have claimed small business deduction from the previous or current year, the deadline for the tax return filing is three months from the end of the taxable year.

Non-resident corporations, with or without tax liability, need to adhere to the same deadline, which is subject to penalties for failure to meet it.

Generally, a refund will not be issued if the income tax return has not been filed within three years of the end of the year (four years for a Quebec income tax return filed by a non-CCPC).

## INVESTMENT TAX CREDITS (ITC)

Qualified expenditures in respect of scientific research and experimental development (SR&ED) in Canada qualify for a 15% federal ITC. Certain qualifying CCPCs are entitled to a 35% federal ITC on SR&ED up to specified maximums.

The ITCs may be used to offset federal income taxes payable in the current year, the preceding three years, or the 20 succeeding years. CCPCs may qualify to receive a cash refund when ITCs claimed exceed tax payable for the year. Nine provinces (all but Prince Edward Island) and the territories offer provincial or territorial tax credits as an incentive for conducting qualifying SR&ED activities in their jurisdiction. The amount of federal ITC claimed is included in taxable income in the year following the claim. Provincial credits are generally included in taxable income in the year of entitlement.

The acquisition of qualified property for use in Atlantic Canada, the Gaspé Peninsula or prescribed offshore regions (other than qualified resource property) may qualify for a federal ITC of 10%. Qualified property encompasses a wide range of assets related to manufacturing and processing operations as well as assets used in specific industries such as farming, fishing, and logging, as well as in storing grain, harvesting peat, new energy generation and electrical energy processes. The acquisition of qualified resource property used mainly in Atlantic Canada, the Gaspé Peninsula or prescribed offshore regions and used primarily for oil and gas, and mining activities, if acquired after 28 March 2012, and before 1 January 2016 may qualify for a 10% federal ITC.

In 2016, a transitional relief rate applied for certain qualified resource property. This credit is eliminated for assets acquired after 2015. The federal ITC on certain pre-production mining exploration and development expenditures was eliminated for amounts incurred after 2015.

The regional opportunity investment tax credit is a 10% refundable tax credit available to CCPCs that make qualifying investments in eligible geographic areas of Ontario. Eligible properties are those capital properties classified under capital cost allowance class 1 or class 6. Expenditures will include construction or renovating expenses. The tax credit is eligible for expenditures of more than CAD 50,000 and up to CAD 500,000 in a year for investments that became available for use on or after 25 March 2020. This tax credit has temporarily been doubled for the years 2021-2023.



## BRANCH PROFITS TAX

The federal government imposes a branch tax on profits under Part XIV of the Income tax Act of 25% on non-resident corporations carrying on business in Canada. The tax is payable on notional distributions of branch profits to the foreign head office. A tax treaty may reduce the rate of tax and may provide a cumulative exemption amount (e.g., the first CAD 500,000 of income is tax-exempt under Article X (6) of the Canada-US tax treaty).

## GOODS AND SERVICES TAX (GST)

The federal government imposes a goods and services tax (GST) of 5% on a wide range of goods and services. Exemptions are provided for basic foods, health care and education. All businesses providing taxable services or selling taxable goods of more than CAD 30,000 in a single calendar quarter or in the last four consecutive calendar quarters must register for and collect the GST. The GST rate must be applied on all taxable items or services provided by a GST registrant. GST paid on purchases made by a registrant is credited against its GST collections on its GST return. A net credit is refunded.

Except for the three territories and Alberta, all provinces impose a provincial sales tax on a wide variety of goods. The application of sales tax to services will vary depending on the province. General provincial sales tax rates vary from 6% to 10% as described below. The federal government and the provinces of Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island, and Ontario are parties to a sales tax harmonisation agreement. Under the harmonised sales tax (HST) agreement, the participating provinces have ceased to collect provincial sales tax. In its place, the federal government collects HST under the GST rules. The HST is 13% in Ontario and 15% in Newfoundland, Nova Scotia, New Brunswick and in Prince Edward Island. New Brunswick and Newfoundland HST increased from 13% to 15% effective 1 July 2016.

British Columbia, Saskatchewan, Manitoba, and Quebec are not harmonized with the Federal government and have their own Provincial Sales Tax regimes (and independently collect their own Provincial Sales taxes). The rates of Provincial Sales Tax for these provinces are as follows: British Columbia (7%-discussed below), Saskatchewan (6%), Manitoba (7%) and Quebec (9.975% discussed below). In July 2019 the PST rate in Manitoba was reduced from 8% to 7%.

British Columbia was party to the sales tax harmonization agreement, but as a result of a British Columbia referendum in 2011, British Columbia removed the HST and reinstated the former 7% British Columbia provincial sales tax (PST) and 5% GST effective 1 April 2013. In Quebec, the GST and Quebec sales tax (QST) systems are essentially harmonised and administered by Quebec. As of 1 January 2013, QST was increased to 9.975% but was levied on the price before GST. Therefore, the effective rate will remain unchanged at 14.975% (GST of 5% and Quebec sales tax of 9.975%).

## FRINGE BENEFITS TAX (FBT)

The Northwest Territories and the provinces of Newfoundland, Quebec, Ontario, and Manitoba levy a tax on payroll costs to support provincial health care and other programs. Rates and exemptions vary from province to province. The territory of Nunavut levies a payroll tax on high income employees.

The federal government does not impose FBT on employers but requires employer (and employee) contributions to Employment Insurance (EI) and the Canada Pension Plan (CPP) based on payroll costs. Employers are required to remit EI, CPP and income tax with respect to their employees who are in regular and continuous employment in Canada, regardless of whether the employees (or employer) are resident in Canada. This can be reduced by a social security agreement between Canada and the home country. Certain fringe benefits are taxable to employees and are required to be reported on their personal income tax returns.

However, the Quebec government is managing its own provincial income tax, Quebec Pension Plan (QPP), and Quebec Parental Insurance Plan (QPIP). EI for Quebec has increased from 1.18% to 1.2% effective 1 January 2022.

## LOCAL TAXES

Provincial, territorial and municipal governments impose various taxes that need to be confirmed in each situation. These taxes include real property taxes, real property transfer taxes, carbon taxes, business licences and several industry-specific taxes such as mining and petroleum resource taxes, logging tax and hotel tax.

**COVID Pandemic subsidies**

The Canada Emergency Wage Subsidy (“CEWS”), which was introduced in April 2020 in response to the pandemic, provides for a subsidy to qualifying employers for wages paid to employees, depending on the extent of an employer’s revenue reduction. A similar response of Canada Emergency Rent Subsidy (“CERS”) was introduced in December 2020 to help eligible businesses to claim a subsidy of up to 65% of eligible rent expenses. These payments are taxable and qualifying claimants must include them in their taxable business income immediately before the end of the related claim period.

In order to allow more organisations to benefit from the proposed programmes, the federal government has decreased the requirement of revenue loss from 40% to 25%. In addition, the benefit programme expands its reach by letting more companies take part in which capacity and revenue was impacted by public health order. These changes are applied to the qualifying period from 19 December 2021 to 12 February 2022. As for personal benefits, the government reduced restrictions and expanded the capacity of workers.

On 23 October 2021, CEWS and CERS was replaced by the Canada Recovery Sickness Benefit (CRSB) and Canada Recovery Caregiving Benefit (CRCB). CRSB is a programme for employers who are unable to carry on their business for at least 50% of the week or those needing self-isolation due to COVID-19. CRCB is also a program for workers who need to take care of their children or family members under 12 years old due to unavailability of day-care premises during the Covid-19 lockdown. All these programme benefits are available until 7 May 2022.

Furthermore, each province announced additional grants and tax subsidies to stimulate the economy during the pandemic downturn. The Alberta government pays attention to its tourism industry by introducing a policy called revenue-tested tourism levy abatement. It aims to help accommodation providers with a reduced tourism levy for 6 weeks. In British Columbia, the provincial government provides business grants from CAD 1,000 to CAD 10,000 depending on their business scale.



In Manitoba, a program called Sector Support Programme was provided to business owners. They can apply through different grant levels based on the number of employees in a corporation.

Nova Scotia provided business grants based on their gross payroll cost in November 2021.

Ontario has adopted a different approach. Ontario Business Costs Rebate provides rebate, in property tax and energy, to those businesses that meet the 50% reduced capacity requirement caused by the Omicron variant. The Ontario government also supports businesses by providing a six-month interest- and penalty-free period for provincial tax, which started on 1 January 2022 and ends on 1 July 2022.

The Quebec government helps businesses by providing various type of loans, e.g. Assistance for Businesses in Regions on Maximum Alert (“AERAM”) is part of the emergency Assistance to Small and Medium-Sized Enterprises (“PAUPME”) programme, which can help businesses to obtain loan forgiveness and get money to pay fixed costs. In addition, the period of interest was also extended to 31 March 2022.

### OTHER TAXES

The federal government also imposes certain industry-specific taxes in addition to customs and excise duties. The federal large corporations tax, which was a minimum tax based on capital, was repealed effective 1 January 2006, there are no provincial capital taxes for general businesses. The federal government and several provinces still have capital taxes that apply to certain types of financial institutions and life insurance corporations. For corporations with a permanent establishment in Ontario, Ontario imposes a corporate minimum tax on corporations with total assets or gross revenues above certain threshold amounts in certain circumstances. The corporate minimum tax rate is 2.7%, which applies to large corporations with total assets equal to or more than CAD 50 million and total revenue equal to or more than CAD 100 million.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a corporation is determined by using the accrual method of accounting. Certain professional, agricultural, or fishing businesses are permitted to follow a cash or modified cash method of accounting. For a corporation resident in Canada, taxable income is based on its worldwide income less allowable deductions. For a non-resident corporation, taxable income earned in Canada is essentially defined to include:

- Income from carrying on business in Canada;
- 50% of capital gains from the disposition of certain specified Canadian assets or specified foreign assets with significant values attributable to underlying specified Canadian assets included in the definition of ‘taxable Canadian property’;
- Income from the disposition of resource property and certain other assets included in the definition of ‘taxable Canadian property’;
- Income from the disposition of certain other assets with a connection to Canada included in the definition of ‘taxable Canadian property’; and
- Recaptured Canadian tax depreciation.

The scope of the definition of ‘taxable Canadian property’ was significantly narrowed effective 4 March 2010 in order to exclude shares of corporations and other interests (such as an interest in certain partnerships and trusts) that have not derived their fair market value principally from real property situated in Canada, Canadian resource property or timber resource property, at any time within the 60 months immediately preceding the disposition. A treaty may limit Canada’s ability to tax a non-resident on the various components of taxable income earned in Canada listed above.

### DEPRECIATION

Canada has a complex system of determining the depreciation or amortization for tax purposes with respect to capital assets. Depreciable property is subject to several regulations that specify the amount that may be written off in any particular year. One is called Capital Cost Allowance (CCA). When a depreciable property is acquired, its full cost cannot be deducted in the year it is acquired; its capital cost can be deducted over several years. Depreciable properties need to be classified into a CCA class and CCA is to be claimed based on the class rate.

There are also several detailed restrictions that have the effect of limiting write-offs for depreciable property. Expenditures for exploration, development and maintenance of resource properties are subject to rules that categorise the expenditures and specify the amounts which may be deducted in a year. Qualifying Canadian exploration costs may be deducted at 100% against any type of income if desired.

Canadian development expenses can be deducted at a rate of 30% per year. Other expenditures are subject to less generous deductions. Capital assets used for SR&ED are subject to regular tax depreciation rules rather than a 100% deduction if they were acquired after 2013.

### INVENTORY

Inventory must be valued at the lower of cost or fair market value unless the taxpayer elects to value all inventory at fair market value. Special rules apply for the valuation of animals and certain derivatives. For those properties used as nature of trade, it must be valued at its acquisition cost.

### CAPITAL GAINS AND LOSSES

Taxable capital gains are included in taxable income and taxed at normal rates. A capital gain is essentially the proceeds of disposition for a capital property less the aggregate of the cost of the property and costs of disposition. However, only 50% of the gain is taxable. Capital gains from the sale of property are also eligible for lifetime capital gain deduction (limited to CAD 892.218

in 2021). Capital losses may only be used to offset capital gains but may be carried back three years and forward indefinitely, subject to change of control rules (discussed under the 'Losses" heading below). As noted above, under 'Determination of Taxable Income', non-residents are only taxed on certain specified capital gains.

### DIVIDENDS

Dividends received by a private Canadian corporation from another resident corporation are subject to a refundable tax of 38.33% of the amounts received. In the event that the recipient corporation holds more than 10% of the payer-corporation (measured by votes and value), refundable taxes payable are based on the amount of tax refunded to the payer-corporation as a result of the dividend.



Dividends received by most public corporations from another Canadian corporation are effectively excluded from income. Dividends received from non-resident corporations are subject to tax unless received from a subsidiary out of its active business profits from a designated treaty country (a country with which Canada has entered into a comprehensive agreement or convention for the elimination of double taxation on income, or a comprehensive tax information exchange agreement).

Other dividends from foreign affiliates are netted against a grossed-up adjustment for the underlying foreign affiliate tax and withholding tax. Portfolio dividends from foreign corporations are included in taxable income, but the Canadian-resident recipient is entitled to a foreign tax credit for the foreign withholding tax.

### INTEREST DEDUCTIONS

Interest paid on funds borrowed to finance business operations or the acquisition of income-producing assets is generally fully deductible. In certain cases, interest payable relating to the acquisition of bare land is only deductible to the extent the land generates net income. The deductibility of interest incurred during the construction of real property is also restricted. Interest payable on funds borrowed to pay dividends is deductible if the corporation has taxed retained earnings at least equal to the amount of the dividend.

Statutory 'thin capitalisation' rules restrict the deductibility of interest paid to a non-resident shareholder or group that owns 25% or more of the shares of a Canadian corporation. Essentially, these rules prevent the deduction of interest paid to said non-residents (or non-residents not dealing at arm's length with them) where the ratio of outstanding debt to shareholders' equity exceeds 1.5-to-1 for the taxation years after 2012. A ratio of 2-to-1 applies for taxation years that begun prior to 2013. The equity is measured by taking the aggregate of the retained earnings at the beginning of the year and the average paid-up capital of shares owned by certain non-resident shareholders and related contributed surplus computed on a monthly-average basis. Effective 29 March 2012, the disallowed interest will be treated as a deemed dividend paid to the non-resident and will be subject to withholding tax of 25%, unless reduced by a treaty. If a debtor's outstanding liabilities to related non-residents exceeds 1.5 times, the interest deduction will be limited.

For taxation years beginning on or after 29 March 2012, the thin capitalisation rules apply to partnerships that have a Canadian-resident corporation partner and for taxation years that begun after 2013. The thin capitalization rules apply to Canadian resident trusts and non-resident corporations and trusts that operate in Canada.

### LOSSES

Losses arising from business operations may be carried back three years or carried forward up to twenty years. The carry-forward period increased from seven to ten years and from ten to twenty years for losses arising in taxation years ending after 22 March 2004 and after 31 December 2005, respectively.

Capital losses are discussed separately above. In the event of a change of control of a corporation, there is a deemed taxation year-end. Business losses incurred prior to the change of control may only be deducted in subsequent years from income from the same or similar business but only if the business which generated the losses continues to be carried on with a reasonable expectation of profit. A similar restriction applies to the carry-back of subsequent business losses to the three years preceding a change of control.

On a change of control, a number of complementary rules come into play that have the effect of deeming most types of assets to be disposed of at fair market value if fair market value is less than that particular asset's tax carrying value. The purpose of these rules is to realise any unrealised losses that may exist at the time of the change of control. These deemed losses are added to the existing losses and are subject to the carry-forward restrictions mentioned above. Unclaimed net capital losses expire on a change of control. A special election to crystallise unrealised capital gains to use expiring capital losses should be considered when filing a change of control tax return. Post-change of control capital losses cannot be carried back to pre-change of control taxation years.

### FOREIGN SOURCE INCOME

Canadian corporations are taxable on worldwide income regardless of its source. Income earned by foreign affiliates in active businesses is generally not subject to taxation in the Canadian parent until the profits are repatriated (refer to the discussion on Dividends above). Corporations having an investment in a controlled foreign affiliate earning passive income, or deemed passive income, are subject to tax on that income in the year it is earned by the foreign corporation.

## C. FOREIGN TAX RELIEF

Foreign income earned by a Canadian corporation is generally subject to tax in the year received or receivable. Credit is given for foreign income taxes paid, including withholding taxes. Depending upon the tax rate of the foreign country, foreign tax credits may or may not provide full relief for the foreign taxes paid. The amount of the foreign tax credits is effectively limited to the amount of Canadian tax paid on the foreign income. Foreign business income taxes not utilised in a particular year may be carried forward ten years (seven years if incurred before 23 March 2004) and back three years. Excess foreign non-business income tax paid cannot be carried over but may be available as a deduction in computing income.

Dividends arising from active business income received from foreign affiliates residing in treaty countries are not subject to further tax in Canada if the business is carried on in Canada or a designated treaty country. No credit is given for foreign withholding taxes in these cases. Dividends arising from other business income received from foreign affiliates are netted against a grossed-up adjustment for the underlying foreign tax and withholding tax. Dividends arising from passive income received from controlled foreign affiliates residing in treaty countries or arising from all sources in non-treaty countries are subject to tax as ordinary income.

Deductions will be given for underlying foreign tax and withholding tax, as well as Canadian tax which may have been payable at the time the income was earned. In addition, dividends received by Canadian resident corporations from non-resident corporations are eligible for a 38.33% tax refund.

## D. CORPORATE GROUPS

No provision is made for filing consolidated tax returns for corporate groups. Certain tax provisions require the aggregation of amounts for members of related groups for purposes of determining access to certain tax incentives and benefits. Loss utilisation among members of a corporate group is often affected by amalgamation or merger of group members.



## E. RELATED PARTY TRANSACTIONS

Domestic transactions between related parties are subject to rules that require such parties to transfer property at fair market value. Failure to effect transfers at fair market value may result in one-sided adjustments to income or cost basis. Charges between domestic group members are also subject to reasonableness and income earning tests. Transactions with related non-residents are subject to both transfer pricing and foreign reporting rules. Contemporaneous documentation of transfer pricing methodologies is required to avoid exposure to transfer pricing penalties on adjustments. Substantial penalties may be levied where transactions with related non-residents are not in compliance with prescribed procedures.

Certain multinational entities, with taxation years commencing after 1 January 2016, will be required to disclose information relating to each country in which the multinational group operates; only multinational entities within multinational groups with combined revenues of EUR 750 million or more will be subject to such reporting requirements.

## F. WITHHOLDING TAX

Canada imposes non-resident withholding tax on many types of income paid or credited to non-residents including dividends, interest, royalties, pension payments and rents. The statutory rate of withholding is 25% but may be reduced or eliminated by treaty provisions. Section I Treaty and Non-Treaty Withholding Tax Rates summarises the rates of withholding under Canada's present income tax treaties. As of 1 January 2008, withholding tax is not payable under Canada's domestic legislation on most interest payments made by Canadian borrowers to arm's length non-resident lenders.

Canada also has a clearance certificate procedure that requires a purchaser to withhold from the proceeds paid to a non-resident seller on the sale of certain Canadian properties.

The amount of withholding is generally 25% (50% for certain types of properties) of the net gain on disposition if proper notice is given to the tax authorities and a clearance certificate is provided to the purchaser. If a clearance certificate is not obtained, the amount of withholding tax increases to 25% (or 50%) of the gross proceeds instead of the net gain. Amounts withheld are deductible from Canadian taxes payable by the non-resident seller. If the amount withheld exceeds the Canadian taxes payable by the non-resident seller, a refund will be granted on filing a Canadian federal tax return. The March 2010 changes to the definition of 'taxable Canadian property' have streamlined the withholding and compliance procedures impacting non-residents and those that acquire property from them. In addition to the federal withholding tax, Quebec has a similar withholding tax regime on sales of taxable Quebec property. The general rate of withholding is 12.875% and can be higher for certain types of property.

Non-residents are also subject to a 15% withholding on amounts received for services rendered in Canada. Said withholding is credited on the non-resident's Canadian income tax return and will reduce the tax due or result in a refund. A refund due to a corporation will not be processed if the return is not filed within three years from the end of the taxable year. In addition to the federal withholding tax, Quebec has a 9% withholding tax on services rendered in Quebec by non-residents of Canada.

## G. EXCHANGE CONTROL

Canada does not impose currency or exchange controls.

## H. PERSONAL TAX

Individual residents in Canada are subject to tax on their worldwide income. Non-residents are subject to tax in Canada on Canadian-sourced employment income and business income; 50% of the capital gains from the disposal of certain specified Canadian assets; and 100% of gains on disposal of certain property such as resource property or certain life insurance policies. Investment or passive income earned by non-residents is subject to withholding tax as discussed above.

Residency is determined based on common law tests of residency relating to social and economic ties. The significant residential tie to Canada refers to having a primary residence, spouse or common-law and dependants in Canada.

Individuals who stay in Canada for 183 days or more in a particular year may be deemed to be resident in Canada. Canada's tax treaties may contain further provisions regarding determination of residency.

Also, if you leave Canada for temporary reasons and you maintain residential ties with Canada, you may be considered a factual resident of Canada.

Tax returns are filed based on the calendar year and generally are due by 30th April of the following year. An extended deadline of 15th June of the following year is available for business proprietors and partners of most partnerships, as well as their spouses. However, if a self-employed person owns investment accounts, the return must be filed by 30th April following the taxable year. There is no provision for joint spousal tax returns. Certain pension benefits may be allocated between two spouses by election.

Virtually all income earned is subject to taxation. Employment income (including certain employment benefits) and some forms of investment income are included in taxable income on a cash basis.

If you received federal, provincial, or territorial government COVID-19 benefit payments, such as the CRB, CRSB and CRCB, the taxpayer will receive a T4A slip with instructions on how to report these amounts on the 2021 tax return.

Business income and some investment income, notably interest, are included in income on an accrual basis. Income earned from farming, fishing and certain professions is subject to a cash or modified cash method of accounting.

Taxable Canadian dividends received by an individual resident in Canada are subject to a gross-up and dividend tax credit mechanism.

Employees are subject to withholding on their earnings from employment in respect of income tax and contributions for Canada

Pension Plan and Employment Insurance. Self-employed individuals and those with income from other non-employment sources are required to make quarterly instalments of estimated taxes due for the year. The balance of taxes and Canada Pension Plan owing for a calendar year is due by 30th April of the following year for all individuals. If you are unable to pay the balance pending before the deadline, you will incur interest and if you file the tax return after the deadline and have a balance pending you will be subject to penalties.



Individuals are permitted various deductions including contributions to Registered Pension Plans and Registered Retirement Savings Plans, interest paid on funds borrowed to earn income, and qualifying alimony or spousal support payments. In 2022, the RRSP contribution limit is CAD 29,210 and for 2023 it is CAD 30,780. Child maintenance payments are neither deductible by the payer nor taxable to the recipient if paid pursuant to an agreement entered into after 30 April 1997 or if an agreement or Court Order made before that date is modified after 30 April 1997.

There are also tax credits available for personal exemptions, donations, medical and education expenses, and Canada Pension Plan (CPP) and Employment Insurance (EI) contributions.

Updated federal EI premium rates and maximums for 2022 are as follows (figures in CAD):

| Year | Maximum annual insurable earnings | Rate (%) | Maximum annual employee premium | Maximum annual employer premium |
|---|---|---|---|---|
| 2022 | 60,300 | 1.58 | 952.74 | 1,333.84 |
| 2021 | 56,300 | 1.58 | 889.54 | 1,245.36 |
| 2020 | 54,200 | 1.58 | 856.36 | 1,198.90 |
| 2019 | 53,100 | 1.62 | 860.22 | 1,204.31 |

Updated CPP contribution rates, maximums and exemptions for 2022 are as follows (figures in CAD):

| Year | Maximum annual pensionable earnings | Basic exemption amount | Maximum contributory earnings | Employee and employer contribution rate (%) | Maximum annual employee and employer contribution | Maximum annual self-employed contribution |
|---|---|---|---|---|---|---|
| 2022 | 64,900 | 3,500 | 61,400 | 5.7 | 3,499.80 | 6,999.60 |
| 2021 | 61,600 | 3,500 | 58,100 | 5.45 | 3,166.45 | 6,332.90 |
| 2020 | 58,700 | 3,500 | 55,200 | 5.25 | 2,898.00 | 5,796.00 |
| 2019 | 57,400 | 3,500 | 53,900 | 5.1 | 2,748.90 | 5,497.80 |
| 2018 | 55,900 | 3,500 | 52,400 | 4.95 | 2,593.80 | 5,187.60 |
| 2017 | 55,300 | 3,500 | 51,800 | 4.95 | 2,564.10 | 5,128.20 |
| 2016 | 54,900 | 3,500 | 51,400 | 4.95 | 2,544.30 | 5,088.60 |
| 2015 | 53,600 | 3,500 | 50,100 | 4.95 | 2,479.95 | 4,959.90 |
| 2014 | 52,500 | 3,500 | 49,000 | 4.95 | 2,425.50 | 4,851.00 |
| 2013 | 51,100 | 3,500 | 47,600 | 4.95 | 2,356.20 | 4,712.40 |
| 2012 | 50,100 | 3,500 | 46,600 | 4.95 | 2,306.70 | 4,613.40 |
| 2011 | 48,300 | 3,500 | 44,800 | 4.95 | 2,217.60 | 4,435.20 |
| 2010 | 47,200 | 3,500 | 43,700 | 4.95 | 2,163.15 | 4,326.30 |

Hereafter is the table for 2022 on non-refundable tax credits (all figures in CAD):

| Description | 2022 | 2021 | 2020 | 2019 |
|---|---|---|---|---|
| Basic personal amount for 2019 and prior years | NA | NA | NA | 12,069 |
| Basic personal amount for individuals whose net income for the year is greater than or equal to the amount at which the 33% tax bracket begins | 12,719 | 12,421 | 12,298 | NA |
| Basic personal amount for individuals whose net income for the year is less than or equal to the amount at which the 29% tax bracket begins | 14,398 | 13,808 | 13,229 | NA |
| Spouse or common-law partner amount (maximum) for 2019 and prior years | NA | NA | NA | 12,069 |
| Spouse or common-law partner amount (maximum) for individuals whose net income for the year is greater than the amount at which the 33% tax bracket begins | 12,719 | 12,421 | 12,298 | NA |
| Spouse or common-law partner amount (maximum) for individuals whose net income for the year is less than or equal to the amount at which the 29% tax bracket begins | 14,398 | 13,808 | 13,229 | NA |
| Spouse or common-law partner amount (maximum if eligible for the Canada caregiver amount for a dependent spouse or common-law partner) for 2019 and prior years | NA | NA | NA | 14,299 |
| Spouse or common-law partner amount for individuals whose net income for the year is greater than or equal to the amount at which the 33% tax bracket begins (maximum if eligible for the Canada caregiver amount for a dependent spouse or common-law partner) | 15,069 | 14,716 | 14,571 | NA |

| Description | 2022 | 2021 | 2020 | 2019 |
|---|---|---|---|---|
| Spouse or common-law partner amount for individuals whose net income for the year is less than or equal to the amount at which the 29% tax bracket begins (maximum if eligible for the Canada caregiver amount for a dependent spouse or common-law partner) | 16,748 | 16,103 | 15,502 | NA |
| Amount for an eligible dependant (maximum) for 2019 and prior years | -- | -- | -- | 12,069 |
| Amount for an eligible dependant (maximum) for individuals whose net income for the year is greater than or equal to the amount at which the 33% tax bracket begins | 12,719 | 12,421 | 12,298 | NA |
| Amount for an eligible dependant (maximum) for individuals whose net income for the year is less than or equal to the amount at which the 29% tax bracket begins | 14,398 | 13,808 | 13,229 | NA |
| Amount for an eligible dependant (maximum if eligible for the Canada caregiver amount for a dependant) for 2019 and prior years | NA | NA | NA | 14,299 |
| Amount for an eligible dependant for individuals whose net income for the year is greater than or equal to the amount at which the 33% tax bracket begins (maximum if eligible for the Canada caregiver amount for a dependant) | 15,069 | 14,716 | 14,571 | NA |
| Amount for an eligible dependant for individuals whose net income for the year is less than or equal to the amount at which the 29% tax bracket begins (maximum if eligible for the Canada caregiver amount for a dependant) | 16,748 | 16,103 | 15,502 | NA |
| Canada caregiver amount for children under the age of 18 | 2,350 | 2,295 | 2,273 | 2,230 |
| Age amount | 7,898 | 7,713 | 7,637 | 7,494 |
| Net income threshold for age amount | 39,826 | 38,893 | 38,508 | 37,790 |
| Canada employment amount (maximum) | 1,287 | 1,257 | 1,245 | 1,222 |
| Canada caregiver amount for other infirm dependants age 18 or older (maximum amount) | 7,525 | 7,348 | 7,276 | 7,140 |
| Net income threshold for Canada caregiver amount | 17,670 | 17,256 | 17,085 | 16,766 |
| Disability amount | 8,870 | 8,662 | 8,576 | 8,416 |
| Supplement for children with disabilities (maximum) | 5,174 | 5,053 | 5,003 | 4,909 |
| Threshold relating to allowable childcare and attendant care expenses | 3,030 | 2,959 | 2,930 | 2,875 |
| Adoption expenses (maximum per adoption) | 17,131 | 16,729 | 16,563 | 16,255 |

Individuals pay income tax at graduated marginal rates, effective 1 January 2020, as follows:

| Taxable income (CAD) | Tax rate (%) |
|---|---|
| First 49,020 | 15 |
| 49,021 - 98,040 | 20.5 |
| 98,041 - 151,978 | 26 |
| 151,979 - 216,511 | 29 |
| over 216,511 | 33 |

Federal and provincial tax rates for 2022:

| Taxable income (CAD) | Tax rate (%) |
|---|---|
| First 50,197 | 15 |
| 50,198 - 100,392 | 20.5 |
| 100,393 - 155,625 | 26 |
| 155,626 - 221,708 | 29 |
| over 221,708 | 33 |

Provincial and territorial tax rates for 2022 (all figures in CAD):

| Provinces and territories | Rates |
|---|---|
| Newfoundland and Labrador | 8.7% on the first 39,147 of taxable income, plus<br>14.5% on the next 78,294 plus<br>15.8% on the next 139,780 plus<br>17.8% on the next 195,693 plus<br>19.8% on the amount over 250,000 |
| Prince Edward Island | 9.8% on the first 31,984 of taxable income, plus<br>13.8% on the next 31,985, plus<br>16.7% on the amount over 63,969 |

| Provinces and territories | Rates |
|---|---|
| Nova Scotia | 8.79% on the first 29,590 of taxable income, plus<br>14.95% on the next 29,590, plus<br>16.67% on the next 33,820, plus<br>17.5% on the next 57,000, plus<br>21% on the amount over 150,000 |
| New Brunswick | 9.40% on the first 44,887 of taxable income, plus<br>14.82% on the next 89,775 plus<br>16.52% on the next 145,955 plus<br>17.84% on the next 166,280 plus<br>20.3% on the amount over 166,280 |
| Quebec | 46,295 or less -> 15%<br>More than 46,295 but not more than 92,580 -> 20%<br>More than 92,580 but not more than 112,655 -> 24%<br>More than $112,655 -> 25.75% |
| Ontario | 5.05% on the first 46,226 of taxable income, plus<br>9.15% on the next 92,454 plus<br>11.16% on the next 150,000 plus<br>12.16% on the next 220,000 plus<br>13.16% on the amount over 220,000 |
| Manitoba | 10.8% on the first 34,431 of taxable income, plus<br>12.75% on the next 74,416 plus<br>17.4% on the amount over 74,416 |
| Saskatchewan | 10.5% on the first 46,773 of taxable income, plus<br>12.5% on the next 133,638 plus<br>14.5% on the amount over 133,638 |
| Alberta | 10% on the first 131,220 of taxable income, plus<br>12% on the next 26,244, plus<br>13% on the next 52,488, plus<br>14% on the next 104,976, plus<br>15% on the amount over 314,928 |
| British Columbia | 5.06% on the first 43,070 of taxable income, plus<br>7.7% on the next 86,141 plus<br>10.5% on the next 98,901 plus<br>12.29% on the next 120,094 plus<br>14.7% on the next 162,832 plus<br>16.8% on the next 227,091 plus<br>20.5% on the amount over 227,091 |
| Yukon | 6.4% on the first 50,197 of taxable income, plus<br>9% on the next 100,392 plus<br>10.9% on the next 155,625 plus<br>12.8% on the next 500,000 plus<br>15% on the amount over 500,000 |
| Northwest Territories | 5.9% on the first 45,462 of taxable income, plus<br>8.6% on the next 90,927 plus<br>12.2% on the next 147,826 plus<br>14.05% on the amount over 147,826 |
| Nunavut | 4% on the first 47,862 of taxable income, plus<br>7% on the next 95,724 plus<br>9% on the next 155,625 plus<br>11.5% on the amount over 155,625 |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Due to space limitations, the following summary does not reflect detailed information on the statutory or treaty provisions relating to withholding tax rates. Rates shown are in effect on 1 January 2018 subject to the notes at the end of the table below.

The reader should ensure careful reviews of the statutory rules and treaty provisions are undertaken when considering a particular cross-border transaction. For example, refer to note 1 pertaining to the elimination of Canadian withholding tax on arm's-length interest payments. The domestic rate may be lower than the treaty rate. Special care should also be taken to review the effective date of changes for new treaties and protocols. Care should be taken with respect to Canada-US payments involving fiscally transparent entities with changes effective in 2009 and 2010.

The Canada Revenue Agency (CRA) has provided declaration forms that are recommended for use by non-residents of Canada to provide the CRA and Canadian resident payers with information regarding their residency status and eligibility for treaty benefits.



| | Dividends (%) | Interest[1] (%) | Royalties (%) |
|---|---|---|---|
| Corporations and individuals resident in Canada: | Nil | Nil | Nil |
| Non-resident corporations/individuals of non-treaty countries: | 25 | 25 | 25 |
| ***Treaty countries:*** | | | |
| Algeria | 15 | 15 | 15[6] |
| Argentina | 10/15[2] | 12.5 | 15[6] |
| Armenia | 5/15[2] | 10 | 10 |
| Australia[11] | 5/15[2] | 10 | 10 |
| Austria | 5/15[2] | 10 | 10[6] |
| Azerbaijan | 10/15[2] | 10 | 10[6] |
| Bangladesh | 15 | 15 | 10 |
| Barbados | 15 | 15 | 10[6] |
| Belgium | 5/15[2] | 10 | 10[6] |
| Brazil | 15/25[2] | 15 | 25[6] |
| Bulgaria | 10/15[2] | 10 | 106 |
| Cameroon | 15/20[4] | 15/20[4] | 15/20[4] |
| Chile | 10/15[2] | 15 | 15 |
| China (PRC)[9, 11] | 10/15[2] | 10 | 10 |
| Colombia | 5/15[2] | 10 | 10 |
| Croatia | 5/15[2] | 10 | 10 |
| Cyprus | 0/15[16] | 15 | 10[6] |
| Czech Republic | 5/15[2] | 10 | 10 |
| Denmark | 5/15[2] | 10 | 10[6] |
| Dominican Republic | 18 | 18 | 18[6] |
| Ecuador | 5/15[2] | 15 | 15[6] |
| Egypt | 15 | 15 | 15 |
| Estonia | 5/15[2] | 10 | 10 |
| Finland | 5/15[2] | 10 | 10[6] |
| France | 5/15[2] | 10 | 10[6] |
| Gabon | 15 | 10 | 10 |
| Germany | 5/15[2] | 10 | 10[6] |
| Greece | 5/15[2] | 10 | 10 |
| Guyana | 15 | 15/25[4] | 10 |
| Hong Kong | 5/15[2] | 10 | 10[6] |
| Hungary | 5/15[2] | 10 | 10[6] |
| Iceland | 5/15[2] | 10 | 106 |
| India | 15/25[2] | 15 | 206 |
| Indonesia | 10/15[2] | 10 | 10 |
| Ireland | 5/15[2] | 10 | 10[6] |
| Israel | 5/15[2] | 10 | 10[6] |
| Italy | 5/15[2] | 10 | 10[6] |
| Ivory Coast | 15 | 15 | 10 |
| Jamaica | 15 | 15 | 10 |
| Japan | 5/15[2] | 10 | 10 |
| Jordan | 10/15[2] | 10 | 10 |
| Kazakhstan | 5/15[2] | 10 | 10 |
| Kenya | 15/25[2] | 15 | 15 |
| Korea (Rep.) | 5/15[2] | 10 | 10 |
| Kuwait | 5/15[2] | 10 | 10 |
| Kyrgyzstan | 15 | 15 | 10[6] |
| Latvia | 5/15[2] | 10 | 10 |
| Lebanon[10] | 5/15[2] | 10 | 10[6] |

| | Dividends (%) | Interest[1] (%) | Royalties (%) |
|---|---|---|---|
| Lithuania | 5/15[2] | 10[7] | 10 |
| Luxembourg | 5/10/15[2] | 10 | 10[6] |
| Madagascar[10] | 5/15[2] | 10 | 5/10[6] |
| Malaysia[11] | 15 | 15 | 156 |
| Malta | 15 | 157 | 106 |
| Mexico | 5/152 | 10 | 106 |
| Moldova | 5/152 | 10 | 10 |
| Mongolia | 5/152 | 10 | 106 |
| Morocco | 15 | 15 | 106 |
| Namibia[10] | 5/152 | 10 | 10 |
| Netherlands[11] | 5/15[2] | 10 | 10[6] |
| New Zealand[8] | 5/15[2] | 10 | 5/15 |
| Nigeria | 12.5/15[2] | 12.5 | 12.5 |
| Norway | 5/15[2] | 10 | 10[6] |
| Oman | 5/15[2] | 10 | 10[6] |
| Pakistan | 15/205 | 15/25[4] | 15/20[4,6] |
| Papua New Guinea | 15/25[4] | 10 | 10 |
| Peru | 10/15[2] | 15 | 15 |
| Philippines | 15/25[4] | 15 | 10/25[4] |
| Poland | 5/15[2] | 10 | 5/10[6] |
| Portugal | 10/15[2] | 10 | 10 |
| Romania | 5/15[2] | 10 | 10[6] |
| Russia | 10/15[2] | 10[7] | 10[6] |
| San Marino[12] | -- | -- | -- |
| Senegal | 15/16[4] | 15/16/20[4] | 15 |
| Serbia | 5/15[2] | 10 | 10 |
| Singapore | 15 | 15 | 15 |
| Slovak Republic | 5/15[2] | 10 | 10[6] |
| Slovenia | 5/15[2] | 10 | 10 |
| South Africa | 5/15[2] | 10 | 10[6] |
| Spain | 5/15[2] | 10 | 10[6] |
| Sri Lanka | 15 | 15 | 10[6] |
| Sweden | 5/15[2] | 10 | 10[6] |
| Switzerland | 5/15[2] | 10 | 10[6] |
| Taiwan | 10/15[17] | 10 | 10 |
| Tanzania | 20/25[2] | 15[7] | 20 |
| Thailand | 15/20[5] | 15/25[4,7] | 15[6] |
| Trinidad and Tobago | 5/15[2] | 10 | 10[6] |
| Tunisia | 15 | 15 | 20[6] |
| Turkey | 15/20[2] | 15 | 10 |
| Ukraine | 5/15[2] | 10 | 10[6] |
| United Arab Emirates | 5/15[2] | 10 | 10[6] |
| United Kingdom | 5/15[2] | 10 | 10[6] |
| United States[14, 15] | 5/15[2] | 0[13] | 10[6] |
| Uzbekistan | 5/15[2] | 10 | 10[6] |
| Venezuela | 10/15[2] | 10 | 10[6] |
| Vietnam | 5/10/15[3] | 10 | 10[6] |
| Zambia | 15 | 15 | 15 |
| Zimbabwe | 10/15[2] | 15 | 10 |

NOTES:

1. Effective 1 January 2008, Canada's Income Tax Act eliminates the Canadian withholding tax on arm's-length payments of interest (other than participating debt interest) to all non-residents of Canada.
2. Depending upon the particular treaty, the lower rate applies where a corporate recipient of a dividend (beneficial owner) holds, at least, 10% to 25% of the voting control or at least 10% to 25% of the share capital of the company paying the dividend.
3. The 5% rate applies if at least 70% of the voting power is controlled by the recipient corporation. The 10% rate applies if between 25% and 70% of the voting power is controlled by the recipient corporation.
4. The lower rate only applies if the payment arises in Canada.

5. The 15% rate is applicable where the payment arises in Canada or if paid from a company engaged in an industrial undertaking.
6. Maximum withholding rate. Lower rates may apply depending on the nature of the royalty.
7. Lower rates apply to banks, insurance companies and lending institutions.
8. A protocol signed on 12 September 2014 entered into force on 26 June 2015 and is effective as of 1 August 2015 (withholding taxes) and 1 January 2016 (other taxes) for Canada and as of 1 August 2015 (withholding taxes) and 1 April 2016 (other taxes) for New Zealand.
9. See separate listing for treaty with Hong Kong, signed on 11 November 2012 (entry into force on 29 October 2013).
10. Initial treaty which is not in force as of 10 January 2017. Table shows rates which will be in force when implemented. General rates are in effect until that time.
11. Canada is presently renegotiating a treaty with this country.
12. Canada is presently negotiating an initial treaty with San Marino.
13. The withholding rate for non-arm's length interest paid to the US was reduced to 0% effective 1 January 2010. The rate for arm's-length interest payments was reduced to 0% effective 2008. Interest on participating debt is excluded from these exemptions, but the withholding rate on such interest is limited to a 15% withholding rate.
14. Effective 1 January 2010, changes to the Canada – US Tax Treaty eliminated treaty benefits for payments from an entity which is treated as a corporation by Canada but as a fiscally transparent entity in the US and certain other conditions are met. For example, a payment from a Canadian unlimited liability company to its US owner will not be eligible for a treaty rate reduction where the tax treatment of the transaction under US rules differs from the treatment it would have received if the payer was not fiscally transparent for US purposes. Effective 1 February 2009, payments from Canada to a US fiscally transparent entity such as a US limited liability company, or a US partnership require consideration of the US treaty status of the individual members of the recipient entity. A US S Corporation will also generally be a fiscally transparent entity subject to the same look-through rules but Canada has indicated that it will give an S Corporation a reduced treaty rate where it qualifies for such rate as a recognized entity under the treaty. Specific tax advice should be sought to establish the withholding rate for Canada – US cross-border payments involving fiscally transparent entities. In April 2011, the CRA issued forms NR302 and NR303 for declaring the eligibility for treaty benefits for a partnership and other fiscally transparent or hybrid entities. The applicable withholding rate is calculated on worksheets included with these forms.
15. The limitation of benefits clause in the Canada-US Tax Treaty became effective on 1 February 2009 for Canadian withholding taxes, and may in certain circumstances deny treaty benefits on payments to US entities with non-US owners.
16. Dividends paid by a company resident in Cyprus to a Canadian owner are not subject to withholding tax. Dividends paid by a company resident in Canada to an owner in Cyprus are subject to a withholding tax of 15%.
17. The lower 10% rate applies if the recipient company owns directly or indirectly at least 20% of the capital of the dividend-paying company.

# CAPE VERDE

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Santa Maria | José Parada Ramos | +238 9726434<br>paradaramos@pkf.pt |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Cape Verde |
| Capital: | Praia |
| Main languages: | Portuguese, Cape Verdean Creole |
| Population: | 567,350 (2022 estimate) |
| Monetary unit: | Cape Verdean Escudo (CVE) |
| Internet domain: | .cv |
| Int. dialling code: | +238 |

## KEY TAX POINTS

- Resident corporations are subject to Cape Verde corporate income tax (CIT) on their worldwide income. Non-resident companies with a permanent establishment in Cape Verde are liable for CIT on the income attributable to that permanent establishment.
- There is a CIT simplified regime for micro and small-sized companies in place.
- A tax-neutral regime for mergers and spin-offs is available, subject to certain conditions.
- Transfer pricing legislation enables the tax authorities to make corrections to taxable income when the conditions (and prices) agreed upon between related parties are different from those that would have been agreed upon and accepted between independent entities (arm's-length principle). In certain cases, transfer pricing documentation is required.
- Companies licensed in the International Business Centre of Cape Verde are taxed at a reduced CIT rate.
- Payments between resident companies are generally subject to withholding tax.
- The standard rate of VAT is 15%.
- Resident individuals are subject to income tax on their worldwide income whilst non-residents are liable to income tax only on income sourced in Cape Verde. There is a special tax regime for non-habitual resident taxpayers.
- Social security is due on remunerations at a 15% rate for the employer and 8% for the employee.

## A. TAXES PAYABLE

### CORPORATE INCOME TAX

Resident corporations are subject to corporate income tax (CIT) on their worldwide income. Resident companies are those which have their head office or place of effective management in Cape Verde.

Non-resident companies with a permanent establishment (PE) in Cape Verde are liable for CIT on the income attributable to that PE. Non-resident companies without a PE are subject to tax on specified categories of income sourced in Cape Verde, including services and commissions, rental income, dividends, interest, and royalties.



There are two different CIT regimes:

- the general regime; and
- a simplified regime for micro and small-sized companies.

Under the simplified regime, applicable for micro and small-sized companies, CIT is replaced by a Single Special Tax (SST), which is levied at a 4% rate on the gross turnover amount. The SST is payable on a quarterly basis (in April, July, October, and January of the following year).

Criteria to determine micro and small-sized companies are:

- Micro-sized company: an entity that employs up to five persons with an annual turnover (gross amount of sales and services) that does not exceed CVE 5 million;
- Small-sized company: an entity that employs between six and ten persons with an annual turnover (gross amount of sales and services) between CVE 5 million and CVE 10 million.

Under the general regime, the taxable profit is subject to a 22% tax rate. In addition to the CIT charge, resident companies and PEs domiciled in the municipalities of Praia and Mindelo are subject to a fire brigade surcharge (*Taxa de Incêndio*), levied at a 2% rate on corporate taxable income.

Certain expenses, such as costs related to vehicles and non-documented expenses, are subject to autonomous taxation at rates varying from 10% (e.g. travel and kilometres allowances) to 40% (undocumented expenses).

The tax year usually coincides with the calendar year (1 January to 31 December). However, PEs of non-resident companies may opt for a different tax year. Resident companies may also opt for a different tax year, subject to authorisation from the Minister of Finance. Tax is payable by the end of the fifth month following the end of the tax year – generally the 31st of May.

Payments on account of the final tax liability are due in March, August, and November of the respective tax year, totalling 80% of the previous tax year's CIT liability.

Permanent establishments of non-resident companies are taxed at the rates applicable to resident companies. The tax rate for non-resident companies having no permanent establishment obtaining Cape Verde-sourced income ranges from 10% to 20%.

### CAPITAL GAINS TAX

Worldwide capital gains obtained by resident companies are included in their taxable income.

### BRANCH PROFITS TAX

All income attributable to a Cape Verdean branch (permanent establishment) is subject to corporate tax. No tax is imposed on remittances of profits from the branch to the head office.

### VALUE ADDED TAX (VAT)

VAT is a sales tax levied on the supply of goods and services as well as on the import of goods into the territory. The VAT system in Cape Verde closely follows the European Union VAT system and the standard VAT rate is 15%.

The 2021 State Budget (Law 109/IX/2020, of 31 December 2020) introduced, as from 1 January 2021, a 10% reduced VAT rate applicable to:

- lodging in hotels and similar facilities, as well as catering; and
- tour operators who are resident micro, small and medium-sized companies – on all combined services rendered in Cabo Verde in 2021.

VAT exemptions are mainly applicable to medical services, services related to education and social support, transactions performed by non-profit-making organisations, banking and financial transactions, insurance, and reinsurance operations, as well as to imports of certain essential goods.

### PROPERTY TAX (IUP)

IUP ("Imposto Único Sobre Patrimómio") is a municipal property tax levied on the value of real estate on the territory of each municipality, calculated in accordance with the classification of each property at a rate of 1.5%. IUP is due on the ownership of immovable property on an annual basis by the owner of the real estate, registered as such on 31 December of the relevant year. The taxable basis corresponds to 25% of the value attributed to the property by the Evaluation Commission.

IUP is also due on the transfer of real estate, based on the value of the contract declared by the transferee, being the tax payable by the transferee.

There are some exemptions from IUP on the acquisition of real estate.

### STAMP DUTY (IS)

Stamp tax is due on several documents, acts, and transactions, which occur or are presented for legal purposes in Cape Verde. The rates may be set at specific amounts or on a percentage basis.

Among others, stamp duty is due on the following transactions/acts at the following rates:

| Item | Stamp duty rate |
|---|---|
| Loans | 0.50% |
| Bank interest | 3.50% |
| Bank fees and commissions | 3.50% |
| Insurance | 3.50% |
| Guarantees | 0.50% |
| Promissory notes, securities | 0.50% |
| Emoluments, registration acts | 15% |
| Contracts | CVE 1,000 |



## B. DETERMINATION OF TAXABLE INCOME (CIT)

### GENERAL REGIME

Taxable income is determined by adjusting the accounting profit for non-taxable income and non-deductible expenses. As a general principle, costs are only deductible when necessarily incurred for the purpose of producing income.

### DEPRECIATION

Tangible fixed assets and intangible assets can be depreciated/amortised for tax purposes. The depreciation rates are set by specific legislation and include 3% for office buildings and 5% for industrial buildings. No depreciation is allowed on land. The normal method of calculation is the straight-line basis, but the declining-balance method may be used except for items such as buildings, cars, and office furniture.

### STOCKS / INVENTORY

Inventory must normally be valued at the effective cost of acquisition or production (historic cost). Other methods which may be adopted include:

- The standard cost method, which must be calculated in accordance with the appropriate technical and accounting principles;
- The sale price method, which is based on the market value less a normal profit margin.

### CAPITAL GAINS AND LOSSES

Capital gains (or losses) are calculated as the difference between the sales proceeds and the acquisition cost which may be updated using official inflation coefficients. If the proceeds of the sales are reinvested in other eligible assets, 50% of the gain obtained (net of the related losses) will be excluded from taxation. For this purpose, re-investments made in the preceding year, in the year of sale and in the two subsequent years will be taken into account.

When only part of the consideration is re-invested, only the corresponding part of the gain qualifies for the relief.

### DIVIDENDS

There is a full participation exemption on domestic and overseas dividend income, provided the distributing company is subject to and not exempt from CIT. An exception applies for entities with a reduced CIT rate, where the tax relief is only 50%.

### INTEREST DEDUCTIONS

The deductibility of net financing costs is limited to the higher of:

- CVE 110 million; or
- 30% of the tax EBITDA.

The tax EBITDA is based on the taxable income or tax loss that is not exempt, adjusted by the net financial expenses as well as the depreciation and amortisations that are tax deductible. The net financial expenses are calculated as the balance of borrowing expenses and financing revenue.

Non-deductible net borrowing expenses may be deducted in the following seven years, provided the total financial costs (costs of the year plus costs carried forward) do not exceed the above limits.

If the financial costs are below 30% of the EBITDA, the amount of the limit that was not used may be carried forward to offset against the financial costs of the following 7 tax years.

### DOUBTFUL DEBTS IMPAIRMENT

The deduction for tax purposes of impairment losses on overdue debt is limited to the following percentages, computed on the amount of the debt:

| Delay on payment | Limit |
|---|---|
| More than 6 and up to 12 months | 25% |
| More than 12 and up to 18 months | 50% |
| More than 18 and up to 24 months | 75% |
| More than 24 months | 100% |

### TAX LOSSES

Tax losses incurred by resident companies, or by a branch of a non-resident company, may be carried forward to be offset against taxable profits for seven years. However, companies are only allowed to deduct tax losses up to 50% of the taxable profits in any given period.

Tax loss carry-back is not allowed.

## FOREIGN SOURCED INCOME

Resident companies are taxed on their worldwide income.

## INCENTIVES

Incentives under Cape Verde tax legislation include the International Business Centre of Cape Verde; investment tax credits; a Youth Start-Up program incentive; and tax credits for hiring unemployed persons and interns.



## C. FOREIGN TAX RELIEF

Foreign-sourced income, gross of tax paid abroad, is included in taxable income. A unilateral credit for foreign income tax suffered can be offset against Cape Verde CIT. The tax credit is restricted to the lower of:

- The income tax paid abroad;
- The Cape Verde income tax chargeable on that foreign income.

## D. RELATED PARTY TRANSACTIONS

Transfer pricing legislation enables the tax authorities to make corrections to taxable income when the conditions (and prices) agreed upon between related parties are different from those that would have been agreed upon and accepted by independent entities.

According to Ministerial Order no 75/2015, preparation of transfer pricing documentation is required for entities subject to corporate income tax that are:

- Classified as “large taxpayers” under the terms of proper regulations;
- Beneficiaries of a privileged taxation regime, as defined in the General Tax Code;
- Permanent establishments of non-resident entities;
- Entities that the tax authorities designate for this purpose.

## E. WITHHOLDING TAX

Non-resident companies without a PE in Cape Verde are generally subject to a final withholding tax on the following categories of income and at the following rates:

| Type of income | Tax rate |
|---|---|
| Rental income | 10% |
| Interest payments | 10%/20% |
| Dividends | 10% |
| Royalties | 20% |
| Services rendered/used in Cape Verde | 15% |

The withholding tax rates may be reduced under the terms of an existing double tax treaty signed by Cape Verde.

## F. PERSONAL INCOME TAX

Income tax is payable by individuals on income obtained from employment, a business activity or independent profession, pension income, investment income, rental income, and capital gains. Resident individuals are subject to income tax on their worldwide income while non-residents are liable to income tax only on income sourced in Cape Verde. Tax residence is determined by physical presence in Cape Verde for more than 183 days in aggregate, consecutive or not, during any 12-month period. Having remained for less time, the residence is also determined by having a place of abode on 31 December in a way that may lead to the supposition of an intention to keep and occupy it as a habitual home/ residence.

Individuals can be taxed under two different tax methods:

- Under the declarative method, individuals are taxed according to their annual income statement. This method is mandatory for taxpayers included in Category B (business and professional income) with organised accounting, and individuals taxed under Category C (rental income). This method is also applicable to dependent workers, Category A, (employment income) who opt to file the tax return, to income obtained abroad by resident taxpayers, and to income obtained in Cape Verde by non-resident taxpayers that could not be taxed at flat rates. Total income will be subject to tax at progressive rates ranging between 16.5% and 27.5%.
- A final withholding method is applied to taxpayers who are not obliged to submit their annual income statement in the following cases: Categories A, D (investment income), E (Capital Gains), and under the Special Regime for Small and Micro-Sized Companies (SRSMC).

There are specific deductions for each category of income, using as a criterion the costs or charges necessary to obtain them. Thus, expenditure on health and education, pensions, housing rents, housing debt interest, construction and improvement of real estate, amounts paid for health or personal accident insurance, as well as some life insurance, and amounts invested annually in government bonds and contributions to social security or single social tax for the taxable person or their dependents may be deducted from the taxable income. Donations to certain entities can also be deducted from the total income.

### Employment and pension income

Employment and pension income are generally subject to monthly withholding tax (WHT). As a rule, the monthly WHT is levied as final taxation, unless the taxpayer chooses to file a tax return in which case the withheld tax acts as an advance payment.

### Rental income

Rental income is subject to a 20% withholding tax, which has the nature of an advance payment on account of the final annual income tax liability. In computing the net rental income, taxpayers may deduct maintenance and repair expenses of up to 30% of gross rental income.

**Investment income**

In general, investment income is subject to a flat 20% rate. However, some exceptions apply:

- dividends are subject to a 10% flat rate;
- interest on bonds is subject to a 10% flat rate;
- other interest is subject to a 20% flat rate;
- a special tax regime foreseen in the Tax Benefits Code provides for an exemption from taxation on interest on long-term deposits received by Cape Verdean emigrants.

**Capital gains**

Capital gains earned by individual taxpayers are subject to a flat 1% rate in case of gains on the disposal of real estate, intellectual property, or shares.

**Non-habitual tax residents**

A special tax regime for non-habitual residents is in place. Individuals becoming tax residents and who have not been resident in Cape Verde for tax purposes for the past five years may apply for this regime, under which certain foreign-sourced income, such as investment income, may be exempt from taxation in Cape Verde, subject to certain conditions, for a period of 10 years. In addition, non-habitual residents may benefit from a reduced 10% tax rate on Cape Verde sourced employment and self-employment income, if derived from high value-added activities performed there. Non-habitual resident status is acquired upon registration with the tax authorities until March 31 of the year following that in which they become tax residents in Cape Verde.

## G. SOCIAL SECURITY

Employees are subject to social security contributions on their monthly gross income at a rate of 8%. Social security contributions due by the employer are levied at 15%.

Self-employed individuals are subject to monthly social security contributions computed in accordance with a rate ranging from 11% to 19.5%. The payment of contributions shall take place by the 15th of the subsequent month to which they are related.

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

**Foreign tax relief**

A resident employee, entrepreneur, or professional may deduct the lower of the following amounts in order to mitigate double taxation on foreign income taxed in another jurisdiction:

- Income tax paid abroad; or
- PIT fraction computed before deductions due on the income taxed in the source state.

**Double tax treaties**

Cape Verde has signed double tax treaties with Macau, Mauritius, Portugal and Spain. The Cape Verde Parliament has approved the ratification of new double tax treaties with Angola, Equatorial Guinea, and São Tomé e Príncipe. In addition, negotiations are ongoing to conclude a double tax treaty with Guinea-Bissau and Senegal.

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-treaty countries** | 10 | 10/20[1] | 20[2] |
| **Treaty countries:** | | | |
| Macau | 10 | 10 | 10 |
| Mauritius | 0/5[3] | 0/10[4] | 7.5 |
| Portugal | 10 | 0/10[5] | 10 |
| Spain[8] | 0/10[6] | 0/5[7] | 5 |

Notes:

1. As of 1 January 2015, interest paid to non-residents is subject to a final 20% withholding tax%, except interest on bonds, government bonds and similar public securities derived from public debt, financial investment instruments such as promissory notes and bills of exchange, which are subject to a final 10% withholding tax.
2. Royalties (representing know-how, technical assistance, and leasing of equipment) paid to non-resident companies are subject to a final 20% withholding tax.
3. The 5% rate applies if the beneficial owner of the dividends owns directly less than 25% of the capital stock (capital social) of the dividend-paying company. In all other cases the 0% rate applies.
4. The 0% rate applies if (i) the debtor of the interest is the Cape Verde Government, a political or administrative subdivision or a local authority or a statutory body thereof (ii) interest is paid to the Government of Mauritius, a political or administrative subdivision or a local authority or a statutory body thereof (iii) interest is paid to an institution (including a financial institution) in connection with any financing granted by them under an agreement between the Governments of the Contracting States.
5. The 0% rate applies if (i) the payer of the interest is the Cape Verde Government or a political or administrative subdivision or local authority thereof (ii) interest is paid to the Government of Portugal or a political or administrative subdivision or local authority thereof, or to an institution or body (including a financial institution) in connection with any financing granted by them within the framework of agreements between the Governments of the contracting States.
6. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.

7. The 0% rate applies if (i) the beneficial owner is the Spanish State or the Central Bank, or a political subdivision or local authority thereof (ii) the interest is paid by the State in which the interest arises (i.e. Cape Verde) or by a political subdivision or local authority or statutory body thereof (iii) the interest is paid in respect of a loan or credit owed to, or granted, made, guaranteed or insured by the Spanish State or a political subdivision, local authority or export financing agency thereof (iv) the beneficial owner of the interest is a financial institution (v) the interest is paid in connection with the sale on credit of equipment, goods or merchandise, or services (vi) the beneficial owner of the interest is a pension fund approved for tax purposes by Spain and the income of the fund is, in general, exempt from tax in Spain.
8. Effective date: 1 January 2022.



# CHILE

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Santiago | Antonio Melys | +56 22650 4332<br>amelys@pkfchile.cl |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Chile |
| Capital: | Santiago |
| Main languages: | Spanish |
| Population: | 19.41 million (2022 estimate) |
| Monetary unit: | Chilean Peso (CLP) |
| Internet domain: | .cl |
| Int. dialling code: | +56 |

## KEY TAX POINTS

- The Chilean income tax system applies to all individuals and entities domiciled or resident in Chile in respect of their worldwide income. Non-residents are subject to tax on Chilean-sourced income.
- Two categories of income tax apply in relation to different types of income (activities). The rules for calculating tax under each category are different.
- In general, profits from commercial activities (including relevant capital gains) are taxed at 25% under 'First Category tax'.
- However, as of 2020 the general tax system (Partially integrated system) affects profits made by enterprises that determine the income tax taking into account the results of financial statements based on full accounting records, at a rate of 27%. Such system has a maximum tax burden of 44.45%, taking into account both the tax on the company (First Category tax at 27%) and the owners (Additional tax at a rate of 35% or Global Complementary tax with progressive tax rates). Under the Partially integrated system the higher burden results from the owners having to refund 35% of corporate tax (First Category Tax) on the same taxable profit distributed or withdrawn. However, the restriction in the use of corporate tax as a credit will not be applicable to investors domiciled or resident in countries that have a double tax treaty with Chile, in which the application of the Additional Tax on the income distributed or withdrawn has been agreed upon provided that the First Category Tax is deductible of said tax, or another clause is included producing the same effect. This beneficial rule is also applicable when a double tax treaty with Chile has been signed before 1 January 2020 although it is not in force yet. The latter rule will stay applicable up to 2026, the year when it is expected that those conventions will be in force. That is the case for investors domiciled in the United States and the United Arab Emirates.
- Gross taxable income arising from wages, salaries, overtime payments, bonuses, fees, gratuities, profit sharing and any other form of remuneration is taxed under the Second Category which is a progressive tax, the highest rate of which is 40% from 2020 onwards.
- Profits remitted or withdrawn from Chile (such as by way of payment of dividends to non-residents in enterprises subject to the Partially Integrated System) are subject to a 35% 'Additional Tax', although relief is given for any First Category tax paid on the relevant profits. Some of the taxpayers domiciled or resident abroad may have to refund the 35% of the tax credit, which means that in practice they could only use the 65% of the First Category tax as a tax credit. This restriction is applicable only to taxable income generated since 1 January 2017.
- Transfers and other operations regarded as sales, as well as services other than those rendered by employees and consultants, are subject to 19% Value Added Tax (VAT). Exports of all products and services qualified as exports by the Customs Service are exempt for VAT purposes. VAT paid on imports and on local purchases and services may be deducted from VAT surcharged on sales or services rendered.
- There are various other types of payments to non-residents which are subject to withholding tax. Chile has signed double tax treaties with a number of countries under which the withholding tax rate may be reduced or the tax may not be applicable.
- Credits are available for overseas taxes paid on foreign-sourced income. Where the income consists of dividends or overseas profits, the credit is capped at a maximum of 35% of the gross dividends or profits.
- Although individuals resident in Chile generally pay income tax on their worldwide income, foreigners who establish their domicile or residence in Chile pay income tax only on their Chilean-sourced income for the first three years of residence.

## A. TAXES PAYABLE

### COMPANY TAX

The income tax legislation provides for a scheduler system divided as follows:

## FIRST CATEGORY TAX

First Category tax is due on income derived from commercial, industrial and agricultural activities, mining, fishing and other extractive activities, investment, and real estate. All income not specifically taxed under another category and not tax exempt is included. Capital gains are included in gross income subject to First Category tax with certain exceptions which include:

(a) Gains from the sale of publicly traded Chilean corporations' stock acquired and sold under certain conditions such as to be carried out on the Stock Exchange, which are tax exempt.

(b) Sale of mining rights up to the amount represented by the variation in the cost of living index between the date of purchase and that of sale, carried out by taxpayers not subject to the First Category tax on effective income.

(c) Sale of real estate other than that included in the assets of a taxpayer subject to the First Category tax on effective income. The maximum cumulative income not taxable under this rule amounts to 8,000 UF (approximately USD 309,000), regardless of the number of operations made by the taxpayer.

### FIRST CATEGORY INCOME TAX SYSTEMS

Taxpayers required to declare their income subject to First Category tax, based on the results of a balance sheet according to full cycle accounting are subject to a partially integrated regime. This is the standard applicable regime, under which shareholders, partners and individual entrepreneurs must include in their own income tax return the profits distributed by or withdrawn from the company but in practice they can only use 65% of the corporate tax as a tax credit as they have to refund 35% of the First Category corporate tax. The maximum tax burden on profits affecting investors under this system is therefore 44.45%. Said restriction on the use of corporate tax as a credit is not applicable to investors domiciled or resident in countries that have concluded a double tax treaty with Chile, in which the application of the Additional Tax on the income distributed or withdrawn has been agreed upon provided that the First Category Tax is deductible of said tax, or another clause producing the same effect is included. The same tax benefit is also granted when the double tax treaties have not yet entered into force but have been signed by Chile before 1 January 2020, but that rule will only stay applicable until 31 December 2026.

Micro, small and medium-sized enterprises (Pymes) that meet certain conditions and generate income not exceeding 75,000 UF (approximately USD 2,860,000 ) on average over the last three years can benefit from a special tax system, under which the First Category Tax is applied to the result determined on a cash basis, i.e. income and effective disbursements. In other words, the Pro Pyme tax regime is based on the difference between the proceeds, i.e. income effectively received by the taxpayers, and the disbursements made in the same period, regardless of whether the payments correspond to purchases of fixed assets or inventories. The entrepreneurs, partners or shareholders will be taxed on withdrawals, remittances or distributions of profits and the 25% First Category tax can be fully used as a tax credit against their personal income tax. Taxpayers can opt to become subject to the partially integrated system within the first quarter of the year.

There is an additional special tax regime called Transparent Pro Pyme Regime, applicable to companies whose owners are subject to final taxes. The income is determined based on the receipts received and expenses paid. The company is not subject to tax, but the income determined by the company is subject to owners' personal taxes, although the profit has not been withdrawn or distributed.

## SECOND CATEGORY TAX

Second Category gross taxable income refers to the one arising from wages, salaries, overtime payments, bonuses, fees, gratuities, profit sharing and any other form of remuneration. It is a progressive tax, the highest of which is 40%, applicable on a monthly basis to the excess of 310 monthly tax units (approximately USD 21,000).

## COMPLEMENTARY TAX (IMPUESTO GLOBAL COMPLEMENTARIO)

This is a progressive tax assessed on a resident individual or domiciled in Chile with respect to income received or withdrawn in the preceding year. Its highest rate is 40%, applicable to the excess of 310 yearly tax units (approximately USD 252,000 ).

## ADDITIONAL TAX (IMPUESTO ADICIONAL)

This tax affects, among others, the Chilean-sourced income withdrawn or remitted abroad to non-residents or non-domiciled individuals and of companies or juridical entities organised abroad with or without a permanent establishment in Chile in the form of branches, offices, agents or representatives. This tax also affects foreign payments such as royalties, technical assistance and others at varying rates.

## SPECIAL TAX OF ARTICLE 21° OF THE INCOME TAX LAW

This tax affects almost all entities regardless of the legal structure they have (individuals, corporations, permanent establishments of non-resident entities, etc.). It is applied at a 40% rate on all amounts that are disallowed as an expense, when they represent disallowed actual disbursements or withdrawals of assets, regardless of the way in which they may have been accounted for. Under certain circumstances this kind of disallowed expense must be included in the income tax return of the correspondent shareholder, partner or individual owner which has to pay a 10% additional surcharge on such amounts.

## SPECIFIC TAX IN OPERATIONAL MINING INCOME

Since 2006, there is a specific tax on the operational income of the mining activity obtained by a mining operator. This progressive tax rate currently ranges from 0.5%, if annual turnover is equal to or exceeds 12,000 metric tons of fine copper, to 4.5% if annual turnover is between 40,000 metric tons and 50,000 metric tons. If turnover exceeds 50,000 metric tons, the tax is applied on the mining operational profit margin1 and the progressive tax rate ranges from 5% on the operational profit margin not exceeding 35 to 14% if the operational profit margin exceeds 85. The operational taxable income2 on which this tax is applied is determined in a specific way. Certain expenses such as losses from past periods, accelerated depreciation of fixed assets, etc. are not allowed for this purpose.

- This is the mining operational taxable income divided by the mining operational revenue, multiplied by 100.
- This is the net income (that is, the total mining revenues less the cost and expenses) and making the adjustments indicated in the Income Tax Law for the application of the corporate tax.

## CLASSES OF TAXPAYERS

Any person or entity domiciled or resident in Chile must pay tax on income, whatever its origin, whether its source is located in Chile or abroad. Non-residents are subject to tax on income, the source of which is located within Chile. An individual is considered resident for tax purposes when remaining in Chile, uninterruptedly or not, for a period or periods exceeding 183 days in aggregate during any twelve-month period. Foreigners working in Chile are subject to tax only on their Chilean-sourced income during the first three years of domicile or residence period which may be extended. After this period, they become subject to tax on their worldwide income.



Thus, the income tax system covers individuals and legal persons, resident or non-resident, foreign or national, whose income source is located in Chile and also, in the case of a resident's income, foreign-sourced income. For example, partnerships are subject to a 25% or 27% First Category tax on their profits, depending on the tax system which they are subject to. Under the Partially integrated system the income tax of partners is payable or included in the personal income tax return when distributed or remitted abroad. The credit is 27% First Category tax but 35% of it must be refunded, except in some cases such as that of taxpayers of countries that have a double tax treaty with Chile (see paragraph First Category Income Tax Systems).

## VALUE ADDED TAX (VAT)

Transfers and other operations regarded as sales, as well as services other than those rendered by employees and consultants, are subject to 19% VAT. In addition, certain items are subject to sales tax. For imports, the taxable basis is the customs value or CIF value, including customs duties. Certain capital goods forming part of foreign investments of at least USD 5 million may be exempt from VAT, for which the investor must submit an application to the Ministry of Finance.

The tax applies to the sale of all movable and immovable physical assets (except land) sold by a person who is a customary seller. The tax basis is the sales price, including monetary correction, interests, finance charges and penalty interests. The tax itself is excluded from the basis. Exports of all products are exempt for VAT purposes. VAT paid on imports and on local purchases and services may be deducted from VAT surcharged on sales or services rendered. VAT paid on importation and on acquisition or services received, when accessory to operations exempt from VAT (unless they are exports) or not related directly to the activities of the seller, is not recoverable.

Some products like alcoholic and non-alcoholic beverages, jewels, furs, articles made of gold, silver or ivory are subject to a sale surtax at different rates.

## LOCAL TAXES

No local income taxes are payable in addition to central government taxes. However, Chile imposes taxes on real estate and a stamp tax on documents that contain loans and credit operations (bill of exchange, promissory notes, etc.). Enterprises have to pay an annual municipal licence, calculated on the taxpayer's equity at a minimum rate of 0.25% and a maximum of 0.5%, set by each municipality. The total amount cannot exceed 8,000 monthly tax units (approximately USD 542,000 ), which is allocated among the municipalities in which the taxpayer has an office, factory or other establishment.

## B. DETERMINATION OF TAXABLE INCOME

Gross income is arrived at by deducting from gross receipts the direct cost of goods and services required to produce such receipts. The direct cost of locally acquired goods will be the purchase price, to which the cost of freight and insurance to deliver to the taxpayers' premises may be added. For imported goods, it will include CIF value, duties and customs charges, and local freight and insurance costs as above could optionally be added. For manufactured or processed goods, direct cost will include raw material, costs in the manner described, and labour charges. Business income is determined on the accrual basis, whereas the dividend income on corporate shares is assessed on a cash basis. In the case of long-term projects, the tax authorities are empowered to issue rulings regarding the determination of income for tax purposes.

Business expenses are deductible from gross income provided that they have not already been deducted in arriving at such gross income and that the expenses are required for the income to be obtained. Expenses incurred in the acquisition, maintenance or exploitation of assets not used in the regular course of business are not deductible. The accounting period in Chile coincides with the calendar year.

### CFC (Controlled Foreign Company) Rules

Certain foreign income is taxable in Chile not only when it is received but also accrued. In fact, profit consisting of passive income (interests, dividends, etc.) received or accrued by foreign entities controlled by Chilean taxpayers or patrimonies, must be considered as received or accrued by these Chilean taxpayers. The taxable profit of the foreign entity is determined by applying the Chilean tax regulations.

## DEPRECIATION

Depreciation on fixed assets, except for land, is tax deductible under the straight-line method based on their useful lives in accordance with the guidelines of the Chilean Internal Revenue Service (IRS), computed on the restated value of the assets. A shorter lifespan is stated in the Income Tax Law as an option for depreciation, applicable to fixed assets purchased since 2003. The option means an accelerated depreciation for new assets when acquired locally, or new or used assets when imported, with useful lives of over five years. For this purpose, the assets will be assigned useful lives equivalent to one-third of the normal, eliminating fractions of months.

There is an alternative according to the amount of turnover of the taxpayers (100,000 UF; approximately USD 3,860,000 ) on average over the last three years), which allows them to accelerate the depreciation to 1/10 of the normal lifespan of the fixed assets. The lifetime thus obtained cannot be less than one year. Taxpayers may discontinue the use of the accelerated method at any time but may not return again to the accelerated method. The difference between accelerated and straight-line method will not reduce the taxable profit that can be withdrawn by partners or distributed to shareholders.

No allowance is made for amortisation of intangible assets such as, patents, trademarks, etc. Goodwill in mergers and acquisitions that cannot be allocated to non-monetary assets, is considered as an expense only at the winding up of the enterprise. Depletion of ore in mining properties is not tax deductible.

## STOCK / INVENTORY

The cost of goods sold or production materials and supplies consumed is based on the first-in, first-out (FIFO) basis, although the 'average' method may be elected. The method adopted determines the basis for the valuation of the closing inventory. The valuation so determined is, however, adjusted in the manner stipulated for the annual monetary correction procedures.

## DIVIDENDS



Dividends received from Chilean corporations are exempt from First Category tax. There is no distinction in Chile between dividends and inter-company dividends. A dividend in kind as such does not exist. Dividends are necessarily expressed in cash, notwithstanding the fact that the company may distribute certain assets corresponding in value to the dividend amount. Stock dividends in the form of bonus shares or increases in the par value of existing shares are not considered income for tax purposes.

## INTEREST DEDUCTIONS

Generally, interest accrued or paid in the financial year is a deductible expense, provided that it has been incurred in connection with loans related to the business. Regarding the interest and other amounts, when originating in acts or contracts concluded with related parties abroad, the expense will only be deductible in the year such amounts are paid, credited to account or placed at the disposal of the beneficiary. It is also required that the correspondent Additional tax is paid unless such amounts are tax exempt.

## LOSSES

Losses incurred in the fiscal year are deductible. Furthermore, there is no limit on carry forward of losses. There are no loss carry-back provisions, nor is it available to group profitable and unprofitable affiliates for tax purposes. However, dividends received or income withdrawn from third companies can be offset against losses for tax purposes. This leads to a refund of the First Category tax that affected the dividends or the income withdrawn. This tax benefit will be reduced yearly and it will no longer be applicable from 2024 onwards.

## FOREIGN SOURCE INCOME

Non-domiciled or non-resident corporations are only subject to income taxes on their Chilean-sourced income. If the domestic corporation receives amounts in excess of the book value of an investment when a foreign subsidiary is liquidated, these are considered as income subject to regular taxes. From 2012 onwards, the income received or accrued from derivatives such as forwards, futures, swaps and options, by persons or entities without domicile or residence in the country, will not be subject to income tax, except for those arising from derivatives that are settled by physical delivery of shares or rights in companies incorporated in Chile.

## INCENTIVES

Foreigners may remit their earnings or be paid abroad. Remittances have to be reported to the Central Bank of Chile. Non-domiciled or non-resident individuals in Chile are subject to an Additional income tax, at a rate of 35%. However, if the nature of the foreign activities is scientific, cultural or sports-related, the tax rate is only 20% as a sole tax as long as the foreigner's stay is insufficient to be considered a resident. This tax is also applicable to engineering or technical jobs and professional or technical services rendered, in Chile or abroad, by individuals or juridical entities at a 15% rate. This rate will be 20% in the cases pointed out in the summary showed below.

## ROYALTIES

Royalties are deductible expenses:

(a) Provided they are necessary to produce income;

(b) Provided the rate is that normally paid in similar circumstances with respect to their nature;

(c) As a result of the relationship existing between the parties. In this case, the royalty is deductible when it is paid, credited to account or placed at the disposal of the beneficiary, and Additional income tax is paid unless the royalty is tax exempt.

Deduction of outbound royalties is limited to 4% of receipts from sales and services effected in the tax year. The 4% limit is not applied if in the tax year there is no capital, control or administration relationship, whether direct or indirect, between the taxpayer and the recipient of the royalties. Likewise, the 4% limit is not applied if the royalties are taxed in the recipient's country at a rate of at least 30%. In calculating the 4% limit, it is necessary to first compute the royalties not subject to the limit and then the royalties subject to the limit. Also the effect of double tax treaties entered into by Chile need to be considered.

## C. FOREIGN TAX RELIEF

- Foreign tax credits are allowed in Chile. A resident taxpayer who is taxed in Chile on dividends or profits received from enterprises set up abroad which have already been taxed in the source country may be entitled to have the foreign tax levied on that income credited against his tax liability, with a cap equivalent to 35% of the gross dividends or profits. This credit must be computed into the tax basis. Foreign taxes paid in excess of the cap, which cannot be used as a tax credit, are allowed as a deduction from taxable income. The foreign tax is set off against First Category tax at the corresponding tax rate and, in the case of companies, the balance against the Additional or Complementary taxes when the profits are distributed.
- Law 19.840, published in the Official Gazette on 23 November 2002, allows foreign investors to establish Chile as a base for their investments into third countries. That law states special regulations (Article 41 D) to publicly traded corporations and closely held corporations ruled by the regulations of the former, constituted in Chile and in accordance with Chilean laws, incorporated with foreign capital permanently owned by partners or shareholders not domiciled nor resident in Chile, nor in countries or territories that are considered tax haven jurisdictions, or harmful preferential tax regimes. The same tax treatment will be applicable to non-domiciled or non-resident shareholders of said companies for remittances and distribution of profits or dividends obtained from them and from partial or total repatriations of capital, as well as for the capital gains obtained from the disposal of shares in companies governed by the abovementioned Article 41 D.
- According to this article, such companies are not considered as domiciled in Chile for the purposes of the Chilean Income Tax Law and, therefore, they will only pay taxes in the country on their Chilean-sourced income. The line of business of the aforementioned companies must be investments in Chile and abroad and the capital contributed by the foreign investor must

have a foreign source. The regulations related to bank secrecy will not be applied to them. This rule has been cancelled with effect from 1 January 2022. However, as of 23 November 2017 new companies could no longer join this regime.

- Expenses incurred in approved training plans for personnel, up to 1% of the yearly payroll, are allowed as a credit against the First Category income tax.
- Immovable property tax will be creditable against the First Category tax only if paid by the owner or usufructuary of agricultural land or if they have given the property on lease, usufruct or other forms of temporary assignment to a person or entity, except when they are relatives or related parties. Construction companies and real estate companies may credit property tax paid on immovable property built to be sold.



## D. CORPORATE GROUPS

For tax purposes, consolidation of affiliated companies is not allowed. Losses can only be offset against profits of the same company ( or against dividends or taxable profits withdrawn from third companies until 2023).

## E. RELATED PARTY TRANSACTIONS

Charges from foreign affiliates or head offices are only allowable for specific items related to the local company or branch. A pro-rata allocation of the foreign entity's expenses is not generally acceptable for tax purposes (see under 'Royalties' above).

## F. PROFIT REMITTANCES, WITHDRAWALS OR DISTRIBUTIONS

Broadly speaking, profit remitted, withdrawn or distributed to investors not domiciled or resident in Chile that is taxed with the Additional Tax, is subject to a withholding tax. Regarding taxpayers subject to the Partially Integrated System, profit remittances and dividends paid to the shareholders not domiciled or resident in Chile are subject to Additional Tax upon distribution at a rate of 35%, which has to be withheld. However, if the taxpayer has an accumulated credit originating from amounts subject to the First Category tax, a credit is granted against the withholding tax, taking into account the First Category tax rate in force in the year of remittance or withdrawal. It must be kept in mind that in such case 35% of the credit has to be returned by increasing the amount of the withholding, unless the taxable profit remitted has been generated before 2017, subject to the old tax regime. However, such restriction is not applicable to investors domiciled or resident in those countries that have concluded a double tax treaty with Chile (see paragraph "First Category Income Tax Systems" letter b). The same tax procedure is applicable to remittances of profit to partners or profit withdrawn by individuals not domiciled or resident in Chile.

## G. THE 42% ALTERNATIVE

Foreign investors that have a Decree Law 600 contract entered into with the State of Chile and have opted for the 42% rate are subject to the First Category tax (payable by the branch or subsidiary) at the corresponding rate and an Additional tax at a rate that completes the 42%, on the same tax base. Thus, the total theoretical tax burden is 42% on pre-tax income instead of the 35% currently paid under normal taxation. The investor who has opted for the 42% invariable rate can elect at any time to be taxed at the normal rates. This election is irrevocable. Decree Law 600 has been cancelled with effect from the beginning of 2016, and has been replaced with a new regulation that does not consider any income tax rules. However, foreign investors were still allowed during the four years following the entry into force of the law to apply for investment contracts with the State of Chile subject to Decree Law 600. In any case, the invariable income tax rate would be 44.45%.

## H. PAYMENTS ABROAD

Other payments to a non-resident not domiciled in Chile are subject to an additional withholding tax as follows:

| Type of Payment | Rate |
|---|---|
| Royalties | 30% |
| Royalties paid abroad for patents of invention, industrial designs, new vegetal varieties, software and other specific cases | 15%[1] |
| Engineering and technical jobs | 15%[2] |
| Professional and technical services | 15%[2] |
| Other services paid abroad | 35% |
| Interest to foreign entities | 35% |
| Interest to foreign banks | 4% |
| Interest to foreign related banks, on the part of the loans that exceeds three times the equity (sole tax on excess indebtedness) | 35% |
| Marine freight (exemptions on the basis of reciprocity) | 5% |
| Insurance premiums to foreign insurers | 22% |
| Reinsurance premiums to foreign insurers | 2% |
| Individuals who carry out scientific, cultural or sports activities in Chile | 20% |

Notes:

1. The rate is 30% when the creditor or beneficiary of the remuneration is incorporated, domiciled or a resident in a country considered as a preferential tax regime according to the rules stated in article 41 H of the Income Tax Law.
2. The rate is 20% in the same situation as described in note 1 above.

## I. PERSONAL TAX

All individuals, domiciled or resident in Chile are subject to income tax whatever the source of the income. Non-domiciled or non-resident individuals in Chile are subject to tax on their Chilean-sourced income. An individual is considered resident for tax purposes when remaining in Chile, uninterruptedly or not, for a period or periods exceeding 183 days in aggregate during any twelve-month period. During the first three years of residence in the country, foreigners who establish domicile or residence in Chile pay income taxes only on their Chilean-sourced income. This term may be extended by the tax authorities for an additional three years after which they are taxed on their worldwide income. All remuneration for personal services as well as income derived from other services is included in gross income. All forms of remuneration are included in taxable salary. The only deduction is for social security contributions.

Items like reimbursement of travel expenses, housing provided for the sole interest of the employer, moving expenses, and reasonable relocation allowances are considered non-taxable income and are excluded from the tax calculation. Items like cost of living allowance, area allowance, car allowance, vacation travel, and utilities are taxable.

Capital gains of individuals are treated mostly as any normal income, subject to First Category tax and Complementary Tax. However, certain capital gains have special treatments as in the case of shares and immovables.



Necessary business expenses incurred on behalf of others are reimbursable and exempt from taxes, provided that they are duly proved. Professionals can deduct their effective expenses or standard deduction. The only deductible non-business expenses are social security contributions, on a voluntary basis where maximum amounts are determined in the same way as it is applicable to employees. Employees must pay a variable percentage for pension plans of around 12% and 7% for health insurance, applicable on a maximum of up to 81,6 UF (approximately USD 3,150 ), adjustable yearly. On a voluntary basis, employees are allowed to make additional contributions to the pension fund of up to 50 UF (approximately USD 1,900), also deductible from salaries for tax purposes. Tax computation for individuals varies depending on the type of income.

Basically, the following categories exist:

(1) Professionals – working as independent consultants must compute all their yearly income less the expenses necessary to produce such income or presumed expenses of up to 30% of the annual gross income with a top limit equivalent to 15 yearly tax units (approximately USD 12,200). They can also deduct the social security contributions with equal caps applicable to employees.

(2) Employees – taxable income is the salary minus social security contributions either mandatory or voluntary (see paragraph above). No other deductions from taxable income are allowed. The tax applicable is the Sole Second Category income tax, mandatorily withheld by the employer on a monthly basis.

(3) Combined income – income received by individuals such as dividends, profits in partnerships or derived from personal business is subject to complementary tax. In the case of dividends and profits distributed by a First Category taxpayer, the individual has a credit originated in the payment of the First Category tax, whether the 35% tax credit should be returned or not. In the case of employment income, the individual has a credit for the payment of the Sole Second Category income tax.

(4) Professionals and employees domiciled or resident in Chile subject to Sole Second Category tax or Complementary Tax have a credit equivalent to the foreign tax levied on their foreign-source income. There is a cap of 35% on the gross foreign income.

### EMPLOYEE REMUNERATION

A deduction is allowed for wages, salaries and remuneration paid for personal services, including bonuses paid in accordance with the law or a contract. Voluntary participations and profit sharing granted to employees and workers are deductible, provided the taxes they are subject to have been paid.

A deduction is also allowed in connection with remunerations paid to persons who, due to their controlling position in the enterprise, are able to influence the setting of their remuneration. The deduction is limited to that part which, in the opinion of the tax administration, is proportionate to the importance of the enterprise, its reported income, services rendered by the recipient and capital profitability. Subject to the same conditions, remuneration paid for actual and permanent work to owners of sole proprietorships, partners of companies, managing partners of partnerships limited by shares and shareholders are also deductible. Likewise, the remuneration paid to the spouse or civil partner of the owner or to his children who actually work in the company or business will be accepted as a deductible expense to the extent that it is a reasonably remuneration in terms of the previous paragraph.

A deduction is allowed for remuneration paid for services rendered abroad, provided that it is substantiated by reliable documents and provided that, in the opinion of the tax administration, the remuneration is necessary or convenient for the production of income in Chile.

## J. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Chile has signed a number of double tax treaties referenced to in the table below. Chile has also signed treaties with the United States of America, the United Arab Emirates, the Netherlands and India although these are not yet effective at the time of publication.

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | **Individuals, companies (%)** | **Qualifying companies[1] (%)** | | |
| **Non-treaty countries** | 35% (Chilean sourced income) | | 0/4/35 | 0/4/35 |
| **Treaty countries:** | | | | |
| Argentina | 15 | 10 | 4/12[28] | 3/10/15[19] |
| Australia | 15 | 5[2] | 5/10[7] | 5/10[33] |
| Austria | 15 | 15 | 58/15[31] | 5[18]/10 |
| Belgium | 15 | 03 | 5/15[40] | 5/10[33] |
| Brazil | 15 | 10 | 15 | 15[30] |
| Canada | 15 | 5[4] | 10[9] | 10/15[20] |
| China | 10 | 10 | 4[32]/10 | 2/10[33] |
| Colombia | 7 | 0 | 5/15[10] | 10[29] |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies[1] (%) | | |
| Croatia | 15 | 55 | 5/15[10] | 5/10[33] |
| Czech Republic | 15 | 15 | 5[11]/15[31] | 5[18]/10 |
| Denmark | 15 | 5 | 5[11]/15[31] | 5[18]/10 |
| Ecuador | 15 | 5 | 5[8]/15[31] | 10[22] |
| France | 15 | 15 | 4/5/10[35, 12] | 2[39]/10 |
| Ireland | 15 | 5[5] | 5[8]/15[31] | 5[18]/10 |
| Italy | 10 | 5 | 4/5/10[41] | 2/5/10[23] |
| Japan | 0/15 | 0/5[6] | 4/10/15[13,14] | 2/10[33] |
| Korea (Rep.) | 10 | 5 | 5[11]/15[31] | 5[21]/15[21] |
| Malaysia | 15 | 5[5] | 15 | 10 |
| Mexico | 10 | 5[5] | 5/10[15] | 10[24] |
| New Zealand | 15 | 15 | 10/15[10] | 5/10[25] |
| Norway | 15 | 5 | 5/15[36] | 5/10/15[34] |
| Paraguay | 10 | 10 | 10/15[10] | 15 |
| Peru | 15 | 10 | 15 | 10/15[26] |
| Poland | 15 | 5[5] | 5[16]/15[31] | 5[18]/10 |
| Portugal | 15 | 10 | 5/10/15[17] | 5/10[33] |
| Russia | 10 | 5 | 15 | 5/10[33] |
| South Africa | 15 | 5 | 5/15[35] | 10/15[33] |
| Spain | 10 | 5[5] | 5[8]/15[31] | 5[18]/10 |
| Sweden | 10 | 5[5] | 4/5/15[10, 12] | 2[39]/10 |
| Switzerland | 15 | 15 | 5/15[35] | 5/10[33] |
| Thailand | 10 | 10 | 10/15[10] | 10/15[27] |
| United Kingdom | 15 | 5[5] | 5[8]/15[31] | 5[18]/10 |
| Uruguay | 15 | 5[37] | 4/15[38] | 10 |

Notes:

1. The rate applies to a participation of at least 25% of capital or voting power, unless stated otherwise.
2. Applies to a participation of at least 10% of voting power.
3. Applies to a participation of at least 10% of capital.
4. The treaty rate is 10%, which is reduced to 5% with respect to a participation of at least 25% of voting power (by virtue of a most favoured nation clause under the Chile-Mexico treaty; Circular 62, 2005 Chilean IRS).
5. Applies to a participation of at least 20% of capital or voting power.
6. A 5% rate applies if the beneficial owner is a company that has owned directly, for the period of six months ending on the date on which entitlement to the dividends is determined, at least 25% of the voting power in the company paying the dividends and 0% if the beneficial owner of the dividends is a pension fund, provided that such dividends are not derived from the carrying on of a business by such pension fund or through an associated enterprise.
7. The lower rate applies to interest derived by financial institutions. The rate of 15% stated in the treaty was reduced to 10% since 1 January 2019 by virtue of a most favoured nation clause under the Chile-Japan treaty (Circular 27, 2019 Chilean IRS).
8. A 5% rate applies to interest derived from bonds or securities that are regularly and substantially traded on a regulated securities market. A 4% rate applies to interest derived from loans granted by banks and insurance companies and a sale on credit paid by the purchaser of machinery or equipment to a beneficial owner that is the seller of the machinery or equipment. However if the interests derived from an agreement that implies a back to back credit or similar, the rates will be 5% or 10% as the case may be (by virtue of most favoured nation clauses in the Chile-Japan treaty; Circulars 22 and 50, 2018 Chilean IRS).
9. The treaty rate is 15%, which is reduced to 10% with respect to interest derived from (i) loans granted by banks and insurance companies (ii) bonds or securities that are regularly and substantially traded on a regulated securities market and (iii) a sale on credit paid by the purchaser of machinery or equipment to a beneficial owner that is the seller of the machinery or equipment (by virtue of a most favoured nation clause under the Chile-Spain treaty; Circular 8 2005 Chilean IRS). By virtue of a most favoured nation clause under the Chile-Japan treaty, 10% is the only tax rate applicable to interest as from 1 January 2019. Circular 59 2021 Chilean IRS.
10. A 4% rate applies to interest derived from loans granted by banks and insurance companies, and a sale on credit paid by the purchaser of machinery or equipment to a beneficial owner that is the seller of the machinery or equipment and other cases. A 5% rate applies to interest derived from bonds or securities that are regularly and substantially traded on a regulated securities market. Interests from back to back credits are subject to 5% or 10% depending on the case. All these percentages are applicable since 1 January 2017, by virtue of a most favoured nation clause under the Chile-Japan treaty; Circular 27, 2019 Chilean IRS).
11. A 5% rate applies to interest derived from bonds or securities that are regularly and substantially traded on a regulated securities market. A 4% rate applies to interest derived from loans granted by banks and insurance companies and a sale on credit paid by the purchaser of machinery or equipment to a beneficial owner that is the seller of the machinery or equipment. However if the interests derived from an agreement that implies a back to back credit or similar, the rates will be 5% or 10% as the case may be (by virtue of most favoured nation clauses Chile-Japan treaty; Circular 22, 2018 Chilean IRS).

12. The treaty rate is 15%, which is reduced to 10% since 1 January 2019 (by virtue of a most favoured nation clause under the Chile-Japan treaty; Circular 27, 2019 Chilean IRS).
13. General rates under the treaty are 5% and 15%, which are reduced to (i) 4% if the beneficial owner of the interest is a bank, an insurance company, a lending or finance business, an enterprise selling machinery or equipment on credit, or any other enterprise, provided that in the three taxable years preceding the taxable year in which the interest is paid, the enterprise derives more than 50 per cent of its liabilities from the issuance of bonds in the financial markets or from taking deposits at interest, and more than 50 per cent of the assets of the enterprise consist of debt-claims against unrelated persons and to (ii) 10% for interest paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to an arrangement involving back-to-back loans (by virtue of a most favoured nation clause under the Chile-Japan treaty). Moreover, under the MFN clause of the Chile-Japan treaty, the aforementioned 15% general rate will be reduced to 10% as from 1 January 2019 onwards.
14. The 15% general rate applies up to 31 December 2018 and 10% applies as from 1 January 2019 onwards. (Circular 27 2019 Chilean IRS). Regarding the application of the 4% and 10%, see footnote 13, (i) and (ii).
15. The general treaty rate is 15%, which is reduced to 5% for interest from loans granted by banks and to 10% for interest from loans granted by insurance companies, from bonds or securities regularly and substantially traded on a recognized securities market and for interest related to sales of machinery and equipment on credit (by virtue of most favoured nation clauses; Circular 62 and 8, 2005 Chilean IRS). As from 1 January 2019 a 5% tax rate applies to interest paid to banks and 10% in the rest of the cases (by virtue of a most favoured nation clause under the Chile-Japan treaty Circular 59 2021 Chilean IRS).
16. A 5% rate applies to interest derived from bonds or securities that are regularly and substantially traded on a regulated securities market. A 4% rate applies to interest derived from loans granted by banks and insurance companies and a sale on credit paid by the purchaser of machinery or equipment to a beneficial owner that is the seller of the machinery or equipment. However if the interests derived from an agreement that implies a back to back credit or similar, the rates will be 5% or 10% as the case may be (by virtue of most favoured nation clauses under the Chile-Japan treaty; Circular 22, 2018 Chilean IRS).
17. The general treaty rate is 15%, which is reduced to 10% for interest from loans granted by banks and insurance companies and sales on credit of machinery and equipment where the beneficial owner is the seller and to 5% for interest from bonds or securities regularly and substantially traded on a recognized securities market
18. The 5% rate applies to royalties from the use of, or right to use, any industrial, commercial or scientific equipment, was reduced to 2% by virtue of a most favoured nation clause (Chile-Japan treaty. Circulars 22 and 50, 2018 Chilean IRS).
19. The general treaty rate is 15%, which is reduced to 3% for news-related royalties and to 10% for copyright royalties (other than royalties related to films or tapes), patents, trademarks, know-how, certain lease-related royalties and technical assistance.
20. The general treaty rate is 15%, which is reduced to 10% (by virtue of a most favoured nation clause under the Chile-Spain treaty; Circular 8, 2005 Chilean IRS).
21. The general treaty rate is 15%, but reduced to a general rate of 10% by virtue of a most favoured nation clause (Chile-Spain treaty. Circular 62 and 8 2005 Chilean IRS). Treaty rate of 5% applicable to royalties from the use of, or right to use, any industrial, commercial or scientific equipment was reduced to 2% by virtue of a most favoured nation clause (Chile-Japan treaty; Circular 22, 2018 Chilean IRS).
22. The general treaty rate is 15%, but reduced to a general rate of 10% by virtue of a most favoured nation clause (Chile-Spain treaty; Circular 8, 2005 Chilean IRS). 10% also applies to royalties from the use of, or right to use, any industrial, commercial or scientific equipment.
23. The general treaty rate is 10% while a 5% rate applies to royalties from the use of, or right to use, any industrial, commercial or scientific equipment. However, the 5% for such royalties is reduced to 2% since 1 January 2017 under the application of a most favoured nation clause (Chile-Japan treaty; Circular 5, 2020 Chilean IRS).
24. The general treaty rate is 15%, but reduced to a general rate of 10% by virtue of a most favoured nation clause (Chile-Spain treaty; Circular 62 and 8, 2005 Chilean IRS ).
25. The general treaty rate is 10%, which is reduced to 5% under the application of a most favoured nation clause with respect to royalties paid for the use of, or the right to use, any industrial, commercial or scientific equipment. However this reduction has not yet been confirmed by the Chilean IRS.
26. The general treaty rate is 15%, but reduced to a general rate of 10% by virtue of a most favoured nation clause (Chile-New Zealand treaty). However this reduction has not yet been confirmed by the Chilean IRS.
27. The general treaty rate is 15% while a 10% rate applies to royalties from the use of, or the right to use, any copyright of literary, artistic or scientific work, or for the use of, or the right to use, industrial, commercial or scientific equipment.
28. The treaty rate is 15%, which is reduced to 12% with respect to interest derived from loans granted by banks and insurance companies, bonds or securities that are regularly and substantially traded on a regulated securities market and a sale on credit paid by the purchaser of machinery or equipment to a beneficial owner that is the seller of the machinery or equipment. Since 1 January 2019 the rate is also reduced to 12% applicable to interests which rate are not stated in other part of the article 11 of the treaty, by virtue of a most favoured nation clause under the Chile-Japan treaty (Circular 27, 2019 Chilean IRS)
29. Technical and consulting services are included in the concept of royalty.
30. The provision of technical services and technical assistance are included in the concept of royalty.
31. The general treaty rate is 15%, which was reduced to 10% as from 1 January 2019 (most favoured nation clause under the Chile-Japan treaty; Circulars 22 and 50, 2018 Chilean IRS).
32. A 4% rate applies to interest derived from loans granted by banks and insurance companies and a sale on credit paid by the purchaser of machinery or equipment to a beneficial owner that is the seller of the machinery or equipment. However if the interests derived from an agreement that implies a back to back credit or similar, the rates will be 10%. A 5% rate applies to interest derived from bonds or securities that are regularly and substantially traded on a regulated securities market (by virtue of most favoured nation clauses Chile-Japan treaty; Circular 22, 2018 Chilean IRS).
33. The lower rate applies to royalties from the use of, or right to use, any industrial, commercial or scientific equipment.
34. The general treaty rate is 15%, but reduced to a general rate of 10% by virtue of a most favoured nation clause (Chile-Spain treaty; Circular 62 and 8, 2005 Chilean IRS). 5% applies to royalties from the use of, or right to use, any industrial, commercial or scientific equipment.
35. A 4% rate applies to interest derived from loans granted by banks and insurance companies, and a sale on credit paid by the purchaser of machinery or equipment to a beneficial owner that is the seller of the machinery or equipment and other cases. 5% applies on interest derived from bonds or securities that are regularly and substantially traded on a regulated securities market. Interests from back to back credits are subject to 5% or 10% depending on the case. All these percentages are applicable since 1 January 2017, by virtue of a most favoured nation clause under the Chile-Japan treaty (Circular 27, 2019 Chilean IRS).
36. The general treaty rate is 15%. The 5% tax rate applies to interest derived from loans granted by banks and insurance companies, bonds or securities that are regularly and substantially traded on a regulated securities market and a sale on credit paid by the purchaser of machinery or equipment to a beneficial owner that is the seller of the machinery or equipment (by virtue of most favoured nation clauses; Circular 8, 2005 Chilean IRS).

37. A 5% rate applies when a company has a participation of at least 25% of capital or voting power. This tax rate is the maximum applicable to dividends distributed by any Chilean entities set up in Uruguay.
38. A 5% rate applies to interest from sales of machinery and equipment carried on credit.
39. The lower rate applies to royalties from the use of, or right to use, any industrial, commercial or scientific equipment (since 1 January 2017 by virtue of a most favoured nation clause under the Chile-Japan treaty; Circular 27, 2019 Chilean IRS).
40. A 5% rate applies to interest derived from loans granted by banks and insurance companies, bonds or securities that are regularly and substantially traded on a regulated securities market and a sale on credit paid by the purchaser of machinery or equipment to a beneficial owner that is the seller of the machinery or equipment.
41. A 4% rate applies to interest derived from loans granted by banks and insurance companies, and a sale on credit paid by the purchaser of machinery or equipment to a beneficial owner that is the seller of the machinery or equipment. A 5% rate applies to interest derived from bonds or securities that are regularly and substantially traded on a regulated securities market and 10% on interests produced in other operations. 4% and 10% rates are applicable since 1 January 2017 and 2019, respectively, by virtue of a most favoured nation clause under the Chile-Japan treaty (Circular 5, 2020 Chilean IRS).

Chile has also signed several agreements for the avoidance of double taxation of income from international shipping and/or air transport. Some of the agreements were concluded by means of an exchange of diplomatic notes. The agreements have been concluded with the following countries: France (air transport), Germany (air transport and shipping), Panama (air transport), Singapore (shipping), Switzerland (air transport), the United States (air transport), Uruguay (air transport), United Arab Emirates (air transport and shipping) and Venezuela (air transport and shipping).

Several agreements on information exchange are in force (Bermuda, Guernsey, Jersey, Uruguay and Multilateral Convention subscribed by members of the OECD).

C

# CHINA

## MEMBER FIRMS

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## BASIC FACTS

| | |
|---|---|
| Full name: | People’s Republic of China |
| Capital: | Beijing |
| Main languages: | Mandarin Chinese |
| Population: | 1.45 billion (2022 estimate) |
| Monetary unit: | 1 Chines Yuan Renminbi (CNY) = 10 Jiao = 100 fen |
| Internet domain: | .cn |
| Int. dialling code: | +86 |

## KEY TAX POINTS

- Corporate residents of China are taxed on their worldwide income. A foreign tax credit is allowed for income taxes paid in other countries. This credit is capped at the China income tax payable on the same income calculated under the Enterprise Income Tax Law.
- The Enterprise Income Tax Law unified the rate for domestic and foreign enterprises at 25% from 1 January 2008. For small profit making companies, the rate could be reduced to 20%. Since 2010, the government authorities have issued favourite policies to promote the business of small profit making companies and thus the effective enterprise income tax rate could be further reduced to 2.5% and 10% by now.
- Foreign enterprises with establishments in China deriving the above income which is not effectively connected with that

establishment is also subject to withholding tax. The statutory rate is 20% which is reduced to 10% by the Enterprise Income Tax Law Implementation Regulations. The 10% withholding tax may be reduced under an applicable treaty.

- Foreign enterprises without establishments in China are subject to Enterprise Income Tax on a withholding basis on the income of dividends, royalties, interest, rental income, earnings from assignment of assets in China and any other income derived from inside China.
- Individuals are taxed on the comprehensive income and business income at progressive rates.
- There is no separate tax on capital gains. Capital gains will be considered as general taxable income and thus subject to Enterprise Income Tax or Individual Income Tax.
- Turnover taxes include VAT on all goods and services and Consumption Tax on consumable or luxury goods.
- Land Value Appreciation Tax applies to transfers of land use rights and immovable properties.
- Stamp duty is levied on a variety of contracts and certain legal documents.



## A. TAXES PAYABLE

### ENTERPRISE INCOME TAX (ELT)

All foreign invested enterprises (FIEs) and those foreign enterprises (FEs) having their effective management office in China are subject to EIT on their worldwide profits. FEs with permanent establishments (PEs) in China are subject to EIT on profits derived from and attributed to the PEs. FEs without PEs in China are subject to EIT on China-source income only.

The EIT Law introduced a wider concept of management in determining tax residency. A company is recognised as a Chinese tax resident if it is incorporated in China or its place of effective control and management office is in China.

All FIEs (i.e. sino-foreign joint ventures and wholly owned foreign enterprises) and foreign enterprises (FEs) with or without establishments in China are now taxed at the same rate as domestic enterprises. EIT is charged at the rate of 25% on taxable profits in a calendar year.

In recent years, the government has introduced a series of preferential tax policies to stimulate economic growth, such as a reduced EIT rate of 15% for High & New Technological Advanced Enterprise (HNTE), qualified technology-advanced service enterprises, qualified western region enterprises and Hainan Free Trade Port enterprises as well as an effective EIT rate at 2.5% or 10% for small-scale enterprises.

The tax year in China is the calendar year (i.e. year ended 31 December).

### BRANCH PROFITS TAX

When a corporate resident enterprise has branch offices registered in different regions in China, the head office and the branches are consolidated to calculate EIT payables. If a corporate resident enterprise has overseas branch offices, the losses of overseas branch offices cannot be deducted from profit made in China, while the profit of overseas branch offices needs to be subject to EIT in China. If a FE has branches in China, the branches are subject to EIT in China.

### CAPITAL GAINS TAX

There is no separate capital gains tax. Capital gains are subject to income tax as ordinary income and are combined together with operating income to calculate income tax.

### VALUE ADDED TAX (VAT)

VAT is levied on the sales amount in respect of selling, transferring or importing of commodities, selling or transferring of properties and intangible assets, provision of repairs and processing, as well as rendering services covering research and development, and technical services; information technology services; cultural creative services; logistic auxiliary services; certification and consulting services; and tangible movable property leasing services; radio and television services; postage services, telecommunication services; construction; financing and consumer services et in China.

VAT taxpayers could be classified into two categories: general VAT payers and small-scale VAT payers depending on the annual sales amount. Generally, a small scale business is broadly defined as one with an annual turnover of less than CNY 5 million.

China has cut the VAT rates since 1 April 2019 as part of a tax reduction package. For a general VAT taxpayer, the standard VAT rates for goods sales and services are listed below:

- Goods sale/processing/repair and replacement Revenue from provision of labour services: 13% or 9% (for a small category of goods such as agricultural products);
- Lease of movable tangible assets: 13%;
- Basic telecommunication services: 9%;
- Construction: 9%;
- Postal services: 9%;
- Transportation services: 9%;
- Real estate (leasing and sale of immovable properties): 9%;
- Transfer of land use rights: 9%;
- Consumer lifestyle services: 6%;
- Financial services: 6%;
- Value-added telecommunication services: 6%;
- Sale of intangibles (except land use rights): 6%;
- Other modern services: 6%.

From 1 January 2020, the income obtained by taxpayers from the provision of public transportation services and daily life services and from the provision of express delivery services for daily necessities of residents shall be exempt from VAT. This preferential tax policy is effective from 1 January 2020 until the date to be announced separately depending on the developments of the COVID-19 pandemic.

A VAT credit mechanism is allowed for a general taxpayer where VAT payable equals output VAT less input VAT by means of VAT special invoices. Input VAT is incurred on the purchase of material, services as well as purchase or construction of fixed assets.

Taxpayers engaged in small-scale business are subject to VAT at a special rate of 3%, but there is no credit for input VAT. During the pandemic period, the tax rate for small-scale taxpayers is reduced to 1% for 2020 and 2021. 1% could still be effective for year 2022 until further notice is released by the China tax authorities.



Generally, for ordinary VAT taxpayers, export goods are subject to a zero VAT rate and are entitled to a tax refund in relation to the purchase or manufacture of the exported goods on which VAT has previously been paid. The VAT refund rate depends on the categories of the goods exported.

Goods exported by small-scale VAT payers shall be exempted from VAT and consumption tax. However, the input tax shall not be deducted or refunded.

A collection rate of 5% may also be applied to:

- Property leasing or property transfer for the transition period of property industries;
- Labour dispatch services choosing to make balance-based tax payments, which is to deduct the wages and benefits paid to despatched persons from the total consideration;
- Security protection services choosing to make balance-based tax payments;
- Human resource outsourcing services which applied the simplified tax calculation method;
- Exploitation of crude oil and natural gas jointly exploited by the Chinese-Foreign cooperative oil (gas) field.

## CONSUMPTION TAX (CT)

CT is imposed on 15 categories of consumable or luxury goods (e.g. cigarettes, alcohol, petrol and motor vehicles). The tax is calculated based on the sales value of goods, the sales quantity or a combination of the two. CT rates range from 1% to 56%. Part collection of this tax has been shifted to the retailer and is levied by the tax authorities of the retailer’s site.

## FRINGE BENEFITS TAX

No separate fringe benefits tax is levied in China.

## REAL ESTATE TAX (RET)

RET is imposed on owners, users or custodians of houses and buildings. RET is imposed at a flat rate of 12% on annual rental income of the leased property or at the rate of 1.2% on the purchase cost of self-used property. For self-used property, a discount of 10% to 30% on the purchase/construction cost is often offered by some local governments in determining the RET. The tax also applies to FIEs, Fes and foreign individuals. RET is deductible for EIT purposes.

## LAND VALUE APPRECIATION TAX (LVAT)

LVAT applies to domestic enterprises, FIEs, Fes and individuals realising gains from the transfer of land use rights, buildings and premises and associated structures. LVAT is charged at progressive rates ranging from 30% to 60% depending on the percentage gain realised from the transfer of land use rights, buildings or associated structures. LVAT could be deducted when computing EIT.

## DEED TAX (DT)

DT is imposed on the transferee or assignee to which land use rights or building ownership rights are transferred (sales, exchange or gifts). The tax rate ranges from 3% to 5% depending on the location of the property. The transferee or the assignee is the taxpayer.

## STAMP DUTY (SD)

Stamp Duty is levied on various contracts including purchase and sale contracts, property leasing, loan contracts, documents for the transfer of property rights, engineering and design contracts, construction and installation, commodity transportation, storage and property insurance contracts, and registered capital as well as accounting books. Tax rates range from 0.005% to 0.1%. A fixed amount of CNY 5 is charged on certificates evidencing rights, patents, trademarks, and licenses.

## ENVIRONMENTAL PROTECTION TAX

Enterprises, entities, other producers and operators that directly emit taxable pollutants into the environment within the territory and other sea areas under the jurisdiction of the People’s Republic of China are taxpayers of environmental protection tax. This Law has become effective as from 1 January 2018.

## SOCIAL INSURANCE CONTRIBUTIONS

All enterprises are required to contribute to social security insurance (including pension, medical, unemployment, work-related injury, maternity), and housing funds (in certain cities) every month for their employees including foreign employees in China.

## B. DETERMINATION OF TAXABLE PROFIT FOR ENTERPRISES

The taxable profit of a corporate resident is calculated as ‘taxable gross income less deductible costs, expenses, non-taxable and tax-exempt items, and losses incurred in a tax year’. It is normally calculated in accordance with audited accounts prepared on an accrual basis subject to tax adjustments by reference to the prevailing tax regulations.

## TAXABLE GROSS INCOME

The taxable gross income of an enterprise refers to the revenues derived from various sources, whether in monetary terms or in-kind, which shall include:

- Revenue from sales of goods;

- Revenue from provision of labour services;
- Gross proceeds from transfer of property;
- Dividend income from private and listed enterprises and other distributions with respect to equity interests;
- Interest income;
- Rental income;
- Royalty income;
- Revenue from donations; and
- Other income.

## TAX-EXEMPT INCOME

- Interest income from government bonds;
- Dividends, bonus and other equity investment income from qualified resident enterprises;
- Income from qualified non-profit organisations;
- Income from China Clean Development Mechanism Fund;
- Income distributed to investors of securities investment funds;
- Proceeds or income from acquisition of local government bond interest.

## TAX- REDUCTION INCOME

- Income from production of goods by comprehensive utilisation of resources (10% reduction);
- Agriculture-related interest and premium income obtained by financial and insurance agencies (10% reduction);
- Income from China Railway Construction Bond Interest (50% reduction);
- Income from community-based family service (10% reduction).

## DEDUCTIBLE COSTS

## DEPRECIATION

Fixed assets under the EIT Law mean the non-monetary assets owned and used for over 12 months in production or business operations. Generally, fixed assets are depreciable on a straight-line basis over their useful lives. Enterprises shall, in terms of the nature and operating conditions of the fixed assets, reasonably evaluate the new residual value of the fixed assets.

| The minimum depreciation periods for various kinds of assets are as follows: | | Years |
|---|---|---|
| (a) | For houses and buildings | 20 |
| (b) | For airplanes, trains, ships, machinery and other production facilities | 10 |
| (c) | For apparatus, tools and furniture and fittings in connection with production / business operations | 5 |
| (d) | For transportation facilities other than airplanes, trains and ships | 4 |
| (e) | For electronic equipment | 3 |
| (f) | For production-nature biological assets in the nature of forestry | 10 |
| (g) | For production-nature biological assets in the nature of livestock | 3 |
| (h) | For acquired software (subject to approval) | 2 |

The scope of fixed assets to enjoy the accelerated depreciation method got expanded to all manufacturing industries as from 1 January 2019.

In respect of equipment and instruments which are newly purchased from 1 January 2018 to 31 December 2023, and if the unit price is below CNY 5 million, the entire cost could be deducted on a one-off basis when computing taxable income. If the unit price of such newly purchased equipment exceeds CNY 5 million, the enterprises may either adopt the straight-line method or an accelerated depreciation method.

There are two ways the accelerated depreciation method can be used:

- Shorter of depreciation life: A shorter of depreciation life should not be less than 60% of the regular depreciation life of the asset.
- Accelerated depreciation: An accelerated depreciation method can be a double declining method or a sum of the years' digit method.

From 1 January 2020, the cost of relevant equipment newly purchased for capacity expansion by enterprises that manufacture key supplies indispensable for the prevention and control of the pneumonia outbreak could be accounted for, on a lump-sum basis, into the costs and expenses of the current period and be deductible before the calculation of enterprise income tax.

## AMORTISATION OF INTANGIBLE ASSETS

Intangible assets, including technical know-how, patents and trademarks, can be amortised using the straight-line method over a period of not less than ten years or the stipulated time limit as set out in the acquisition agreement.

## PRE-OPERATION EXPENSES

Pre-operation period starts from the date when the enterprise is approved for set up until the enterprise begins operations (trial operation is included). The deductible pre-operation expenses include salary, office expenses, training expenses, travelling, printing expenses, registration fees and interest (that would not be capitalised) and foreign exchange gain/loss during the pre-operation period.

Pre-operation expenses can be deducted on a lump sum basis in the year in which the enterprise commences business operations or amortised as a long term prepaid expenditure to be amortized within three years.

## RESEARCH AND DEVELOPMENT (R&D)

R&D expenses incurred for new and high technology, new products or new craftsmanship can benefit from an extra 50% super-deduction of the actual expenses incurred as a tax incentive after proper filing with the relevant tax authorities. If the R&D expenses are qualified for capitalisation, an additional 50% super-deduction could be allowed for the amortisation when computing annual EIT settlement.

From 1 January 2018 until 31 December 2023, the extra/additional deduction ratio is increased from 50% to 75% for the eligible entities.

From 1 January 2021, the extra/additional deduction ratio is further raised from 75% to 100% for most manufacturing entities, which are referred to as enterprises whose principal activities are manufacturing projects stipulated in 'Industrial Classification for National Economic Activities (GB/T 4574-2017)', and whose income from their principal activities constitutes 50% or more of their total income.

## STOCK/INVENTORY

Inventory is to be valued at cost and the acceptable allocation methods include first-in, first-out (FIFO), weighted average, or specific identification basis. The last-in, first-out (LIFO) basis is not acceptable for tax purposes. The method chosen must be applied consistently.

## MANAGEMENT FEE & INTERCOMPANY CHARGES

Management fees between enterprises shall not be deductible for EIT purposes. As management fees are generally regarded as shareholder costs, they cannot be deducted before income tax for China enterprises.

The intercompany charges need to pass the six tests of benefit, necessity, duplication, value creation, remuneration and authenticity carried out by the tax authorities before China enterprises could remit the charges to the offshore companies.

A Cost Sharing Agreement (CSA) for joint development of intangible assets and sharing of services (generally limited to group procurement and group marketing synergies) are allowed. Under the CSA, the principle of matching costs with expected benefits shall be followed. The taxpayer can claim the tax deduction for shared costs provided the CSA could be filed with the local tax authorities

## LOSSES

Operating losses cannot be carried back but they can be carried forward for up to five years.

From 1 January 2018, high-tech enterprises or technology-oriented small or medium-sized enterprises (SMEs) may carry forward losses for a maximum period of up to ten years.

Losses incurred in 2020 by certain enterprises (transportation, food catering, accommodation, and tourism, including travel agency and related services, scenic area management, among others) as a result of the pandemic may be carried forward for a period of up to eight years, instead of the previous five years.

## TAX INCENTIVES

In general, enterprises engaged in encouraged projects may apply for certain tax incentives as follows.

## HIGH & NEW TECHNOLOGICALLY ADVANCED ENTERPRISES (HNTE)

If the enterprise is qualified as an HNTE, it can enjoy a reduced EIT rate of 15%. An enterprise has to fulfil a set of prescribed criteria and be subject to annual assessment in order to be qualified as an HNTE.

On 29 June 2016, the Ministry of Science and Technology, Ministry of Finance and State of Administration of Taxation jointly released an announcement regarding the guidance for HNTE recognition to replace the previous regulations. The government authorities will exert a much more severe administration on HNTE enterprises.

## WESTERN REGION DEVELOPMENT POLICY

From 1 January 2021 to 31 December 2030, enterprises (i) that are based in the western region; (ii) whose primary business is listed in one of the industry items provided in the Catalogue of Encouraged Industries in Western Regions; and (3) the annual primary business revenue of which accounts for more than 60% of the total enterprise revenue, may pay EIT at the reduced tax rate of 15% subject to their application to the competent tax authority and upon the examination and confirmation by the said authority.

## SPECIFIED BASIC INFRASTRUCTURE

When enterprises are engaged in basic infrastructure such as harbours, wharfs, airports, railways, highways, city public transportation, electric power and water resources utilisation projects, such income generated can enjoy a '3+3 years' tax holiday which means, starting from the first income generating year, three years of exemption from EIT followed by three years of 50% reduction of applicable EIT.

## ENVIRONMENT PROTECTION PROJECTS

When enterprises are engaged in environmental protection projects and energy/water conservation projects such as public sewage treatment, public refuse treatment, comprehensive development and utilisation of methane, technologies alteration for energy-saving and emission reduction and seawater desalination projects, such income generated can also enjoy a '3+3 years' tax holiday.

This means, starting from the first income generating year, three years of exemption from EIT followed by three years of 50% reduction of applicable EIT.

## QUALIFIED TECHNOLOGY-ADVANCED SERVICE ENTERPRISES

Since 1 January 2018, qualified technology-advanced service enterprises would qualify for a reduced EIT rate of 15%.

## INTEGRATED CIRCUIT DESIGN AND SOFTWARE ENTERPRISES

From 1 January 2020, a series of preferential tax policies for qualified integrated circuit design enterprises or software enterprises came into force The preferential policy grants several years of tax holidays as well as a tax deduction based on the line width of the integrated circuits. For integrated circuits with a line width of less than 28 nanometres, they could be granted a 10-year tax exemption. For integrated circuits with a line width of less than 130 nanometres, they could be granted a 10-year tax loss carry-forward.



## HAINAN FREE TRADE PORT POLICIES

From 1 January 2020 to 31 December 2024, enterprises in encouraged industries registered in the Hainan Free Trade Port with substantive operations are entitled to EIT at a reduced tax rate of 15%. Enterprises in encouraged industries are referred to as enterprises whose principal activities are industrial projects stipulated in the list of encouraged industries in the Hainan Free Trade Port, and whose income from their principal activities constitutes 60% or more of their total income.

Income derived by enterprises in the tourism industry, modern service industry and high-tech industry established in the Hainan Free Trade Port from newly increased overseas direct investment are exempted from EIT subject to certain conditions: (i) operating profit obtained from the newly established overseas branches; or dividend income corresponding to the newly increased overseas direct investment obtained from the overseas subsidiaries in which more than 20% (inclusive) of the equity is held; (ii) the statutory EIT rate of the invested country (region) shall not be less than 5%.

Based on the Overall Plan for the Construction of the Hainan Free Trade Port, the reduced EIT rate of 15% would be applied to all Hainan enterprises except for those that qualify for the industrial negative list from 1 January 2025 to 31 December 2034.

## SMALL-SCALE ENTERPRISE

EIT rate shall be reduced to 20% for small-scale enterprises if they meet the following criteria:

- The annual taxable income does not exceed CNY 3,000,000;
- The number of staff does not exceed 300; and
- The total assets do not exceed CNY 50 million.

From 1 January 2021 to 31 December 2022, small enterprises with annual taxable income equal to or lower than CNY 1 million may enjoy an 87.5% deduction on calculating the taxable income (i.e. an effective EIT rate of 2.5%).

From 1 January 2019 to 31 December 2021, small enterprises with annual taxable income exceeding CNY 1 million but lower than CNY 3 million may enjoy a 50% deduction on calculating the taxable income (i.e. an effective EIT rate of 10%).

## C. FOREIGN TAX RELIEF

Corporate residents can claim tax credits for corporate income taxes paid by them or their branches in other countries in respect of income derived from sources outside China based either on a country-basket principle or on a comprehensive basis that income from all countries and of all types are considered together to calculate the tax credit starting from January 1, 2017. Once the credit basis is selected, it shall not be changed within 5 years. However, the amount of tax credit is restricted to the Chinese tax payable on the foreign income as calculated according to the EIT law.

## D. CORPORATE GROUPS

There are no group relief tax consolidation provisions in Chinese tax law.

## E. RELATED PARTY TRANSACTIONS

All companies should conduct business with their associated companies on an arm's length basis. The Chinese tax authorities are empowered to disregard, vary or make any necessary adjustments to the arrangements that are carried out for tax avoidance purposes.

## TRANSFER PRICING

The New Law imposes transfer pricing documentation requirements. Specific information must be submitted to the Tax Authorities together with the enterprise's annual income tax returns or subsequently in the course of a transfer pricing audit. Interest will be payable in respect of any late tax payments arising from a transfer pricing adjustment.

China adopts stringent requirements on the related party transactions disclosure and taxpayers have to disclose related party transactions in Related Party Transaction Forms. The acceptable transfer pricing methods are comparable uncontrolled price (CUP); resale price method (RPM); cost-plus method (CPM); transactional net margin method (TNMM); profits split method (PSM); and other methods that are consistent with the arm's length principle approved by the in charge tax authorities.

In June 2016, the China tax authorities issued new transfer pricing compliance requirements whereby transfer pricing documentation has adopted a three-tiered structure, i.e. Master File, Local File and Special Issue File. The Local File and Special Issue File should be completed by 30 June 2017 for related party transactions carried out during the year 2016; the Master File should be completed within 12 months after the end of the same fiscal year of the group's ultimate holding company. Taxpayers should submit the transfer pricing report within 30 days upon the tax authorities' request.

If the company meets either of the following criteria, it shall prepare a Master File:

- Have cross-border related party transactions, and belong to a group which has prepared the master file, or
- The total annual related party transactions exceed CNY 1 billion.

For the Local File, the thresholds for preparing a local file depend on the types of related party transactions, which are listed below:

- CNY 200 million for tangible assets transfer (in the case of tolling manufacturing, the total amount in the annual customs record including raw material should be taken into account);
- CNY 100 million for financial assets transfer;
- CNY 100 million for intangible assets transfer; and
- CNY 40 million for other related party transactions in total.

The special issue file is required for taxpayers who are engaged in cost sharing agreements or fall in the thin capitalization threshold.

The new transfer pricing compliance regulations also require the submission of a Country-by-Country (CbC) report if a Chinese resident company is the ultimate holding company of the group and the consolidated revenue is over CNY 5.5 billion or it is nominated as the reporting entity by the group.

Chinese companies that only have domestic related party transactions do not need to prepare a master file, local file and special issue file.



Single function enterprises, which are making losses, are also required to prepare the contemporaneous documentation regardless of the transaction amount threshold.

When an enterprise is audited for transfer pricing issues, the enterprise will be followed up by the tax authorities for five years and during the follow-up period enterprises are also required to prepare the contemporaneous documentation.

### ADVANCE PRICING AGREEMENT (APA)

An Advance Pricing Agreement (APA) is available in China. The State Administration of Taxation encourages taxpayers to use an APA to ascertain the transfer pricing position and reduce the tax compliance burden.

From 1 September 2021, the procedures for unilateral APAs have been further simplified, thus improving the efficiency of APA negotiations and signing by simplifying the phases of the application and specifying time limits, where decisions on whether or not to accept the APA application must be made within 90 days and negotiations and signing must be completed within six months.

### THIN CAPITALISATION

In China, for non-financial enterprises, when the ratio of loans received from related parties to equity investments exceeds a prescribed ratio (2:1) (or 5:1 for financial institutions), the portion of interest expense related to the debt exceeding the ratio shall not be deductible when computing the taxable income in accordance with the thin capitalization rule under the EIT law. However, enterprises could provide supporting documents to demonstrate that the financing is set at arm’s length in order to claim the EIT deduction upon the agreement of the tax authorities.

### GENERAL ANTI-AVOIDANCE

China requires a *bona fide* business purpose for any commercial arrangement that could result in reducing, deferring or avoiding taxable revenue or taxable income. When the absence of reasonable purposes is sustained, the tax authorities are authorized to disregard the arrangement and impose EIT. China is currently more focused on cross-border anti-avoidance.

### CONTROLLED FOREIGN COPORATION

Foreign controlled corporation (CFC) is defined as a non-Chinese company controlled by China tax residents (both companies and individuals, each of which must hold 10% or more of the voting shares and jointly own 50% or more of the shares) through direct or indirect share ownership.

CFC rules were introduced such that undistributed profits derived by CFCs located in low-tax jurisdictions with an effective corporate income tax rate of less than 12.5% may be taxed in China as a deemed distribution to the parent company in China.

### BASE EROSION AND PROFIT SHIFTING (BEPS)

BEPS refers to tax planning strategies that exploit the gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. The OECD and G20 countries worked together on an equal footing to tackle BEPS issues. The BEPS initiative aims to enhance the integrity and fairness of the international tax system by aligning jurisdictional tax rights with the location where value is created and business activities are actually incurred.

The new transfer pricing compliance requirements discussed in the Transfer Pricing Section are one of the most important developments of China’s commitment to the BEPS action plans.

## F. WITHHOLDING TAXES

Foreign enterprises without establishments in China are subject to Enterprise Income Tax on a withholding basis on the income of dividends, royalties, interest, rental income, earnings from assignment of assets in China and any other income derived from inside China. Foreign enterprises with establishments in China deriving the above income which is not effectively connected with that establishment is also subject to withholding tax. The statutory rate is 20% which is reduced to 10% by the EIT Law Implementation Regulations. The 10% withholding tax may be reduced under an applicable treaty.

When foreign enterprises obtain active income in China, the revenue is subject to turnover taxes, and EIT will be levied on the active income if the foreign enterprises have or are deemed to have a permanent establishment (“PE”) in China. The domestic payers are the withholding agents to retain such turnover taxes and EIT from the total payments to foreign enterprises.

## G. EXCHANGE CONTROL

Foreign currency transactions are controlled by the State Administration of Foreign Exchange Control and its branch offices. Financial institutions cannot engage in foreign exchange business without prior approval.

## H. PERSONAL TAX (Individual Income Tax)

China is enforcing new individual income tax (IIT) laws effective from 1 January 2019 onwards.

According to the new IIT law, a tax resident is determined as follows:

(1) A person who has a domicile in China; or

(2) A person who does not have a domicile in China but has resided in China for more than 183 days in a calendar year.

A tax resident is subject to IIT on his/her worldwide income. A non-China-domiciled individual would generally be exempt from China IIT on foreign-source income that is not paid by a China domestic entity or resident individual, unless the non-China-domiciled individual has stayed in China for more than 183 days in each calendar year for six consecutive years in China.

Under the IIT Law, the following nine categories of income are subject to IIT in China:

| | |
|---|---|
| Comprehensive Income | • Wages and salaries<br>• Income from labour service<br>• Remunerations to authors<br>• Royalties |
| Income from Business Operation | • Income of individual industrial and commercial operators from production or business operation |
| Other Income | • Interests and dividends<br>• Income from leasing of property<br>• Income from transfer of property<br>• Contingency income |

(1) Comprehensive Income

Effective from 1 January 2019, the first four categories including salary, personal labour service income, royalty income and author's remuneration are combined into one comprehensive income base to be taxed together at the level of resident individuals. However, it will still be taxed on a separate basis for non-resident individuals.

Comprehensive Income shall be taxable at the following rates:

| Annual Taxable Income (CNY) | Tax Rate(%) |
|---|---|
| 0 – 36,000 | 3 |
| 36,001 – 144,000 | 10 |
| 144,001 – 300,000 | 20 |
| 300,001 – 420,000 | 25 |
| 420,001 – 660,000 | 30 |
| 660,001 – 960,000 | 35 |
| 960,001 or above | 45 |

For comprehensive income, a yearly deduction of CNY 60,000 is allowed (CNY 5,000 per month). Apart from that, the following items are introduced to be deducted from comprehensive income.

- Dependent children's education expenditure;
- Serious illness medical expenditure;
- Continuous education expenditure;
- Rental or housing mortgage interest;
- Dependent parents;
- Public welfare donations.

From 1 January 2019 to 31 December 2023, non-resident individuals working in China could enjoy certain deduction items including rental, meal subsidy, children's education, home leave trip transportation expense, laundry etc.

Where there is a withholding agent, the withholding agent shall withhold and prepay tax on a monthly basis or based on each income item. Where there is no withholding agent for the taxable income, the taxpayer shall file tax returns within the first 15 days of the following month after obtaining the income, and pay tax.

Annual filing for the comprehensive income is required the next year from 1 March to 30 June.

Non-resident individuals are not subject to annual filing for comprehensive income.

From 1 January 2019 to 31 December 2021, for the comprehensive income obtained by individual residents, if the annual comprehensive income is less than CNY 120,000 or the supplementary tax payment is less than CNY400, such individual resident is exempt from annual filing.

(2) Income from Business Operation

Net income derived from production and business operations by individuals (i.e. annual gross income less business costs, expenses and losses) shall be taxable at the following rates:

| Annual Taxable Income (CNY) | Tax Rate(%) |
|---|---|
| 0 – 30,000 | 5 |
| 30,001–90,000 | 10 |
| 90,001–300,000 | 20 |
| 300,001–500,000 | 30 |
| 500,001or above | 35 |

Taxpayers obtaining income from business operation shall compute individual income tax on a yearly basis, file tax returns within 15 days after the end of each month or quarter, make prepayment of tax, and complete the annual filing before 31 March of the following year.

(3) Other Income

Income derived from interest, dividends and bonuses, or contingency income and other income is taxed at a flat rate of 20%.

## TAX INCENTIVES

From 1 January 2020 to 31 December 2024, personnel with high-end and urgently-needed skills that work in the Hainan Free Trade Port qualify for a partial IIT exemption when their individual income tax burden exceeds 15% of comprehensive income (including salary, royalties, labour service and author's remuneration) and Hainan-sourced business income. Taxpayers may enjoy this tax incentive when performing their individual income tax annual filing in Hainan Province.

Based on the Overall Plan for the Construction of the Hainan Free Trade Port, Hainan Free Trade Port would offer more IIT incentives to qualified individuals and the applicable IIT brackets on comprehensive income and business income would be 3%, 10% and 15% from years 2025 to 2034.

From 1 January 2019 to 31 December 2023, Guangdong Province and Shenzhen offer subsidies to overseas high-level talent and urgently-needed talent working in the Greater Bay Area (including Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing), according to the difference between the amounts of individual income tax levied by the Mainland and by Hong Kong, and such subsidies are exempt from individual income tax.

## ANTI-TAX AVOIDANCE CLAUSES FOR INDIVIDUALS

The new IIT law also introduced anti-tax avoidance clauses for the first time. The tax authorities may perform tax adjustments and collect additional tax plus interest thereon pursuant to the law under any of the following circumstances:

- **Related Party Transactions**

  If a transaction between an individual and his/her related party does not comply with the arm's length principle, and the tax payable amount of the individual or his/her related party is reduced as a result, when there are no justifiable reasons.

- **CFC Rules**

  An enterprise established in a country (region) with significantly lower tax burden which is controlled by a resident individual or jointly controlled by a resident individual and a resident enterprise, does not distribute or reduces distribution of profits which are attributable to the resident individual, when there are no reasonable business purposes.

- **Others**

  An individual makes other arrangements without reasonable business purposes and obtains improper tax gains.

## I. TREATY WITHHOLDING TAX RATES

The Mainland China Government has signed tax treaties with more than 100 countries. The following table summarises the withholding tax rates applicable to dividends, interest and royalties as provided by the double taxation agreements concluded by Mainland China government with some major countries and regions.

| | Dividends[1] (%) | Interest[2] (%) | Royalties (general) (%) | Royalties[3] (%) |
|---|---|---|---|---|
| Non-treaty countries: | 10 | 10 | 10 | 10 |
| **Treaty countries:** | | | | |
| Albania | 10 | 0/10 | 10 | 10 |
| Algeria | 5/10 | 0/7 | 10 | -- |
| Angola[4] | | | | |
| Argentina[5] | 10/15 | 0/12 | 3/5/7/10 | 10 |
| Armenia | 5/10 | 0/10 | 10 | 10 |
| Australia | 15 | 10 | 10 | 10 |
| Austria | 7/10 | 0/7/10 | 10 | 6 |
| Azerbaijan | 10 | 0/10 | 10 | 10 |
| Bahrain | 10 | 0/10 | 10 | 10 |
| Bangladesh | 10 | 0/10 | 10 | 10 |
| Barbados | 5/10 | 0/10 | 10 | 10 |
| Belarus | 10 | 0/10 | 10 | 10 |
| Belgium | 5/10 | 0/10 | 7 | 7 |
| Botswana | 5 | 0/7.5 | 5 | 5 |
| Brazil | 15 | 0/15 | 15/25 | 15 |
| Brunei | 5 | 0/10 | 10 | 10 |
| Bulgaria | 10 | 0/10 | 7/10 | 7 |
| Cambodia | 10 | 0/10 | 10 | -- |
| Canada | 10/15 | 0/10 | 10 | 10 |
| Chile | 10 | 4/10 | 2/10 | 2 |
| Congo (Republic of)[6] | 5/10 | 0/10 | 5 | -- |
| Croatia | 5 | 0/10 | 10 | 10 |
| Cuba | 5/10 | 0/7.5 | 5 | 5 |
| Cyprus | 10 | 10 | 10 | 10 |
| Czech Republic | 5/10 | 0/7.5 | 10 | 10 |
| Denmark | 5/10 | 0/10 | 10 | 7 |
| Ecuador | 5 | 0/10 | 10 | 10 |
| Egypt | 8 | 0/10 | 8 | 8 |
| Estonia | 5/10 | 0/10 | 10 | 10 |

| | Dividends[1] (%) | Interest[2] (%) | Royalties (general) (%) | Royalties[3] (%) |
|---|---|---|---|---|
| Ethiopia | 5 | 0/7 | 5 | 5 |
| Finland | 5/10 | 0/10 | 10 | 10 |
| France | 5/10 | 0/10 | 10 | 10 |
| Gabon[7] | 5 | 0/10 | 5/7.5 | -- |
| Georgia | 0/5/10 | 0/10 | 5 | -- |
| Germany | 5/10/15 | 0/10 | 10 | 6 |
| Greece | 5/10 | 0/10 | 10 | 10 |
| Hong Kong[8] | 5/10 | 0/7 | 5/7 | 7 |
| Hungary | 10 | 0/10 | 10 | 10 |
| Iceland | 5/15 | 0/10 | 10 | 7 |
| India | 10 | 0/10 | 10 | 10 |
| Indonesia | 10 | 0/10 | 10 | 10 |
| Iran | 10 | 0/10 | 10 | 10 |
| Ireland | 5/10 | 0/10 | 10 | 6 |
| Israel | 10 | 7/10 | 10 | 7 |
| Italy | 10 | 0/10 | 10 | 7 |
| Italy[9] | 5/10 | 0/8/10 | 10 | 5 |
| Jamaica | 5 | 0/7.5 | 10 | 10 |
| Japan | 10 | 0/10 | 10 | 10 |
| Kazakhstan | 10 | 0/10 | 10 | 10 |
| Kenya[10] | 5 | 10 | 10 | -- |
| Korea | 5/10 | 0/10 | 10 | 10 |
| Kuwait | 0/5 | 0/5 | 10 | 10 |
| Kyrgyzstan | 10 | 0/10 | 10 | 10 |
| Laos | 5 | 0/5/10 | 5/10 | 5/10 |
| Latvia | 5/10 | 0/10 | 7 | 7 |
| Lithuania | 5/10 | 0/10 | 10 | 10 |
| Luxembourg | 5/10 | 0/10 | 10 | 6 |
| Macau | 5/10 | 0/7 | 5/7 | 7 |
| Malaysia | 10 | 0/10 | 10/15 | 10 |
| Malta | 5/10 | 0/10 | 10 | 7 |
| Mauritius | 5 | 0/10 | 10 | 10 |
| Mexico | 5 | 0/10 | 10 | 10 |
| Moldova | 5/10 | 0/10 | 10 | 10 |
| Mongolia | 5 | 0/10 | 10 | 10 |
| Morocco | 10 | 0/10 | 10 | 10 |
| Nepal | 10 | 0/10 | 15 | 15 |
| Netherlands | 5/10 | 0/10 | 10 | 6 |
| New Zealand | 0/5/15 | 0/10 | 10 | 10 |
| Nigeria | 7.5 | 7.5 | 7.5 | 7.5 |
| North Macedonia | 5 | 0/10 | 10 | 10 |
| Norway | 15 | 0/10 | 10 | 10 |
| Oman | 5 | 0/10 | 10 | 10 |
| Pakistan | 10 | 0/10 | 12.5 | 12.5 |
| Papua New Guinea | 10/15 | 0/10 | 10 | 10 |
| Philippines | 10/15 | 0/10 | 10/15 | 10 |
| Poland | 10 | 0/10 | 10 | 7 |
| Portugal | 10 | 0/10 | 10 | 10 |
| Qatar | 10 | 0/10 | 10 | 10 |
| Romania | 0/3 | 3 | 3 | 3 |
| Russia | 5/10 | 5 | 6 | 6 |
| Rwanda[11] | 7.5 | 0/8 | 10 | -- |
| Saudi Arabia | 5 | 0/10 | 10 | 10 |
| Serbia | 5 | 0/10 | 10 | 10 |
| Seychelles | 5 | 0/10 | 10 | 10 |
| Singapore | 5/10 | 0/7/10 | 10 | 6 |
| Slovakia | 10 | 0/10 | 10 | 10 |
| Slovenia | 5 | 10 | 10 | 10 |
| South Africa | 5 | 0/10 | 10 | 7 |
| Spain | 0/5/10 | 0/10 | 10 | -- |

| | Dividends[1] (%) | Interest[2] (%) | Royalties (general) (%) | Royalties[3] (%) |
|---|---|---|---|---|
| Sri Lanka | 10 | 0/10 | 10 | 10 |
| Sudan | 5 | 0/10 | 0/10 | 10 |
| Sweden | 5/10 | 0/10 | 10 | 7 |
| Switzerland | 5/10 | 0/10 | 9 | 9 |
| Syria | 5/10 | 0/10 | 10 | 10 |
| Taiwan[12] | 5/10 | 0/7 | 7 | -- |
| Tajikistan | 5/10 | 0/8 | 8 | -- |
| Thailand | 15/20 | 0/10 | 15 | 15 |
| Trinidad and Tobago | 5/10 | 0/10 | 10 | 10 |
| Tunisia | 8 | 0/10 | 10 | 5 |
| Turkey | 10 | 0/10 | 10 | 10 |
| Turkmenistan | 5/10 | 0/10 | 10 | -- |
| Uganda[13] | 7.5 | 0/10 | 10 | 10 |
| Ukraine | 5/10 | 0/10 | 10 | 10 |
| United Arab Emirates | 0/7 | 0/7 | 10 | 10 |
| United Kingdom | 5/10/15 | 0/10 | 10 | 6 |
| United States of America | 10 | 0/10 | 10 | 7 |
| Uzbekistan | 10 | 0/10 | 10 | 10 |
| Venezuela | 5/10 | 0/5/10 | 10 | 10 |
| Vietnam | 10 | 0/10 | 10 | 10 |
| Zambia | 5 | 0/10 | 10 | 5 |
| Zimbabwe | 2.5/7.5 | 0/7.5 | 0/7.5 | -- |

NOTES:

1. Dividends received by non-resident shareholders holding at least 25% of the shares in FIEs were eligible for a reduced withholding tax rate in China based on the percentage of equity holding. This exemption was repealed under the New Law. The withholding tax rate for dividends under the New Law is 10%, effective from 1 January 2008. However, distribution of pre-2008 profits can still enjoy withholding tax exemption even if the dividend is declared and distributed after 1 January 2008.
2. Exemption of interest from withholding tax generally applies in the following situations:
   a. Interest on loans made by international financial organisations at a preferential rate to the Chinese government or resident enterprises; or
   b. Interest on loans made by foreign governments to Chinese government. A lower withholding tax rate may apply to interest paid by an enterprise in China to a foreign enterprise without establishments in China.
3. The rates of withholding tax on royalties for the use of industrial, commercial or scientific equipment is 10% and the taxable income is generally taken to be 60% or 70% of the remittance depending on the location of the enterprises. Accordingly, the effective withholding tax rate is 6% or 7% as shown above.
4. A double taxation agreement between Angola and the People's Republic of China was signed on 9 October 2018 but is not yet in force until both jurisdictions have completed their legislative procedures. The official content has not yet been published.
5. A double taxation agreement between Argentina and the People's Republic of China was signed on 2 December 2018 but is not yet in force until both jurisdictions have completed their legislative procedures.
6. A double taxation agreement between the Republic of Congo and the People's Republic of China was signed on 5 September 2018 but is not yet in force until both jurisdictions have completed their legislative procedures.
7. A double taxation agreement between Gabon and the People's Republic of China was signed on 1 September 2018 but is not yet in force until both jurisdictions have completed their legislative procedures.
8. A new amendment to the double taxation agreement between Hong Kong or Macau and Mainland China to specify for the tax levying on the royalty income arising from airplane and ship leasing shall be less than 5%.
9. A new double taxation agreement between Italy and the People's Republic of China was signed on 23 March 2019 but is not yet in force until both jurisdictions have completed their legislative procedures.
10. A double taxation agreement between Kenya and the People's Republic of China was signed on 21 September 2017 but is not yet in force until both jurisdictions have completed their legislative procedures.
11. A new double taxation agreement between Rwanda and the People's Republic of China was signed on 7 December 2021 but is not yet in force until both jurisdictions have completed their legislative procedures.
12. A double taxation agreement between Taiwan and Mainland China was signed on 25 August 2015 but is not yet in force until both jurisdictions have completed their legislative procedures.
13. A double taxation agreement between Uganda and the People's Republic of China was signed on 11 January 2012 but is not yet in force until both jurisdictions have completed their legislative procedures.

From 1 January 2020, non-resident taxpayers shall judge by themselves whether or not meet the requirements for entitlement to treaty benefits, and obtain such entitlement themselves. At the same time, they shall collect and retain relevant support documents for future reference, and accept the follow-up administration from Chinese tax authorities. The support documents may include:

a) Tax resident status certificate issued by the competent tax authority;
b) Contracts, agreements, resolutions of the board of directors or shareholders' meeting, payment vouchers, etc;
c) Relevant information proving the status of "beneficial owner"; and
d) Other information which can prove that the non-resident taxpayer meets the requirements for entitlement to treaty benefits.

- On 27 August 2013, China signed the Convention on Mutual Administrative Assistance in Tax Matters (Convention). The Convention can be described as a multilateral agreement designed to promote international cooperation regarding tax laws. The Convention includes provisions aimed at preserving the rights of taxpayers in relation to the exchange of information between countries.

- On 16 December 2015, China signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information.
- On 7 June 2017, China signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.



# COLOMBIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Bogotá | Vivian Amézquita | +57 1 208 7500<br>avivian@amezquita.com.co |
| Bogotá | John Rivera | +57 1 208 7500<br>rcjohn@amezquita.com.co |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Colombia |
| Capital: | Bogotá |
| Main languages: | Spanish, indigenous |
| Population: | 51.87 million (2022 estimate) |
| Monetary unit: | Colombian Peso (COP) |
| Internet domain: | .co |
| Int. dialling code: | +57 |

## KEY TAX POINTS

- Companies resident in Colombia and foreign entities are subject to corporate income tax at a single rate of 31% for 2021 and 35% for 2022 and subsequent years (according to the new tax regulations) on their worldwide income (a reduced 20% rate applies to 'free-trade zone' areas).
- Capital gains are taxed at nominal tax rate as ordinary income if the asset sold has remained for less than two years in the hands of the taxpayer. Capital gains on the sale of assets owned for more than 2 years are taxed as an occasional profit at a rate of 10 % (there are some exemptions, such as gains from lotteries and similar sources that may be subject to a different tax rate).
- Value Added Tax (VAT) is levied at a general rate of 19% on taxable supplies of goods and services by a taxable person within Colombia and on the importation of goods into Colombia by any person. VAT at a rate of 5% applies to staples products and 0% is applied to certain specific services and goods.
- There are a number of 'free-trade zones' and 'special import-export systems' which provide duty-free entry of capital goods and materials to be used in the production goods for exportation.
- Financial entities are subject to a surcharge for the additional income tax as follows: three percentage points are added in the year 2021 amounting to a total of 34% and in the year 2022 and subsequent years three percentage points are added amounting to a total of 38% on their worldwide income. This surtax is applied to financial entities that have taxable income equal to or exceeding COP 4.560 million in a fiscal year since year 2022.

## A. TAXES PAYABLE

The following are the main taxes that apply throughout Colombia.

## COMPANY INCOME TAX

Companies resident in Colombia and foreign entities are subject to corporate income tax at a rate of 31% for 2021 and 35% for 2022 and subsequent years on their worldwide income. Resident corporations are those organised under Colombian law and those foreign companies that have a branch in Colombia. Permanent establishments are also submitted to income tax. A reduced 20% rate applies to 'free-trade zone' areas. The presumptive income tax system applies when the net equity of the previous year is higher than the net taxable income for the current year. For the year 2021 and subsequent years, the rate of presumptive income tax will be 0%.

**Temporary reduction of the statute of limitation for certain income tax returns**

For years 2022 and 2023, Law 2155, which includes the 2021 tax reform, reduces the standard time the tax authorities may audit income tax returns from five years to 6 or 12 months, depending on whether the net income tax increased by 35% or 25% from the prior year, respectively.

## CAPITAL GAINS TAX

Capital gains are taxed at the same rate as ordinary income if the asset sold was owned for less than two years by the taxpayer. Capital gains derived from a sale of assets owned for more than two years is taxed as an occasional profit at a rate of 10 % (there are some exemptions, however, such as gains from lotteries and similar sources that may be subject to a tax rate of 20%).

## VALUE ADDED TAX (VAT)

VAT is applicable on taxable supplies of goods and services by a taxable person within Colombia and on the importation of goods into Colombia by any person. There are currently three VAT rates as follows:

- 19% general rate;
- 5% for staples; and
- 0% for certain services and goods.



For the year 2022, the hotel and tourism industry will be subject to a 0% VAT rate. In addition, for the year 2022, taxpayers who fall under the Simple Tax Regime will be excluded from VAT if the economic activity carried out by them consists solely of the sale of food and beverages.

## COLOMBIAN HOLDING COMPANY (CHC) REGIME

This tax regime was approved via Law 1943 of 2018 (tax reform) and became effective on 1 January 2019. Despite it being ruled unconstitutional, it remained in force with the Ley 2010 of 2019. It was created to serve domestic corporations that have as one of their principal activities, the holding of shares or stakes in domestic and/or foreign entities or corporations, and/or the administration of such investments.

**Requirements**

- Direct or indirect participation in at least 10% of the capital of two or more Colombian and/or foreign companies or entities for a minimum period of 12 months; and
- Having at least three employees, a physical address in Colombia and being able to demonstrate that strategic decisions regarding the investments and assets of the CHC are carried out in Colombia. The simple formality of holding the annual meeting of Shareholders will therefore not suffice.

**Main benefits**

- Dividends or shares distributed by non-resident entities in Colombia to a CHC will be exempt from income tax and will be declared as capital-exempt income;
- Dividends distributed by a CHC to an income taxpayer (resident natural person or resident legal person) would be taxed at the dividend income rate, which ranges from 7.5% to 15%;
- Dividends distributed by a CHC to a non-resident natural or legal person will be qualified as foreign source income and therefore no tax on dividends will be charged.

## OTHER TAXES

## WEALTH TAX

- A wealth tax applied through 2021 for individuals whose net equity is higher than COP 5 billion as per 1 January 2020. This equity is calculated by including the aggregate value as per 1 January of the assets owned (real estate, investments, vehicles, financial products, accounts, etc.) and subtracting the liabilities and debts.
- It should be noted that the net equity is not the taxable base. The taxable base is calculated taking the net equity and subtracting the value of the home of dwelling (up to approximately USD138,000).
- The flat tax rate is 1% and not deductible for income tax purposes.
- Further to the most recent tax reform, Law 2155 of 2021 did not include any wealth tax as a result of which there is no wealth tax for individuals as of 2022.

## PROPERTY TAX

Real estate property is subject to municipal taxation. The tax is usually levied at rates ranging from 5.5 to 11.3 per thousand, with reference to the cadastral value of each urban residential property. Non-residential property is subject to rates ranging from 5 to 33 per thousand.

## VEHICLE TAX

Vehicle possession is subject to municipal taxation. The tax base is the commercial value of the vehicle.

## FINANCIAL TRANSACTIONS TAX

A 0.4 % tax is imposed on all financial transactions, including money withdrawals from an ATM, wire transfers, internet banking, bank drafts and bank checks, money on term deposit, overdrafts, instalment loans and securities underwriting commitments. As of 1 January 2013, income taxpayers are allowed to deduct 50% of bank debit tax from taxable income.

## NATIONAL CONSUMPTION TAX

This tax is applied to restaurants and bars for consumption at a rate of 8%. It is also applied to mobile telephone services at a 4% rate and to certain vehicles, air balloons and aircrafts at 16%.

In addition, for the year 2022 taxpayers that fall under the Simple Tax Regime will be excluded from the Consumption Tax if the economic activity carried out by them consists solely of the sale of food and beverages.

## INDUSTRY AND COMMERCE TAX

This is a municipal tax applied to developing commercial, industrial and service activities in a municipality. The tax rate ranges from 0.2% to 1.38%, is adjusted according to the activity of the company and is fully deductible for income tax purposes. As of 2021 and subsequent years, income taxpayers are allowed to offset 50% of the municipal tax against income tax.

## B. DETERMINATION OF TAXABLE INCOME

### DEPRECIATION

Tax deductions are available for reasonable depreciation rates which reflect the normal wear and tear or obsolescence of the property concerned. The methods of depreciating assets are established in the accounting technique.



### TAX ON DIVIDENDS

Law 2010 of 2019 introduced a dividend tax on profits derived as from 1 January 2020 by non-resident companies:

- 10% final withholding on non-taxable dividends; and
- 31% for 2021 and 30% for 2022 and subsequent years.

Dividends paid to resident natural persons, from the distribution of non-taxable profits, are subject to the following income tax rates:

| Type of dividend | Dividend amount (COP) | Rate (%) |
|---|---|---|
| Non-taxable dividends | Up to 10.6 million | 0 |
| | Above 10.6 million | 10 |
| Taxable dividends received by a resident company (2022) | any amount | 30 |
| Dividends received by a non-resident company (2022) | any amount | 30 |

Dividends received by foreign companies and non-resident natural persons are subject to a 7.5% withholding tax.

### INTEREST DEDUCTIONS

Taxpayers are allowed to deduct interest derived from debts only up to an amount that does not exceed a 2:1 debt-to-equity ratio, taking into account the taxpayer's net equity as of 31 December of the previous year. Any interest payment derived from debts exceeding the said ratio is not deductible. This limitation applies where interest-generating debts are directly or indirectly contracted with related parties.

### DEDUCTION OF TAXES

Are 100% deductible from taxable income: taxes, levies and contributions, which have been effectively paid during the taxable year or period and are directly related to economic activity. Regarding the financial transactions tax, income taxpayers are allowed to deduct 50% of bank debit tax from taxable income. As of 2021 and subsequent years, income taxpayers are allowed to offset 50% of the tax on industry and commerce paid in the taxable year or take it as a 100% deductible item.

### LOSSES

Losses sustained by a company in a tax year can be carried forward and deducted during the following twelve tax years. Loss carry-back is not allowed.

### FOREIGN SOURCE INCOME

Foreign source income for non-residents is not subject to income tax.

### EXPENSES ABROAD

Expenses abroad that are necessary and related to the activity of the company and that generate fiscal income that is not submitted to withholdings are deductible with a limitation of 15% of the taxable base.

## C. FOREIGN TAX RELIEF

Colombia relieves international double taxation unilaterally by granting an ordinary foreign tax credit, i.e. taxpayers may credit the amount of foreign tax paid on foreign-source income up to the amount of domestic Colombian tax that would be due on the income, subject to certain conditions.

## D. CORPORATE GROUPS

There is no concept of group relief for Colombian tax purposes.

## E. TRANSFER PRICING

As a general rule, transactions between related parties must be carried out on arm's length basis, i.e. the prices should be the same as those that would be arrived at in comparable transactions with independent parties. The tax authorities may adjust the prices at which the taxpayer acquires or sells goods, as well as the consideration of other transactions, and modify the taxable base or the relevant loss of a taxpayer for income tax purposes.

Taxpayers that are subject to TP rules must comply with TP obligations, i.e. they must file an annual informative return and submit supporting documentation if exceeding certain thresholds of gross equity in excess of UVT 100,000, or revenues in excess of UVT 61,000, subject to the following exceptions:

- transactions with related parties not exceeding UVT 61,000 during the taxable year are not subject to the obligation of submitting TP supporting documentation;
- transactions listed by article 11 of Decree 3030 of 2013 conducted with related parties not exceeding UVT 32,000 during the taxable year are not subject to the obligation of submitting TP supporting documentation; and
- transactions between a Colombian resident and a resident in a low-tax jurisdiction are only subject to the obligation of submitting TP supporting documentation if the total amount of the transactions carried out during the taxable year exceeds UVT 10,000.

**Country-by-Country reporting**

CbC-reporting applies for fiscal years beginning on or after 1 January 2016 to MNEs with an annual consolidated group revenue equal to or exceeding UVT 81,000,000 in the previous year.

The Master File:

- Applies for fiscal years beginning on or after 1 January 2017.
- Applies to companies that have operations with related parties which have gross assets that exceed UVT 100,000 and/or gross income that exceeds UVT 61,000 and have intercompany transactions (per type) greater than UVT 45,000.



## G. EXCHANGE CONTROL

Certain foreign currency transactions must be channelled through authorized exchange intermediaries:

- Import of property;
- Export of property;
- External indebtedness;
- Foreign investment in Colombia;
- Colombian investment in foreign countries;
- Financial investments and fixed assets based in foreign countries;
- Endorsements and guarantees;
- Derivative transactions.

## H. PERSONAL INCOME TAX

There are three types of income baskets:

- General income basket;
- Pension income basket; and
- Dividend income basket.

The general income basket includes employment income, capital income and non-employment income.

The rates applicable to the general and pension income basket are as follows:

| Taxable income (UVT) | Marginal tax rate (%) | Tax due |
|---|---|---|
| 0 – 1,090 | 0 | 0 |
| 1,091 – 1,700 | 19 | (taxable base in UVT less 1,090 UVT) * 19% |
| 1,701 – 4,100 | 28 | (taxable base in UVT less 1,700 UVT) * 28% + UVT 116 |
| 4,101 – 8,670 | 33 | (taxable base in UVT less 4,100 UVT) * 33% + UVT 788 |
| 8,671 – 18,970 | 35 | (taxable base in UVT less 8,670 UVT) * 35% + UVT 2,296 |
| 18,971 – 31,000 | 37 | (taxable base in UVT less 18,970 UVT) * 37% + UVT 5,901 |
| Above 31,000 | 39 | (taxable base in UVT less 31,000 UVT) * 39% + UVT 10,352 |

## I. TREATY AND WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies[1] (%) | | |
| **Treaty countries:** | | | | |
| Bolivia | --[1] | --[1] | --[1] | --[1] |
| Canada | 15 | 5/15[2] | 10 | 0/10 |
| Chile | 7 | 0/7[3] | 5/15[4] | 0/10 |
| Czech Republic | 15 | 5/15[3] | 0/10 | 0/10 |
| Ecuador | --[1] | --[1] | --[1] | --[1] |
| France[9] | 5/15[7] | 0 | 0/10 | 10 |
| India | 5/15 | 5/15 | 10 | 10 |
| Italy[10] | 15 | 5[11] | 0/5/10[12] | 10 |
| Mexico | 0/33[6] | 0/33[6] | 5/10[4] | 10 |
| Peru | --[1] | --[1] | --[1] | --[1] |
| Portugal | 10/33 | 10/33 | 10 | 0/10 |
| South Korea | 10 | 5/10[7] | 0/10[5] | 10 |
| Spain | 5 | 0/5[7] | 5/10 | 0/10 |
| Switzerland | 15 | 0/15[7] | 0/10 | 0/10 |
| United Kingdom[8] | 5/15[7] | 0 | 0/10 | 10 |

NOTES:

1. Domestic rate applies, no reduction under the tax treaty. Source state has exclusive right to tax.

2. The reduced 5% rate applies if the beneficial owner is a company that controls directly or indirectly at least 10% of the voting power in the dividend-paying company.
3. The reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company.
4. The lower rate applies to interest derived by banks or insurance companies.
5. The lower rate applies to interests derived by the government, central bank or any financial institution performing functions of a governmental nature.
6. Exclusive taxation by the resident country.
7. The lower rate applies if the beneficial owner is a company other than a partnership which holds directly at least 20% of the capital of the dividend-paying company.
8. Effective date: 1 January 2020.
9. Effective date: 22 October 2020.
10. Effective date: 1 January 2022.
11. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company.
12. The 5% reduced rate applies if the beneficial owner is (i) a statutory body or an export financing agency or (ii) a recognised pension fund. The 0% rate applies if the beneficial owner is a Contracting State, a political subdivision or a public law entity thereof, including the Central Bank of that State or if the interest is paid (i) by the State in which the interest arises or by a political subdivision, a local authority (ii) in respect of a loan, debt-claim or credit that is owed to, or made, provided, guaranteed or insured by, that State or a political subdivision or local authority (iii) on the sale on credit of any industrial, commercial or scientific equipment or on the sale on credit of any goods or merchandise by an enterprise of a Contracting State to an enterprise of the other Contracting State (iv) in respect of any loan or credit of whatever kind granted by a bank, but only if the loan or credit concerned is granted for a period not less than three years (v) by a financial institution of a Contracting State to a financial institution of the other Contracting State.

# COOK ISLANDS

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Avarua | Stefaan De Ceulaer | +44 20 3691 2511<br>stefaan.deceulaermark@pkf.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Cook Islands |
| Capital: | Avarua |
| Main languages: | English, Cook Islands Maori |
| Population: | 17,594 (2022 estimate) |
| Monetary unit: | New Zealand Dollar (NZD) |
| Internet domain: | .ck |
| Int. dialling code: | +682 |

## KEY TAX POINTS

- A resident company pays a flat 20% corporate income tax on worldwide profits while a non-resident company pays 28% corporate tax on profits derived from Cook Islands-sourced income.
- VAT is levied at 15% on most goods and services.
- Dividends, interest, royalties, and technical/management fees paid to non-resident companies are subject to a 15% withholding tax.

## A. TAXES PAYABLE

### CORPORATE TAX

A resident company pays a flat 20% corporate income tax on worldwide profits. A non-resident company pays 28% corporate tax on profits derived from Cook Islands-sourced income.

Residents trusts are taxed at 30%. Non-resident trustees are taxed at 30%.

### CAPITAL GAINS TAX

In general, capital gains are not taxed. However, provisions deeming certain income classes to be derived from the Cook Islands include categories that may apply to capital gains.

### BRANCH PROFITS TAX

Non-resident companies are subject to income tax on their Cook Islands-sourced income under the normal income tax rules applicable to resident companies at a rate of 28% (resident companies pay 20%).

There is no branch remittance tax.

### VALUE ADDED TAX (VAT)

VAT is levied at 15% on most goods and services.

The threshold for VAT registration is an annual turnover of NZD 40,000 or more or an expected turnover of NZD 40,000 or more in the next twelve months.

If taxable annual turnover is less than NZD 40,000 one can opt to register for VAT. If annual turnover does not exceed NZD 20,000 one cannot register for VAT.

## B. DETERMINATION OF TAXABLE INCOME

Income is taxed after deduction of exempt income, deductible expenses, depreciation allowances and losses.



### DEPRECIATION

Assets which cost NZD 500 or less can be written off immediately.

Some depreciation rates according to the straight line method are as follows:

| Assets | Rate (%) |
|---|---|
| Agriculture and aquaculture | 7 – 25 |
| Audio, video and photography | 12.5 – 33 |
| Building and engineering industry | 7 – 25 |
| Buildings | 2.5 – 5 |
| Food industry | 10 – 33 |
| Fuel industry | 4 – 12.5 |
| Leisure | 7 – 33 |
| Motels and hotels | 7 – 20 |
| Office equipment | 7 – 33 |
| Transportation | 4 – 50 |
| Default rate (for assets not described above) | 10% |

### LOSSES

Losses may be carried forward indefinitely but cannot be carried back.

## C. FOREIGN TAX RELIEF

Foreign tax relief is available in the form of a credit for foreign tax paid subject to the condition that is substantially of the same nature as domestic income tax. The credit may not exceed the amount of Cook Islands tax payable on foreign income concerned.

## D. CORPORATE GROUPS

There is no group taxation regime in the Cook Islands.

## E. ANTI-AVOIDANCE RULES

**Transfer pricing**

TP adjustments may be made under the 2014 Income Tax Regulations in respect of international non-arm's length dealings between associated persons.

Transactions must be consistent with the arm's length principle as laid down in article 9 of the OECD Model Tax Convention.

APAs (Advance pricing agreements) can be requested for.

**Controlled foreign companies (CFC)**

There are no CFC regulations.

**Thin capitalisation**

A 1.5:1 debt-to-equity ratio is in place at the level of a foreign-controlled resident company. A deduction for interest paid over this ratio is disallowed.

## F. WITHHOLDING TAX

Dividends, interest, royalties, and technical/management fees paid to non-resident companies are subject to a 15% withholding tax.

## G. PERSONAL TAX

Income tax is levied at the following rates for the 2021 income year.

| Taxable income (NZD) | Marginal rate (%) |
|---|---|
| Up to 14,600 | 0 |
| 14,601 – 30,000 | 17 |
| 30,001 – 80,000 | 27 |
| Over 80,000 | 30 |

Note: The 14,600 tax free threshold (as of 1 January 2021) is for a full year of residence in the Cook Islands. The exemption is apportioned to the number of days of residence for individuals who have not been present in the Cook Islands for a full year.

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The Cook Islands have not entered into any double tax treaties.

# COSTA RICA



## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| San José | Franklin Noguera | +506 2253 3060<br>fnoguera@pkf.co.cr |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Costa Rica |
| Capital: | San José |
| Main languages: | Spanish, Mekatelyu, Bribri, Patois |
| Population: | 5.18 million (2022 estimate) |
| Monetary unit: | Costa Rican Colón (CRC) |
| Internet domain: | .cr |
| Int. dialling code: | +506 |

## KEY TAX POINTS

- Corporate income tax ranges from 5% to 20% for small enterprises with annual gross income not exceeding CRC 112,070,000. Companies with annual gross income exceeding this threshold are subject to a 30% tax rate.
- Costa Rica's general VAT rate is 13%. However, there is a 4% tax on airline tickets and healthcare services while a 2% tax is levied on medical products, raw materials and machinery used for production, insurance premiums, purchase and sale of university issued products. Basic food necessities from a specific list are subject to a 1% tax.
- Dividends paid to individuals or foreign entities are subject to a 15% final withholding tax. A lower rate of 5% applies if the stock of the company distributing dividends is traded on the Stock Exchange and if such stock was acquired on that market.
- Interest, commission, fees and other financial expenses paid or credited to non-residents are subject to a 15% final withholding tax applied to the gross amounts, subject to certain exemptions.
- Royalties from a Costa Rican-source paid or credited to non-residents are subject to a 25% final withholding tax on the gross amount.
- Technical and financial advice fees are subject to a 25% final withholding tax on the gross amount.

## A. TAXES PAYABLE

### COMPANY TAX

Costa Rica has a classical corporate tax system, where a general income tax (*impuesto sobre las utilidades*, GIT) is taxed both at the corporate level and at the shareholder level.

Under the territoriality principle, both residents and non-residents are only taxed on Costa Rican-source income. The GIT is levied on net income derived by resident corporations. Non-resident corporations are subject to a final withholding tax.

The fiscal year runs from 1 January until 31 December. Companies need to make 3 instalments of income tax during the year (on the last working day of June, September and December).

Executive Decree No. 4198-H sets the income tax brackets for the tax year as follows:

- 5% on the first CRC 5,286,000 of annual net income;
- 10% between CRC 5,286,001 and CRC 7,930,000 of annual net income;
- 15% between CRC 7,930,001 and CRC 10,573,000 of annual net income;
- 20% on the excess of CRC 10,573,000 of annual net income.

The above mentioned brackets are applicable for small enterprises with annual gross income not exceeding CRC 112,070,000. Companies with annual gross income exceeding this threshold are subject to a 30% tax rate.

In addition, the following exemptions are established for micro and small businesses registered with the Ministry of Economy, Industry, and Commerce or with the Ministry of Agriculture and Livestock:

- 0% of tax on profits in the first year of commercial activities.
- 25% of tax on profits in the second year of commercial activities.
- 50% of tax on profits in the third year of commercial activities.

### BRANCH PROFITS TAX

In Costa Rica branches of foreign companies are subject to corporate income tax according to the rates set out in the table under 'Company Tax'. There is no branch remittance tax.

### CAPITAL GAINS TAX

As from 1 July 2019, the Tax Reform law created a capital gains tax of 15% which applies to investment income and real estate, which is still in place. For real estate the law provides a one-time exemption for those property owners that own property before the law comes into effect. Those will pay 2.25% of the properties' selling price rather than on the capital gained. Also, the primary residence is exempt from capital gains.



### VALUE ADDED TAX

Costa Rica's general tax rate is 13%, however there is a 4% tax on airline tickets and healthcare services. A 2% tax is levied on medical products, raw materials and machinery used for production, insurance premiums, purchase and sale of university issued products. Basic food necessities from a specific list are subject to a 1% tax.

### OTHER TAXES

- Municipal Office Taxes: taxes are paid according to set rates and total assets of the company but the local municipality imposes the payment depending on several factors.
- Corporation Tax: all commercial companies have to pay this tax in January. It varies from USD 100 to USD 300.
- Social Security Tax: payments made monthly by employers and employees on the payroll of companies for the purpose of guaranteeing the functioning of the worker social security system and retirement benefits at the national level.
- Consumption tax: imposed on the import or domestic manufacture of goods. The rates are variable and selective, affecting only certain types of goods.
- Solidarity tax: imposed on dwellings (real estate) including those used habitually, occasionally or for recreational use and calculated on the estimated value of the real estate asset taking into account land and constructions. The rates are as follows:

| Amount (CRC) | Rate (%) |
|---|---|
| Up to 133,000,000 | 0 |
| 133,000,000.01 – 335,000,000 | 0.25 |
| 335,000,000.01 – 672,000,000 | 0.30 |
| 672,000,000.01 – 1,008,000,000 | 0.35 |
| 1,008,000,000.01 – 1,345,000,000 | 0.40 |
| 1,345,000,000.01 – 1,679,000,000 | 0.45 |
| 1,679,000,000.01 – 2,017,000,000 | 0.50 |
| Over 2,017,000,000 | 0.55 |

## B. DETERMINATION OF TAXABLE INCOME

### CAPITAL ALLOWANCES

There are currently no capital allowances in Costa Rica.

### DEPRECIATION

Deprecation methods allowed are the straight-line method and the sum-of-the-year's digits method although the tax authorities may authorize the use of other methods.

Annual rates of depreciation based on the straight-line method are the following:

| | |
|---|---|
| Buildings in general | 2% |
| Wooden buildings | 4% - 6% |
| Construction machinery and equipment | 15% |
| Motor vehicles | 10% |
| Machinery and equipment | 10% |
| All types of boats | 10% |
| Farming machinery | 10% |
| Computer equipment | 20% |

### STOCK/INVENTORY

Stock/inventory is not taxable in Costa Rica.

### CAPITAL GAINS AND LOSSES

Capital gains are not taxable in Costa Rica subject to certain exceptions (see above under 'Capital Gains Tax').

### DIVIDENDS

Dividends are not taxable at the level of corporations in Costa Rica, i.e. dividends received by an operating resident company from another resident company are exempt from corporate income tax. However, this income is subject to a 15% final withholding tax when paid to individuals or foreign entities.

### INTEREST DEDUCTIONS

Thin capitalisation rules were introduced further to the 2019 Tax Reform and are applicable to financing from shareholders or related parties. In such cases, interest will be deductible up to 20% of the earnings before tax, depreciation, and amortization (EBDITA). The difference may be deducted in the following years until the expense is amortised. Thin capitalisation rules do not apply to loans granted by local banks or non-domiciled financial entities supervised in their country of origin.

## LOSSES

- Business losses from industrial and commercial enterprises may be carried forward for 3 years and deducted in equal or different percentages, provided the aggregate does not exceed 100%.
- Agricultural enterprises may carry forward losses for up to 5 years.

## FOREIGN SOURCED INCOME

The corporate tax system is based on the territoriality principle. Tax is only due on business income generated in Costa Rica, i.e. income from services rendered, capital invested and goods located in the country.



## INCENTIVES

Companies operating in a Free Zone enjoy a number of exemptions which are valued according to the conditions of each company that wants to be established in these zones.

## C. FOREIGN TAX RELIEF

There is no double taxation relief for foreign taxes as the Costa Rica tax system is based on the territoriality principle. Foreign taxes paid are not deductible for income tax purposes.

## D. CORPORATE GROUPS

Costa Rican law does not allow group consolidation.

## E. RELATED PARTY TRANSACTIONS

Since 2013 there are first-time transfer pricing rules applicable to business entities or individuals conducting transactions with related parties. These rules follow the OECD Transfer Pricing Guidelines and are based on the at arm's length principle. They provide for advance pricing agreements (APAs), documentation requirements, an annual information return and a transfer pricing methodology.

On 2 February 2018, Costa Rica gazetted Resolution No. DGT-R-001-2018, setting out the rules for filing a Country-by-Country ('CbC') report.

The parent company of a multinational group resident in Costa Rica with consolidated group revenue of the equivalent of EUR 750 million in the Costa Rican currency – presently CRC 529.3 million (USD 924.7 million) – must comply with the obligation to file a CbC report, in line with the rules set out in the Resolution, which is intended to align Costa Rica's transfer pricing documentation regime with the recommendations put forward by the OECD in its Action 13 report on tackling base erosion and profit shifting.

The Resolution provides that groups covered by the regime must identify the entity that will file a CbC report by the last working day of the month of March each year, beginning in March 2018, through an official letter that must be sent digitally and signed by the local representative of the entity, addressed to the Director General of Taxation. The same deadline and rules apply to groups whose ultimate parent entity is in Costa Rica that have elected to file a CbC report in a different territory.

The Resolution provides that regardless of the month in which a reporting entity's fiscal period ends, the first CbC report must be furnished by 31 December 2018, at the latest, relating to the 2017 fiscal year. The same schedule applies to future years: the CbC report is required by 31st December of each year following the relevant fiscal period.

## F. WITHHOLDING TAX

Dividends paid to individuals or foreign entities are subject to a 15% final withholding tax. A lower rate of 5% applies if the stock of the company distributing dividends is traded on the Stock Exchange and if such stock was acquired on that market.

Interest, commission, fees and other financial expenses paid or credited to non-residents are subject to a 15% final withholding tax applied to the gross amounts.

However, interest is exempt from tax when paid to:

- multilateral or bilateral development institutions;
- development banks; or
- non-profit entities that are exempt from income tax.

Royalties from a Costa Rican-source paid or credited to non-residents are subject to a 25% final withholding tax on the gross amount.

Technical and financial advice fees are subject to a 25% final withholding tax on the gross amount.

Public spectacles are subject to a 15% final withholding tax on the gross amount.

## G. EXCHANGE CONTROL

There is no foreign exchange control. Repatriation payments may be done in any currency. Both residents and non-residents may hold bank accounts in any currency.

## H. PERSONAL TAX

As from 1 January 2022 the salary and income tax brackets and tax credit amounts for individuals for the tax year are as follows:

**Self-employed individuals**

| Annual income (CRC) | Rate |
|---|---|
| Up to 3,836,000 | 0% |
| 3,836,001 to 5,729,000 | 10% |
| 5,729,001 to 9,555,000 | 15% |
| 9,555,001 to 19,150,000 | 20% |
| Over 19,150,000 | 25% |

**Salaried individuals**

| Monthly income (CRC) | Rate |
|---|---|
| Up to 863,000 | 0% |
| 863,001 to 1,267,000 | 10% |
| 1,267,001 to 2,223,000 | 15% |
| 2,223,001 to 4,445,000 | 20% |
| Over 4,445,000 | 25% |



## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Costa Rica has a Free Commerce Treaty with the USA, Central America and the Dominican Republic and double tax treaties with Germany, Mexico, Spain and the United Arab Emirates.

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-treaty countries:** | | | |
| Companies | 5[4]/15 | 0[3]/15 | 25 |
| Individuals | 5/15 | 8/15 | 25 |
| **Treaty countries:** | | | |
| Germany[2] | 5[1]/15 | 0/5[12] | 10 |
| Mexico[5] | 5[1]/12 | 10 | 10 |
| Spain | 5[1]/12 | 0[6]/5[7]/10[8] | 10 |
| United Arab Emirates[9] | 5/15[10] | 5/10[11] | 12 |

Notes:

1. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company.
2. Effective date: 1 January 2017.
3. Interest is exempt from withholding tax if paid to: (i) multilateral or bilateral development institutions (ii) development banks or (iii) non-profit entities that are exempt from income tax.
4. The 5% reduced rate applies if the stock of the dividend-distributing company is traded on a recognized Stock Exchange and if such stock was acquired in that market.
5. Effective date: 1 January 2020.
6. The 0% rate applies if (i) the beneficial owner is a contracting State or a political subdivision or local authority thereof or (ii) the interest is paid in connection with the sale on credit of merchandise or equipment to an enterprise of a contracting State or (iii) the interest is paid in respect of a loan made by a bank or another credit institution.
7. The 5% rate applies if the term of the loan is 5 years or more.
8. As from 1 January 2017, under the application of a most favoured nation clause the 10% general rate is reduced to 5% (general rate is 5% under the Costa Rica-Germany tax treaty).
9. Effective date: 1 January 2022.
10. The 5% reduced rate applies if the beneficial owner is a company (excluding groups of persons) that owns directly at least 20% of the capital of the dividend-paying company; if the described conditions in these provisions are met during a period of 365 days that comprehend the day of the payment of the dividends (in order to calculate this period, will not be considered changes in the property that could derive directly from an entrepreneurial reorganisation, as for example a fusion or split) of the owner company of the shares or that pays the dividends.
11. The 5% reduced rate applies if the maturity of the loan is at least 5 years.
12. The 0% rate applies (i) in case of interest arising in Costa Rica and paid in consideration of a loan guaranteed by the Federal Republic of Germany in respect of export or foreign direct investment or paid to the Government of the Federal Republic of Germany, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or the Deutsche Investitions-und Entwicklungsgesellschaft (ii) if interest is paid in connection with the sale of commercial or scientific equipment on credit (iii) if interest is paid in connection with the sale of goods by an enterprise to another enterprise on credit (iv) if interest is paid for a loan of any kind made by a bank being a resident of one of the Contracting States.

# CROATIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Zagreb | Diana Anticic | +385 16 187 155<br>diana.anticic@porezni-savjetnik.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Croatia |
| Capital: | Zagreb |
| Main languages: | Croatian |

| | |
|---|---|
| Population: | 4.06 million (2022 estimate) |
| Monetary unit: | Croatian Kuna (HRK) |
| Internet domain: | .hr |
| Int. dialling code: | +385 |



## KEY TAX POINTS

- Companies residents in Croatia are subject to corporate tax on profit generated domestically and abroad. Non-resident companies are subject to corporate tax only on profit generated domestically.
- There are no specific rules for branches or groups of companies. Each company is taxed separately.
- Transactions between related companies have to respect transfer pricing principles.
- The standard VAT rate is 25%. There are also reduced rates: 13% and 5% for certain supply of goods and services.
- Many types of payments are subject to withholding tax, such as salaries, dividends, interest and other income.
- Croatian residents – natural persons are subject to income tax on their worldwide income. Non-residents are taxed on income generated in Croatia.
- Real estate tax is paid on real estate transactions (purchase, replacement, gift, etc.). A tax exemption may be applicable subject to certain conditions.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

## COMPANY TAX

Resident companies with a registered office or place of management and supervision in Croatia are taxed on their worldwide income. Non-resident companies are taxed only on income derived in Croatia.

The tax year is usually the calendar year. However, the taxpayer can choose to have a fiscal year different from the calendar year, which is subject to approval by the Tax Administration.

The profit tax is paid based on the determined tax base at the rate of:

- 10% if, during the tax period, revenue has been generated up to HRK 7,500,000; or
- 18% if, during the tax period, revenue has been generated over HRK 7,500,000.

Taxpayers are required to submit a corporate income tax return no later than four months following the end of the tax period. During the Covid crisis, the deadlines for submitting tax returns were extended from four to six months. For 2022, it is not yet known if the postponed deadlines will be maintained or if a return to the old deadlines will be adopted.

## CAPITAL GAINS TAX

Companies - Capital gains derived by a company from the sale of any capital assets are generally included in its ordinary profits. However, gains from the company's own shares (treasury shares) are not taxed.

## BRANCH PROFITS TAX

There is no separate branch profit tax in Croatia. Trading profits and capital gains of a Croatian branch of a foreign company are calculated and taxed on the same basis as those of a Croatian resident company and only for Croatian sourced income.

Based on an official opinion issued by the Croatian Tax Authority on 17 August 2017, distribution of 'dividends' from a Croatian permanent establishment to its foreign head office is subject to withholding tax in Croatia.

## VALUE ADDED TAX (VAT)

VAT is payable on sales of goods and supplies of services, import of goods and intra-community acquisitions of goods.

The general VAT rate is 25%. Reduced rates of 13% (bed and breakfast accommodation, half board or full board at hotels or similar establishments, newspapers and magazines of a newspaper publisher having a media statute, edible oils and fats, vegetable and animal origin, baby car seats, baby diapers and baby food, tickets for concerts, water supply in terms of public water supply, electricity supply, public utility waste collection service, fresh meat and fish supply, etc.) and 5% (all kinds of bread, all kinds of milk, books of professional, scientific, artistic, cultural and educational content, medicines approved by the competent authority for medicines and medical products, medical equipment, movie tickets, newspapers of publishers with a daily newspaper statute, scientific journals, etc.) are also levied.

## SPECIAL TAX AND EXCISE DUTIES

Special taxes are applicable to:

1. motor vehicles;
2. coffee and non-alcoholic beverages;
3. vehicle liability insurance premiums and comprehensive car insurance premiums.

Excise duties are applicable to:

1. alcohol and alcoholic beverages;
2. tobacco products;
3. energy;
4. electricity.

## LOCAL TAXES

In Croatia, the following local taxes are payable:

1. inheritance and gift tax;
2. motor vehicles tax;
3. vessels tax;
4. slot machines tax;
5. surtax;
6. consumption tax;
7. holiday homes tax;
8. use of public areas tax.



## OTHER TAXES

## FRINGE BENEFITS TAX

Fringe benefits are subject to salary tax according to the value of the benefit in kind. The fringe benefits are taxed at the level of the employee and include the private use of a company vehicle, interest fee loans of 2% and any other non-business-related expense for the benefit of the employee.

## REAL ESTATE TRANSFER TAX

Tax is charged at a rate of 3% of the market value of the real estate for transactions that include sale and any other means of transfer of ownership of real estate. If VAT is paid, the transaction is not subject to real estate transfer tax.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company (corporate income tax base) is determined in accordance with the accounting regulations as the difference between revenue and expenses assessed in the profit and loss statement, adjusted for certain items that increase or decrease the tax base.

The tax base can also be determined by the cash principle for realised revenue not exceeding HRK 7.5 million in the previous tax period. The option is granted to taxpayers who are at the same time VAT taxpayers and are paying VAT based on the realised income.

## DEPRECIATION

Depreciation is calculated by using the straight-line method over the estimated useful life of an asset. Standard annual depreciation rates prescribed by the Corporate Income Tax Act can be doubled for tax purposes. The deduction for tax depreciation cannot exceed the expense for accounting depreciation. Depreciation expense for personal cars and other vehicles used for personal transportation, whose purchase cost exceeds 400,000 HRK, is tax deductible only for depreciation calculated on the amount of up to 400,000 HRK. If the purchase cost exceeds said threshold, any depreciation above this amount is recognised only if the vehicle serves for a registered rental or transport activity.

Standard depreciation rates prescribed by the Corporate Income Tax Act (max. tax deductible):

| Assets | Rate |
|---|---|
| Buildings and ships over 1,000 gross registered tons | 10% |
| Personal cars and primary herd | 40% |
| Intangible assets, equipment, vehicles (excluding personal cars), machinery | 50% |
| Computers, computer hardware and software, mobiles and network equipment | 100% |
| Other non-mentioned assets | 20% |

## STOCK / INVENTORY

Inventories are valued at the lower of acquisition cost or net realizable value. They include acquisition costs, conversion costs and other costs incurred in bringing inventories to their current location and condition. Accepted valuation methods include “first in, first out” (FIFO) or weighted average method.

Allowable limits of inventory shortages are prescribed.

## CAPITAL GAINS AND LOSSES

Capital gains and losses are included in taxable income and are subject to regular corporate income tax rates. Specific rules apply to unrealised gains and losses on certain types of assets and may not be taxable or not tax deductible, and may be recognised for tax purposes in the period of the realisation of the asset.

## DIVIDENDS

Dividends (profit distribution) are subject to:

- income tax on income from capital for resident natural persons - 10%;
- income tax on income from capital for non-resident natural persons - 10% (when a double tax treaty is not applicable);
- withholding tax for foreign companies - 10% (when a double tax treaty is not applicable).

Profit distribution to domestic companies is not taxable.

## INTEREST DEDUCTIONS

Interest on late payment is tax deductible unless due to related companies.

Interest expense on loans between related companies is deductible up to the amount prescribed by the Finance Minister and published by the Croatian National Bank. For 2022 the maximum allowed interest rate is 2.68%. Interest expense calculation must also comply with thin capitalisation rules.

The interest rate determined according to the transfer pricing rules and applicable to all contracts may be applied instead of maximum interest rate allowed of 2.68%.



**Thin capitalisation**

Interest paid or accrued on a loan is not deductible if (i) the loan is granted by a shareholder or member owning more than 25% of the share capital or voting power of the company and (ii) the loan exceeds the amount of four times the shareholder's or member's share in the capital or voting rights. The thin capitalization rules do not apply to loans granted by banks or other financial institutions.

**Interest limit rule**

As from 1 January 2019, the tax deductibility of interest is limited, in line with the EU Anti-Tax Avoidance Directive (ATAD) (2016/1164). A deduction of excessive borrowing costs from the taxable base is limited if the following criteria are met:

- the borrowing costs exceed 30% of earnings before interest, tax, depreciation and amortisation (EBITDA).
- the borrowing costs in a financial year exceed EUR 3 million; and

If both criteria are established, it must be assessed whether the company is in a profit or loss-making position in order to determine whether the borrowing costs which exceed EUR 3 million and 30% of EBITDA exceed the loss incurred. The portion exceeding the loss will be taxed.

Non-deductible excessive borrowing costs can be carried forward for 3 years.

**CFC rules**

As of 1 January 2019, controlled foreign company (CFC) rules apply. A foreign company is regarded controlled by a Croatian taxpayer if:

- the taxpayer by itself or together with its related parties holds a direct or indirect participation of more than 50% of the voting rights, owns directly or indirectly more than 50% of capital or is entitled to more than 50% of the profits of the foreign company; and
- the actual corporate income tax paid on its profits by the foreign company is lower than 50% of the corporate income tax that would apply for such profits under the corporate income tax law applicable to the taxpayer.

Under CFC rules, the following non-distributed income of a CFC may be attributed to the Croatian taxpayer, unless the CFC can prove to have sufficient personnel, equipment, assets and premises:

- interest and other income generated by financial assets;
- royalties and any other income generated from intellectual property;
- dividends and income from the disposal of shares;
- income from financial leasing;
- income from insurance, banking and other financial activities; and
- income of invoicing companies deriving income from purchasing and selling goods and services purchased from and sold to related parties.

Tax losses of the CFC may not be included in the taxable base of the taxpayer and the income of the CFC must be included in the taxable base of the Croatian taxpayer proportionally to the participation in the CFC.

**Exit taxation**

Exit tax rules were implemented as of 1 January 2020 in compliance with the EU Anti-Tax Avoidance Directive (ATAD1; Council Directive (EU) 2016/1164). The difference in the market value and the tax value of property is subject to tax when transferred out of Croatia or tax residence is transferred out of Croatia, which may be paid over five tax periods where property is transferred to an EU or EEA Member State with which a mutual assistance agreement has been concluded.

**Hybrid mismatches**

Hybrid mismatch rules were implemented in order to address double deduction and deduction without inclusion mismatches in compliance with the EU Anti-Tax Avoidance Directive as amended by Council Directive (EU) 2017/952 (ATAD2). This includes provisions for the disallowance of a deduction in the case of double deduction mismatch or when a payee does not include the income in its tax base, and provisions for the inclusion of income that would otherwise lead to a mismatch if a corresponding deduction is not disallowed in the payer's jurisdiction.

The provisions regarding reverse hybrid mismatches entered into force on 1 January 2022.

## LOSSES

Tax losses can be carried forward for up to five years. Carry-back of tax losses is not allowed.

Tax losses carried forward may be lost after a business combination (merger, acquisition, i.e.) and/or change of ownership of more than 50% if the taxpayer did not perform any business activity in the two years preceding such an event or if the business activity of the taxpayers changed within two years after such an event.

## TAX INCENTIVES

Tax incentives are available in accordance with the Corporate Income Tax Act and other special legislation regulating incentives. Incentives can be granted for investment activities, business support activities, and activities with higher added value. The tax base can hence be reduced by 50% to 100%.

Investment incentives depend on the amount invested and number of employees contracted. Employment incentives are granted for creating new jobs and for training required by the new job.

## C. FOREIGN TAX RELIEF

Foreign tax paid on income earned by a Croatian resident may be credited against his income or corporate tax liability. The income should be earned directly or through a permanent establishment abroad. The tax relief may be granted up to the amount of the Croatian corporate tax payable.

## D. CORPORATE GROUPS



Consolidated returns or other tax reliefs for corporate groups are not allowed. Companies within the group must submit separate tax returns and are taxed separately.

## E. RELATED PARTY TRANSACTIONS

Related parties shall mean parties wherein one party participates directly or indirectly in management, supervision, or capital of the other party, or both parties participate directly or indirectly in management, supervision or capital of the company.

Transactions between related parties must be contracted under the terms and conditions that would be agreed between unrelated parties. Companies should prepare and maintain transfer pricing documentation.

Interest paid or accrued between related parties must correspond to interest as would have been agreed between unrelated parties. Excessive interest payment is not deductible.

Transfer pricing rules also apply to transactions between related domestic entities if one of the entities is entitled to tax relief or has a right to carry forward tax losses from previous tax years.

## F. WITHHOLDING TAX

Withholding tax at the rate of 15% is applied to payments of fees related to intellectual property rights, services of market research, business consulting, tax consulting, auditing, and interest to foreign legal entities. Withholding tax on performance of artists, entertainers, athletes, dividends and profit sharing is taxed at the rate of 10%.

The Corporate Income Tax Act and certain EU Directives provide for special treatment for dividends, royalties, and interest paid to related companies in other EU states. A full exemption may be applied under certain conditions.

An increased 20% withholding tax is applicable for all payments subject to withholding tax and paid to countries on the EU list of non-cooperative jurisdictions.

If a country has concluded a double tax treaty with Croatia, withholding tax rates may be lower than the non-treaty rates. To benefit from lower rates, a special application needs to be completed and submitted.

The MLI (Multilateral Instrument) is in force in Croatia from June 2021.

## G. EXCHANGE CONTROL

The Croatian National bank and the Foreign Exchange Act regulate domestic and foreign currency transactions. There are no restrictions on transfers of paid-in share capital, dividends, profit, interest, loyalty, and similar payments.

## H. PERSONAL TAX

Income tax is chargeable on Croatian residents natural persons for income generated in Croatia and abroad.

Croatian residents are taxed on the following types of income:

- income from employment (progressive taxation, rates 20% (up to HRK 360,000) and 30% (over HRK 360,000));
- income from self-employment (progressive taxation, rates 20% and 30%);
- income from property and property rights (tax rate 10% and 20%)
- income from capital (tax rate 10%, 20% and 30%)
- other income (tax rate 20%).

Income from employment, self-employment and other income are annual income. For these types of income, the annual tax calculation is carried out. When calculating the annual tax liability, advanced paid tax (paid withholding tax for salaries and other income) is included.

Income from property, property rights and capital is considered final income. They are subject to withholding tax and are not included in the annual tax liability.

### CAPITAL GAINS

- Capital gains from the sale of movable property and securities are currently not subject to tax. The capital gains tax at a rate of 10% plus city surcharge applies to gains derived from financial instruments. However, such gains are not taxable if the financial instruments are held for more than 2 years.
- Capital gains from the sale of immovable property and proprietary rights are taxed by way of final withholding. The taxable amount is the market value of the property less the acquisition price (adjusted for inflation) and costs of alienation. However, such gains are not taxable if (i) the sale takes place after 2 years of ownership, (ii) the taxpayer or his dependants lived on the property before the sale or (iii) the sale is directly connected with a divorce or with an inheritance.

### ANNUAL INCOME

The withholding liability for personal tax lies with the employer. The taxable base is calculated by applying prescribed tax deductions and tax allowances to the total amount of the so called “annual income”. The taxpayer’s personal deduction is a non-taxable part of the income which amounts to HRK 4,000 per month. Tax rates are progressive and applicable to the taxable base when assessing annual income, comprised of employment income, self-employment income and other income not considered as final other income.

The applicable tax rates are:

| Taxable income (HRK) | Rate (%) |
|---|---|
| Up to 360,000 | 20 |
| Over 360,000 | 30 |

Employers are obliged to withhold tax from salaries at the following progressive rates:

| Taxable income (HRK per month) | Rate (%) |
|---|---|
| Up to 30,000 | 20 |
| Over 30,000 | 30 |

Municipalities are authorised to introduce a surcharge on the income tax at rates between 10% and 30%, depending on the number of inhabitants. The actual highest rate of the surcharge is currently 18% (e.g. in Zagreb).

## SOCIAL CONTRIBUTIONS

Employers calculate and pay contributions for their employees. Pension insurance contributions are calculated at a rate of 20% on gross salary. Pension insurance contributions are withheld from the salary. Contributions for health insurance (16,5%) are calculated on the gross salary but are at the employer's expense.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Croatia has signed double tax treaties on avoidance of double taxation with 65 countries listed below. If double tax treaty applies, double taxations avoidance is ensured in accordance with the provisions of relevant treaty, mostly by granted tax relief on a credit basis.

| | Dividends with capital share (%) | Dividends in all other cases (%) | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| **Non-treaty countries** | | | | |
| Corporations | 10 | 10 | 0/15/20 | 0/15/20 |
| Individuals | 10 | 10 | 10 | 20 |
| **Treaty countries:** | | | | |
| Albania | 10 | 10 | 10 | 10 |
| Armenia | 0[2] | 10 | 10 | 5 |
| Austria | 0[3] | 15 | 5 | 0 |
| Azerbaijan | 5[10] | 10 | 10 | 10 |
| Belarus | 5[1] | 15 | 10 | 10 |
| Belgium | 5[3] | 15 | 10 | 0 |
| Bosnia and Herzegovina | 5[1] | 10 | 10 | 10 |
| Bulgaria | 5 | 5 | 5 | 0 |
| Canada | 5 | 15 | 10 | 10 |
| Chile | 5[7] | 15 | 5/15 | 5/10 |
| China | 5 | 5 | 10 | 10 |
| Czech Republic | 5 | 5 | 0 | 10 |
| Denmark | 5[2] | 10 | 5 | 10 |
| Estonia | 5[3] | 15 | 10 | 10 |
| Finland | 5[2] | 15 | 0 | 10 |
| France | 0[3] | 15 | 0 | 0 |
| Georgia | 5 | 5 | 5 | 5 |
| Germany | 5[3] | 15 | 0 | 0 |
| Greece | 5[2] | 10 | 10 | 10 |
| Hungary | 5[1] | 10 | 0 | 0 |
| Iceland | 5 | 10 | 10 | 10 |
| India | 5[3] | 15 | 10 | 10 |
| Indonesia | 10 | 10 | 10 | 10 |
| Iran | 5[2] | 10 | 5 | 5 |
| Ireland | 5[5] | 10 | 0 | 10 |
| Israel | 5[2]/10[9] | 15 | 5/10 | 5 |
| Italy | 15 | 15 | 10 | 5 |
| Japan | 5 | 10[13] | 5 | 5 |
| Jordan | 5[1] | 10 | 10 | 10 |

| | Dividends with capital share (%) | Dividends in all other cases (%) | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| Kazakhstan | 5[2] | 10 | 10 | 10 |
| Korea (South) | 5[1] | 10 | 5 | 0 |
| Kosovo | 5[2] | 10 | 5 | 5 |
| Kuwait | 0 | 0 | 0 | 10 |
| Latvia | 5[2] | 10 | 10 | 10 |
| Lithuania | 5[1] | 15 | 10 | 10 |
| Luxembourg | 5[3] | 15 | 10 | 5 |
| Malaysia | 5[3] | 10 | 10 | 10 |
| Malta | 5[4] | 5 | 0 | 0 |
| Mauritius | 0 | 0 | 0 | 0 |
| Moldova | 5[1] | 10 | 5 | 10 |
| Montenegro | 5[1] | 10 | 10 | 10 |
| Morocco | 8[1] | 10 | 10 | 10 |
| Netherlands | 0[3] | 15 | 0 | 0 |
| North Macedonia | 5[1] | 15 | 10 | 10 |
| Norway | 15 | 15 | 0 | 10 |
| Oman | 0 | 0 | 5 | 10 |
| Poland | 5[2] | 15 | 10 | 10 |
| Portugal | 5[3] | 10 | 10 | 10 |
| Qatar | 0 | 0 | 0 | 0 |
| Romania | 5 | 5 | 10 | 10 |
| Russia | 5[6] | 10 | 10 | 10 |
| San Marino | 5[1] | 10 | 10 | 5 |
| Serbia | 5[1] | 10 | 10 | 10 |
| Slovak Republic | 5[1] | 10 | 10 | 10 |
| Slovenia | 5 | 5 | 5 | 5 |
| South Africa | 5[1] | 10 | 0 | 5 |
| Spain | 0[8] | 15 | 0 | 0 |
| Sweden | 5[2] | 15 | 0 | 0 |
| Switzerland | 5[2] | 15 | 5 | 0 |
| Syria | 5[3] | 10 | 10 | 12 |
| Turkey | 10 | 10 | 10 | 10 |
| Turkmenistan | 10 | 10 | 10 | 10 |
| Ukraine | 5[1] | 10 | 10 | 10 |
| United Arab Emirates | 5 | 5 | 5 | 5 |
| United Kingdom | 5[11]/15[12] | 10 | 5 | 5 |
| Vietnam | 10 | 10 | 10 | 10 |

Notes:

1. If the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.
2. If the beneficial owner is a company (excluding partnership) which holds directly at least 25% of the capital of the company paying the dividends.
3. If the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends.
4. When the dividends are paid by a company which is a resident of Croatia to a resident of Malta who is the beneficial owner.
5. If the beneficial owner is a company (excluding partnership) which holds directly at least 10% of the capital of the company paying the dividends.
6. If the beneficial owner is a company (excluding partnership) which holds directly at least 25% of the capital of the company paying the dividends and this share should be at least 100,000 USD.
7. If the beneficial owner is a company which holds directly at least 20% of the capital of the company paying the dividends.
8. If the dividends are paid to a company the capital of which is wholly or partly divided into shares, as long as it holds directly at least 25% of the capital of the company paying the dividends.
9. If the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends where that latter company is a resident of Israel and the dividends are paid out of profits which are subject to tax in Israel at a rate which is lower than the normal rate of Israeli company tax.
10. If the beneficial owner is a company (excluding partnership) which holds directly at least 25% of the capital of the company paying the dividends and has invested to the capital of that company at least 150,000 EUR.

11. If the beneficial owner is a company which is a resident of the other Contracting State and controls, directly or indirectly, at least 25% of the capital of the company paying the dividends (other than where the dividends are paid by an investment vehicle as mentioned in subparagraph (b)).
12. When dividends are paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6. by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax.



# CYPRUS

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Limassol | Nicholas Stavrinides | +357 25 868000<br>nicholas.s@pkf.com.cy |
| Nicosia | Nicolas Nicolaou | +357 22 462727<br>nicolas.nicolaou@pkf-nic.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Cyprus |
| Capital: | Nicosia (Lefkosia to Greek Cypriots, Lefkosa to Turkish Cypriots) |
| Main languages: | Greek, Turkish |
| Population: | 1.22 million (2022 estimate) |
| Monetary unit: | Euro (EUR) |
| Internet domain: | .cy |
| Int. dialling code: | +357 |

## KEY TAX POINTS

- Companies resident in Cyprus are subject to corporation tax on all their income: non-resident companies only on profits derived from Cyprus. Branches managed and controlled from Cyprus are taxed as resident companies.
- Capital gains tax applies to residents and non-residents disposing of immovable property situated in Cyprus, and shares in companies owning such assets.
- VAT is charged on taxable supplies and imports. A reduced rate, zero rate and exemption regime applies to the supply of certain goods and services.
- In the absence of a tax treaty, the tax paid on overseas income in a non-treaty country is normally allowed as a tax credit by concession and proof of payment. The tax credit may not exceed the Cyprus corporation tax on the overseas income.
- Cyprus tax resident individuals are subject to income tax on worldwide income, non-residents are subject to income tax on Cyprus-sourced income only.
- Cyprus tax resident and domicile individuals are subject to defence contributions on dividend, interest and rental income. Cyprus tax residents who are not Cyprus domiciles are exempted from defence contribution.
- An individual is considered of a Cyprus domicile if he/she has a domicile of origin in Cyprus based on the provisions of the Will and Succession legislation. Examples of domicile may include domicile of the parents at the time of birth or permanently living and intending to live in a country.
- Notwithstanding the above, an individual who although not of a Cyprus origin has been a Cyprus tax resident for 17 out of the last 20 years, prior to the relevant tax year, is considered as a Cyprus domicile.

## A. TAXES PAYABLE

### COMPANY TAX

A Cyprus resident company is subject to corporation tax on its worldwide income. Non-resident companies are subject to corporation tax only on profits derived in the Republic. Resident companies are those companies whose management and control is exercised from Cyprus.

The corporation tax rate is 12.50%. Taxes are paid by two instalments in advance based on a provisional assessment, which should be at least 75% of the final tax charge. A fiscal year is the calendar year.

### CAPITAL GAINS TAX

Gains in respect of the sale of immovable property situated in Cyprus (including shares of a company having immovable property) are subject to Capital Gains Tax. Both residents and non-resident persons are subject to capital gains tax if they own immovable property in Cyprus. The applicable rate on the taxable income is 20%.

No tax is levied in respect of immovable property situated abroad. No tax is levied on capital gains in respect of profits on disposal of shares of companies (other the ones which own immovable property).

## BRANCH PROFITS TAX

Branches of foreign companies managed and controlled from Cyprus are taxed as if they were Cyprus resident companies. Foreign branch profits of Cyprus companies are relieved from Cyprus tax.

## VALUE ADDED TAX (VAT)

VAT is generally imposed on taxable supplies of goods and services and undeveloped land for business purposes at the standard rate of 19%.

Certain supplies of goods and services are charged at the reduced rates of 5% - 9%; others are zero-rated, notably ship management services. Some supplies of goods and services are exempt from VAT: specifically, financial services, health and welfare, insurance, and education.

The annual VAT registration threshold is EUR 15,600.

Cyprus has adopted the provisions of the EU Directive 2008/8/EC effective from 1 January 2010. Exports of goods or provision of services to non-EU or to EU VAT registered persons are subject to 0%.

## FRINGE BENEFITS TAX

Certain benefits such as use of cars for private purposes, rent, school fees etc are considered as benefits in kind and taxed accordingly.

## LOCAL TAXES

Local taxes include transfer fees on sale and purchase of property, stamp duty (only in respect of assets situated in Cyprus or agreements executed in Cyprus).

## OTHER TAXES

Contributions to the social insurance fund are paid on the salaries of resident employees. The total amount paid by an employer can vary from 12 to 14% of the gross salary. The employee pays a further 8.3%. Employers contribute a further 2.90% and the employees 2.65% on the National Health Scheme. The maximum salary on which contributions are paid is currently EUR 4,840 per month and for the NHS EUR 180,000 per annum.

## B. DETERMINATION OF TAXABLE INCOME

Resident companies pay taxes on their net taxable profits. These are determined by pooling their worldwide income and deducting allowable expenses, charges and capital allowances. Non-resident companies pay taxes on their Cyprus-sourced income only.

## CAPITAL ALLOWANCES

Annual wear and tear allowances are allowed on various assets including plant and machinery; fixtures and fittings; commercial vehicles; hotels; commercial buildings; industrial buildings; computer hardware and software; and loose tools. Allowances range from 3% to 33% per annum. No capital allowances are given for saloon cars not used in the business.

## DEPRECIATION

Depreciation included in the financial statements of entities is disallowed for tax purposes, as capital allowances are given instead. For accounting purposes, depreciation rates applied are those which write-off the assets over their useful life.

## STOCK / INVENTORY

Opening and closing stocks are normally stated at the lower of cost and net realizable value on a FIFO basis.

## CAPITAL GAINS AND LOSSES

Capital gains are computed separately and do not form part of the annual taxable income for corporation tax purposes. Indexation allowance is available for the determination of the taxable gains and losses. Capital losses can be offset against capital gains.

## DIVIDENDS

Dividends receivable are exempt from corporation tax. Resident companies withhold contributions to the defence fund of the Republic on dividends paid only to Cyprus tax domicile and resident individuals at the rate of 17%.

## INTEREST DEDUCTIONS

Interest expense is deductible if the borrowing is wholly and exclusively for the purposes of producing income. Interest paid to a connected party is a deductible expense.

Notional interest deductions are given on issue of share capital to encourage avoidance of thin capitalisation up to 80% on the annual taxable income. Interest deductibility restrictions exist to the extent that a company has non-business assets.

The Anti-Avoidance Tax Directive (ATAD) provisions have been transposed into domestic tax legislation regarding interest limitation rules. As from 1 January 2019, exceeding borrowing costs shall be deductible in the tax period in which they are incurred only up to 30% of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA). Exceeding borrowing costs means the amount by which the deductible borrowing costs of a taxpayer exceed the taxable interest and related revenues that the taxpayer receives according to national law. In cases where the companies are part of the same group, exceeding borrowing costs and the EBITDA are calculated at the level of the group and comprise the results of all its members.

The above provisions do not apply in the following circumstances:

a) When exceeding borrowing costs are up to EUR 3 million;

b) When the taxpayer is a standalone entity.

Excess borrowing costs which cannot be set off against the taxable income in the current tax period can be carried forward to be set off against the income of the taxpayer for the next five subsequent years.

## INTEREST INCOME

Where interest in considered as profit close to the ordinary activities of the company, then such type of income is considered as trading profit and not interest. Hence it is not subject to defence contribution and taxed at the corporate tax rate of 12.5%. Examples include financing and insurance companies, interest from trade receivables etc.

Interest income is subject to a 30% defence contribution tax. If the recipient is a Cyprus non domicile individual defence contribution is exempted.



## INCOME FROM INTANGIBLE ASSETS

Please note the following with respect to income from Intangible assets:

- The cost of acquisition or development of the Intellectual Property is amortized equally for a period of 5 years, giving a 20% taxable allowance each year.
- The existing IP Box regime grants deductions under a formula with a maximum deduction up to 80% of the profit deriving from either royalty income (including compensation for improper use), or sale of qualifying intellectual property is deducted as a tax expense, leaving only 20% of the net profit being taxed.
- Qualified IP include, *inter alia*, computer software and patents but not trademarks and goodwill.

## LOSSES

Trading losses may be carried forward for a period of 5 years. Losses from overseas activities can be set off against chargeable income for the year and can be carried forward subject to the 5 year period.

If, within any period of three years, there is both a change in the beneficial ownership of a company and a major change in the nature of trade and, at any time before the change of ownership the activities in the trade become small or negligible, then no trading losses incurred prior to the change in ownership are allowed.

## FOREIGN SOURCE INCOME

Cyprus has controlled foreign company legislation (CFC) legislation as to the extent of dividends from an overseas company. Such dividends are taxed if the companies paying the dividend have activities the nature of which amounts to more than 50% investment income and their country of residence imposes corporation tax which is less than 6.25% per annum. Both criteria must apply in order for the tax to be charged.

The Anti-Avoidance Tax Directive (ATAD) provisions have been transposed into domestic tax legislation regarding CFC rules. As from 1 January 2019, an entity or a permanent establishment of which the profits are not subject to tax or are exempt from tax in Cyprus, is treated as a CFC where the following conditions are met:

a) In the case of an entity, the taxpayer by itself, or together with its associated enterprises holds a direct or indirect participation of more than 50% of the voting rights, or owns directly or indirectly more than 50% of capital or is entitled to receive more than 50% of the profits of that entity; and
b) The actual corporate tax paid on its profits by the entity or permanent establishment is lower than 50% of the corporate tax that would have been charged on the entity or permanent establishment under the applicable corporate tax system of Cyprus.

Where an entity or permanent establishment is treated as a CFC, Cyprus shall include in the tax base the non-distributed income of the entity or the income of the permanent establishment which is derived from the following categories:

i) Interest or any other income generated by financial assets;
ii) Royalties or any other income generated from intellectual property;
iii) Dividends and income from the disposal of shares;
iv) Income from financial leasing;
v) Income from insurance, banking and other financial activities;
vi) Income from invoicing companies earning sales and services income from goods and services purchased from and sold to associated enterprises, adding no or little economic value.

The CFC rules are subject to certain exemptions.

## TAX INCENTIVES

Some of the main incentives are as follows:

a) Low corporation tax of rates at 12.50%;
b) Non-resident entities are only taxed on their Cyprus-sourced income;
c) No withholding tax on payments of dividend and interest to non-residents and Cyprus domiciled individuals;
d) Profits and dividends from abroad are tax-free free subject to CFC rules stated above;
e) Restructuring legislation in line with the EU Merger Directive extending to companies in non-EU countries;
f) Up to 80% deduction from income from qualifying intellectual properties (royalties etc.);
g) Tax incentives on investors on issue of new share capital to innovative companies;
h) Notional interest tax deductions on new share capital issued;
i) A Cyprus holding company can pay virtually no tax on its profits; and
j) Tax incentives for employees coming to Cyprus from overseas (see further).

## C. FOREIGN TAX RELIEF

Foreign tax paid on income of a Cyprus resident company is credited against the corporation tax, subject to Double Tax treaty conditions. In the absence of a tax treaty, the tax paid in a non-treaty country is normally allowed as a deductible expense. Tax paid is credited only if a similar concession is given to Cyprus companies in that particular country. The foreign tax relief cannot exceed the Cyprus corporation tax on these profits.

## D. CORPORATE GROUPS

Group loss relief is available to a group of Cyprus resident companies in relation to current year losses. Two companies will be considered as part of a group if one company holds 75% of the voting share capital or distributable profits of the other, or both companies are 75% subsidiaries of a third company. The group must be in existence within the whole fiscal year unless a company was incorporated in the year.



## E. RELATED PARTY TRANSACTIONS

Transactions between related parties do not need to be adjusted for tax purposes as long as they are on 'an arm's length' basis. When there are transactions which are deemed as not at arm's length, then tax adjustments apply on a notional basis.

## F. WITHHOLDING TAX

Irrespective of the existence of a double tax treaty, national tax legislation does not impose withholding tax with the exception of certain royalty payments if the IP is utilised in Cyprus. Cyprus has entered into double tax treaties with over 60 countries. Non-resident companies have no obligation to withhold taxes on any payments they make.

Dividends paid (directly or indirectly) to non-resident shareholders and interest paid to non-residents are not subject to withholding tax.

## G. EXCHANGE CONTROL

There are no exchange controls in Cyprus.

## H. PERSONAL TAX

A person who is resident for 183 days or more in aggregate during the tax year is deemed to be tax resident.

A person who is resident for more than 60 days and does not spend more than 183 days in another country has the option to become a Cyprus tax resident.

All individuals who are tax residents of the Republic are taxed on their worldwide income. Non-resident individuals are taxed on income derived from Cyprus only. Income tax is payable on assessable income less allowable deductions. Assessable income includes income from employment, rent, interest and profits from trade and business or professions.

Allowable expenses include social insurance and national health contributions and pension contributions.

Individuals taking up employment in the Republic, who were non-resident prior to employment are entitled to an allowance of 20% of remuneration up to a maximum of EUR 8,543 for a period of five years. Individuals with annual remuneration in excess of EUR 100,000 are entitled to an increased allowance of up to 50% for a period of five years, without a maximum ceiling. Salaried services rendered abroad for a total period of more than 90 days to a non-resident employer or at a PE abroad of a resident employer are exempt from income tax.

The current tax rates are as follows:

| Taxable income (EUR) | Normal tax rate (%) |
|---|---|
| 0 – 19,500 | 0 |
| 19,501 – 28,000 | 20 |
| 28,001 – 36,300 | 25 |
| 36,301 – 60,000 | 30 |
| Over 60,000 | 35 |

Pensions receivable from abroad by a resident in respect of services rendered outside Cyprus are still taxed at 5%, after deduction of the first EUR 3,417 if the individual elects to do so.

## TREATY AND NON-TREATY WITHHOLDING TAX RATES

According to domestic tax legislation there is no withholding tax on dividend and interest payments to non-residents.

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 0/17[22] | 0/17[22] | 0/30[23] | 0/5/10[24] |
| Individuals | 0 | n/a | 0 | 10 |
| **Treaty countries:** | | | | |
| Andorra | 0 | 0 | 0 | 0 |
| Armenia | 5 | 0[1] | 5 | 5 |
| Austria | 10 | 10 | 0 | 0 |
| Azerbaijan | 0 | 0 | 0 | 0 |
| Bahrain | 0 | 0 | 0 | 0 |
| Barbados | 0 | 0 | 0 | 0 |
| Belarus | 15 | 5/10[2] | 5 | 5 |
| Belgium | 15 | 10[3] | 0/10 | 0 |
| Bulgaria | 10 | 5[4] | 7 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Canada | 15 | 15 | 15 | 0/10 |
| China | 10 | 10 | 10 | 10 |
| Czech Republic | 5 | 0[5] | 0 | 10 |
| Denmark | 15 | 0[5] | 0 | 0 |
| Egypt | 10 | 5[20] | 10 | 10 |
| Estonia | 0 | 0 | 0 | 0 |
| Ethiopia | 5 | 5 | 5 | 5 |
| Finland | 15 | 5[6] | 0 | 0 |
| France | 15 | 10[7] | 0/10 | 0/5 |
| Georgia | 0 | 0 | 0 | 0 |
| Germany | 15 | 5[8] | 0 | 0 |
| Greece | 25 | 25 | 10 | 0/5 |
| Guernsey | 0 | 0 | 0 | 0 |
| Hungary | 0 | 0 | 0/10 | 0 |
| Iceland | 10 | 5[8] | 0 | 5 |
| India | 10 | 10 | 10 | 10 |
| Iran | 10 | 5[4] | 5 | 6 |
| Ireland | 0 | 0 | 0 | 0/5 |
| Italy | 0 | 0 | 10 | 0 |
| Jersey | 0 | 0 | 0 | 0 |
| Kazakhstan[19] | 15 | 5[8] | 0/10 | 10 |
| Kuwait | 0 | 0 | 0 | 5 |
| Kyrgyzstan | 0 | 0 | 0 | 0 |
| Latvia | 10 | 0[9] | 0/10 | 0/5 |
| Lebanon | 5 | 5 | 5 | 0 |
| Lithuania | 5 | 0[10] | 0 | 5 |
| Luxembourg | 5 | 0[10] | 0 | 0 |
| Malta | 15 | 15 | 10 | 10 |
| Mauritius | 0 | 0 | 0 | 0 |
| Moldova | 10 | 5[4] | 5 | 5 |
| Montenegro | 10 | 10 | 10 | 10 |
| Norway | 15 | 0[10] | 0 | 0 |
| Poland | 5 | 0[11] | 5 | 5 |
| Portugal | 10 | 10 | 10 | 10 |
| Qatar | 0 | 0 | 0 | 5 |
| Romania | 10 | 10 | 10 | 0/5 |
| Russia | 15 | 5[12] | 0/5/15[21] | 0 |
| San Marino | 0 | 0 | 0 | 0 |
| Saudi Arabia | 5 | 0[16] | 0 | 5/8 |
| Serbia | 10 | 10 | 10 | 10 |
| Seychelles | 0 | 0 | 0 | 5 |
| Singapore | 0 | 0 | 7/10 | 10 |
| Slovak Republic | 10 | 10 | 10 | 0/5 |
| Slovenia | 5 | 5 | 5 | 5 |
| South Africa | 10 | 5[13] | 0 | 0 |
| Spain | 5 | 0[14] | 0 | 0 |
| Sweden | 15 | 5[4] | 10 | 0 |
| Switzerland | 15 | 0[15] | 0 | 0 |
| Syria | 15 | 0[16] | 10 | 10/15 |
| Tajikistan | 0 | 0 | 0 | 0 |
| Thailand | 10 | 10 | 10/15 | 5/10/15 |
| Turkmenistan | 0 | 0 | 0 | 0 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Ukraine | 10 | 5[17] | 5 | 5/10 |
| United Arab Emirates | 0 | 0 | 0 | 0 |
| United Kingdom | 0 | 15[18] | 0 | 0/5 |
| United States | 0 | 0 | 0/10 | 0 |
| Uzbekistan | 0 | 0 | 0 | 0 |



Notes:

1. The 0% rate applies if the beneficial owner has invested in the capital of the dividend-paying company not less than the equivalent of EUR 150,000 at the time of the investment.
2. The 10% rate applies if the beneficial owner holds directly at least 25% of the share capital of the company. The 5% rate applies if the beneficial owner of the dividends has invested in the share capital of the dividend-paying company not less than EUR 200,000.
3. The 10% rate applies if the beneficial owner is a company which holds directly or indirectly at least 25% of the capital of the dividend-paying company.
4. The 5% rate applies if the beneficial owner is a company which owns directly at least 25% of the capital of the dividend-paying company.
5. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company where such holding is being possessed for an uninterrupted period of no less than one year.
6. The 5% rate applies if the beneficial owner is a company (other than a partnership) which controls directly at least 10% of the voting power in the dividend-paying company.
7. The 10% rate applies if the beneficial owner is a company (other than a partnership) which controls directly at least 10% of the voting power in the dividend-paying company.
8. The 5% rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company.
9. The 0% rate applies if the beneficial owner is a company (other than a partnership).
10. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
11. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company for an uninterrupted period of 24 months.
12. The 5% rate applies if the beneficial owner is (i) an insurance undertaking or a pension fund or (ii) a company whose shares are listed on a registered stock exchange provided that no less than 15% of the voting shares of that company are in free float and which holds directly at least 15% of the capital of the dividend-paying company throughout a 365 day period that includes the day of payment of the dividends or (iii) the government, a political subdivision or local authority thereof or (iv) the Central Bank.
13. The 5% rate applies if the beneficial owner is a company which holds at least 10% of the capital of the dividend-paying company.
14. The 0% rate applies if the capital of the dividend-receiving company is wholly or partly divided into shares and provided that it holds directly at least 10% of the capital of the dividend-paying company.
15. The 0% rate applies if the capital of the dividend-receiving company (other than a partnership) is wholly or partly divided into shares and provided that it holds directly at least 10% of the capital of the dividend-paying company during an uninterrupted period of at least one year.
16. The 0% rate applies if the capital of the dividend-receiving company is wholly or partly divided into shares and provided that it holds directly at least 25% of the capital of the dividend-paying company.
17. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company and at least has invested in the acquisition of the shares or other rights of the company the equivalent of at least EUR 100,000.
18. The 15% rate only applies if the dividend arises mainly out of profits from immovable property in the country where the property is located.
19. Effective date: 1 January 2021.
20. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company throughout a 365 day period that includes the day of the payment of the dividend.
21. The 0% rate applies if the beneficial owner is (i) an insurance undertaking or a pension fund or (ii) the government, a political subdivision or a local authority thereof or (iii) the Central Bank or (iv) a bank or the interest is paid in respect of the following securities listed on a registered stock exchange: government bonds, corporate bonds or Eurobonds.

    The 5% rate applies if the beneficial owner is a company whose shares are listed on a registered stock exchange provided that no less than 15% of the voting shares of that company are in free float and which holds directly at least 15% of the capital of the interest-paying company throughout a 365 day period that includes the day of payment of the interest.
22. Dividends paid to non-residents are not subject to withholding tax. However, effective 31 December 2022 dividends are subject to a 17% withholding tax when paid by a Cyprus tax resident to companies that are:
    - Resident in jurisdictions included in the EU blacklist of non-cooperative jurisdictions; or
    - Incorporated/registered in a jurisdiction included in the EU blacklist and are not tax resident in any other jurisdiction not included in the EU blacklist.

    The following conditions apply:
    - The dividend-receiving company holds directly, either alone or jointly with associated companies, more than 50% of the capital or voting rights, or is entitled to receive more than 50% of the profits in the dividend-paying company; and
    - The associated companies are also resident in an EU blacklisted jurisdiction or incorporated/registered in an EU blacklisted jurisdictions and are not tax resident in any other jurisdiction not included in the EU blacklist.

    Dividend payments from shares listed on a recognised stock exchange are not subject to withholding tax.
23. Interest paid to non-residents is not subject to withholding tax. However, effective 31 December 2022 interest is subject to a 30% withholding tax when paid by a Cyprus tax resident company to companies that are:
    - Resident in jurisdictions included in the EU Blacklist; or
    - Incorporated/registered in a jurisdiction included in the EU Blacklist and are not tax resident in any other jurisdiction not included in the EU Blacklist.

The withholding tax does not apply to:

- Interest payments on securities listed on a recognised stock exchange; or
- Interest payments made by individuals.

24. Royalties paid to non-residents who are not engaged in any business (irrespective of the existence of a permanent establishment) in Cyprus for the use of rights in Cyprus are subject to a final withholding tax:
    - 5% on film royalties; and
    - 10% on any other royalties, subject to the application of a lower rate under a tax treaty.

    However, effective 31 December 2022, royalties are subject to a 10% withholding tax when paid by a Cyprus tax resident company to companies that are:
    - Resident in jurisdictions included in the EU Blacklist; or
    - incorporated/registered in a jurisdiction included in the EU Blacklist and are not tax resident in any other jurisdiction not included in the EU Blacklist.

    The withholding tax does not apply in case of royalty payments made by individuals.

    Under Cyprus domestic law implementing the provisions of the Interest and Royalties Directive (2003/49), outbound royalties are exempt from withholding tax, provided that the beneficial owner of the royalties is an associated company of the paying company and is resident in another Member State or such a company's permanent establishment situated in another Member State. Two companies are "associated companies" if (i) one of them has a direct minimum holding of 25% in the capital of the other, or (ii) a third EU company has a direct minimum holding of 25% in the capital of the two companies. The relevant companies must have a legal form listed in the Annex of the Directive and be subject to a corporate income tax. No minimum holding period is required.

C

# CZECH REPUBLIC

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Prague | Jiri Valenta | +420 606 667 142<br>jiri.valenta@apogeo.cz |

## BASIC FACTS

| | |
|---|---|
| Full name: | Czech Republic |
| Capital: | Prague |
| Main languages: | Czech |
| Population: | 10,75 million (2022 estimate) |
| Monetary unit: | Czech koruna (CZK) |
| Internet domain: | .cz |
| Int. dialling code: | +420 |

## KEY TAX POINTS

- Czech resident companies are subject to tax on their worldwide income. Non-resident companies are subject to tax on Czech-sourced income.
- Capital gains are not taxed separately but included within ordinary income.
- VAT is applied to the provision of goods, transfer of real estate, provision of services and imports. The basic rate is 21% although there is a lower rate of 15% and from 1 January 2015 a second lower rate of 10%.
- Transfer pricing rules apply to non-arm's length profit-sharing arrangements agreed between related parties.
- A real estate tax is levied on land and buildings.
- Ordinary credits for foreign income tax on overseas income are available for Czech resident taxpayers where a relevant double tax treaty exists. If there is no tax treaty, the overseas tax is included in the tax expenses for the following period.
- For 2021, the personal income tax rate is 15% and 23%. The 23% rate applies to the part of the income which exceeds 48 times the annual average salary (CZK 1,701,168 for 2021 and CZK 1,867,728 for 2022 due to the increase of the annual average salary). The 15% rate applies to a separate tax base, in particular for foreign income from capital assets.
- In addition to income tax, employees also pay social security and medical insurance contributions at the rate of 11 % withheld by their employers from their gross wage. The employer´s part of social security and medical insurance contributions represents an additional cost of 33.8%.
- Withholding tax applies to dividends, licence fees, interest and related income and royalties.

## A. TAXES PAYABLE

### COMPANY TAX

Company tax is payable by Czech resident companies on income derived from worldwide sources. Non-resident companies are required to pay the tax on income sourced in the Czech Republic. Resident companies are those which have their registered office or place of management located in the Czech Republic. The corporate income tax rate is 19% for 2021 and this is applied to all taxable profits of a business, including capital gains from the sale of shares (if not exempt under the participation exemption regime). A 5% and 0% tax rate applies to income from defined investments and pension funds respectively.

A company may choose either a calendar year or an accounting year as its tax year. Tax returns are due within three months of the end of the tax period (in case of electronic submission the period is 4 months) or within six months for audited entities or entities represented by a chartered tax advisor. The tax is payable within the deadline for filing the tax return. Estimated company tax payments (advance tax payments) are paid semi-annually or quarterly.

**Online registration of sales**

Taxpayers in the Czech Republic were obliged until Q1 2020 to electronically evidence sales derived from business activities when they are made in cash, cheque, voucher or in any similar way. After suspension of the obligation due to the Covid-19 pandemic there is currently a legal procedure underway to abolish said obligation completely.



**Exit tax**

The relocation of the taxpayer´s business assets from the Czech Republic to another state will be treated as a transfer of assets for a consideration and corporate income tax will be levied. The consideration is determined as the price agreed between unrelated parties under current business conditions.

## CAPITAL GAINS TAX

Capital gains such as dividends, interest from owed securities, deposit accounts and deeds are subject to a 15% withholding tax. Income of residents of countries outside the EU or EEA that don't have a double tax treaty or tax information exchange agreement in force with the Czech Republic are subject to a 35 % withholding tax. Dividend income is exempt from withholding tax if paid to a resident of an EU member state in accordance with the EU Parent-Subsidiary Directive No. 2011/96/ EU.

The parent company must have a minimum 10% holding in the subsidiary's registered capital for an uninterrupted period of at least 12 months. The subsidiary must have the form of the entities indicated in the Parent-Subsidiary directive, be a tax resident in an EU Member State and be subject to corporate income tax in this State. An exemption also applies under the same conditions to dividends distributed by subsidiaries with their seat in Switzerland, Norway, Iceland or Liechtenstein. Moreover, a similar exemption applies to the income arising from a transfer of shareholdings by a parent company in its subsidiaries within the EU.

The scope of exemption is extended to dividends distributed by qualified subsidiaries with their seat outside the EU where a relevant double tax treaty is applicable and that are subject to a tax rate at a minimum of 12% both in the year of payment of distribution of the dividend and in the previous year. The exemption also applies to income from the transfer of shareholdings by parent companies in subsidiaries outside the EU under the same conditions.

Interest and royalties are tax exempt when paid by a Czech company to a parent company in another member state in the EU or EEA (which is a shareholder of the Czech company and has held at least 25% of its share capital for a period of at least 24 months). It is necessary to apply for this tax exemption with the Czech tax authorities. The following documents must generally be: tax domicile certificate of the parent company, extract of the commercial register of the parent company, extract of commercial register of the Czech company, the title of the licence fees, and confirmation from the tax authority of the parent company that it has its tax domicile in the EU or EEA state.

For companies, capital gains are included within ordinary income in the year they arise and are taxed as part of their respective taxable profits for the period. Capital gains are not taxed separately in the Czech Republic except for those from a foreign source.

## BRANCH PROFITS TAX

There is no separate branch profits tax in the Czech Republic. The income of a Czech branch of a foreign company is subject to taxation at the standard applicable 19% rate for 2021. Attribution of profits to a branch, if it does not result from its separately held bookkeeping, is commonly determined on the basis of the margins that are generally realised by resident companies undertaking similar activities.

## VALUE ADDED TAX (VAT)

Value Added Tax (VAT) is imposed on the domestic provision of goods, transfer of real estate, provision of services, including the transfer or use of rights and importation of goods. There are three rates of VAT; basic rate 21% and reduced rates of 15% and 10% since 2015. The 21% rate applies generally to supplies of goods and most services with some exceptions while the 15% rate applies to selected services and some goods such as foodstuff. The 10% rate applies in particular to pharmaceutical products, printed books, certain children's nutrition and qualified mill products, and services, such as transport, catering, accommodation, spa, barber and hairdresser, tickets to theatres, museums and other cultural facilities, supply of heat, cold, water.

With effect from 1 January 2021, the following changes to VAT legislation apply:

- Exemption of rent from VAT;
- Refund of the undisputed part of the excess VAT deduction.

Goods and services exported from the Czech Republic to non-EU countries are exempt from VAT. The principles of the Sixth VAT Directive (771388/EU) have applied since 1 May 2004 to goods and services exported from the Czech Republic to EU countries. A group of related parties may register as a single VAT taxpayer.

Selected VAT payers will be obliged to submit the VAT Control Statement after 1 January 2016. It is introduced as an effective tool to detect and prevent tax evasion and fraud. Its aim and purpose is to enable the tax authority to obtain information on selected transactions carried out by taxable persons registered for VAT and along with other available information to identify suspicious groups of taxable persons (chains, carousels), which are illegally withdrawing funds from the public budget. VAT Control Statement is based on records for the purposes of VAT, which taxable persons registered for VAT are already obliged to keep. Transactions which are declared in the VAT Control Statement:

1. Domestic taxable supplies (CZ) or receipt of advance payment;
2. Domestic acquisition of goods/services or providing of advance payment;
3. Received transactions from which the acquirer is obliged to declare VAT;
4. Special scheme for investment gold:
    - Received Intermediary Service for which VAT is applied;
    - Supply of VAT exempt investment gold for which a taxable person registered for VAT is entitled to deduct VAT; or

- Production of investment gold or transformation of gold into investment gold.

Deadline for submission of the VAT Control Statement (CZ taxable persons registered for VAT):

- Legal entities or group registration have to submit the VAT Control Statement no later than the 25th day after the end of each month,
- Individuals have to submit the VAT Control Statement on the same day as the VAT return (no later than the 25th day after the taxable period: month or quarter, or special taxable period e.g. in an insolvency procedure etc.).

The VAT Control Statement has to be submitted electronically.



## OTHER TAXES

Tax on real estate property is levied on buildings, structures and land situated within the Czech Republic. The taxpayer is the actual owner or in limited cases the user of the property. The rate depends on the size, quality, type and location of the property. This tax is a tax deductible expense if it has been paid and is not part of the valuation of the property.

Income from inheritance and gifts is not subject to a specific tax but is included in the income tax regime and subject to tax at a rate of 15% and 23% for individuals, and 19% for companies (broad exemptions apply to donations for individuals while income from inheritance is exempt for all taxpayers).

Employers' payment on behalf of their employees towards the workers' social security and medical insurance is at the rate of 33.8 % of the gross payroll (social security premium payments are capped at CZK 1,701,168 for 2021 and CZK 1,867,728 for 2022).

There is no Stamp Duty in the Czech Republic although a notarial fee may apply for certain documents. There is no net wealth/worth tax in the Czech Republic.

## B. DETERMINATION OF TAXABLE INCOME

The company's taxable income is determined by ascertaining assessable income and then subtracting all allowable expenses. In general, to be tax deductible, all expenses must be related to the gaining or producing of assessable income and are not exempt pursuant to the law on income tax.

## DEPRECIATION

The tax law prescribes six groups of tangible assets for tax depreciation purposes using depreciation periods ranging from three to fifty years. Either straight-line or accelerated depreciation methods are available. The choice of a method is made by the taxpayer and, once selected, cannot be changed for the remaining life of the asset.

| Assets | Depreciation group | Depreciation period (minimum years) |
|---|---|---|
| Office machines and computers, tools | 1 | 3 |
| Engines, motor vehicles, machines, audio-visual equipment | 2 | 5 |
| Elevators, escalators, turbines, air conditioning equipment, electric motors, and generators | 3 | 10 |
| Buildings made of wood and plastic, long-distance lines, and pipes | 4 | 20 |
| Buildings (except for those listed in groups 4 and 6), roads, bridges, tunnels | 5 | 30 |
| Administrative buildings, department stores, historical buildings, and hotels | 6 | 50 |

Tangible assets with economic useful lives of more than one year and acquisition prices higher than CZK 80,000 (instead of CZK 40,000 until 31 December 2020) are subject to tax depreciation. Buildings are always considered tangible assets. For tangible assets purchased in the year 2020 there is the option to apply the acquisition price of CZK 80,000.

From 1 January 2021 intangible assets are no longer defined in the Income Tax Act. For tax purposes, intangible assets are depreciated according to the Czech Accounting Act.

In connection with the COVID pandemic an accelerated depreciation regime has been adopted for assets falling into depreciation groups 1 and 2 according to Annex No. 1 to the Income Tax Act (ITA). Assets purchased between 1 January 2020 and 31 December 2021, subject to the condition that the taxpayer is the first depreciator, may be depreciated as follows:

- Tangible assets included in depreciation group 1 purchased during the period 2020-21 may be depreciated equally without interruption up to 100% of the acquisition price for 12 months;
- Tangible assets included in depreciation group 2 purchased during the same period may be depreciated equally without interruption by the taxpayer up to 100% of the acquisition price for 24 months (for the first 12 months up to 60% of the acquisition price, for the next 12 months up to 40% of the entry price).

## STOCK / INVENTORY

All trading stock is valued at purchase price, including ancillary costs incurred. Stock produced by the company's own operation is valued at internal costs. If a temporary reduction of stock value is non-tax deductible, corrective provisions are applied. Accepted valuation methods include the use of the arithmetical average cost and first in first out (FIFO) methods but not last in first out (LIFO) or the replacement-cost methods (except for livestock).

## DIVIDENDS

If dividends are not tax exempt under the participation exemption regime, they are subject to a final withholding tax of 15 % or the rate set in an applicable double tax treaty if paid to a non-resident. A tax exemption does not apply to a profit share paid out as result of the liquidation of a company. A withholding tax of 35 % applies to dividends paid to resident entities of countries which are not part of the EU or EEA and do not have an enforceable double tax treaty or tax information exchange agreement with the Czech Republic.

## INTEREST DEDUCTIONS

Interest incurred for business purposes is broadly tax deductible. However, thin capitalisation rules apply which can restrict its deduction. Notably, financial costs (e.g. interest plus other related costs, such as bank fees) of credits and loans for the relevant tax period shall be considered non-deductible expenses for the proportion of related-party loans which exceed four times the accounting equity (based on Czech GAAP) of the borrower. The non-deductible expense is the amount of the interest connected to the part of the sum of credits and loans (including financing costs) from related parties by which it exceeds a 4:1 debt-to-equity ratio (6:1 for banks and insurance companies) in the period for which the tax return is submitted.



Apart from the thin capitalisation rule, an additional interest limitation rule has been introduced:

- The part of financial costs that exceeds 30% of EBITDA or 80 million CZK is non-deductible;
- All financial costs are taken into account for calculation purposes (not just interest paid to related parties);
- For calculation purposes the financial costs are reduced by financial costs which are non-deductible according to the thin capitalisation rule and by the financial revenue.

## LOSSES

Tax losses may be carried forward for five tax periods following the year in which the tax loss has been declared. As of 1 July 2020 losses may be carried back up to two tax periods before the period in which the loss arose. Losses arising (after 2004) may be transferred within the framework of common taxation of a parent company and its subsidiary(ies) within the EU territory (transfers of enterprises, mergers and demergers of enterprises) subject to strict conditions.

## INCENTIVES

Investment incentives including tax relief are governed by the Investment Incentives Act and apply only to Czech entities (including Czech subsidiaries of foreign companies). A variety of incentives are available including financial support for training or retraining of employees or the creation of new jobs, capital expenditure grants and income tax relief. There are also incentives to support technology centres, strategic services and the manufacturing industry of the Czech Republic.

## C. FOREIGN TAX RELIEF

Ordinary credits for foreign income tax are available to resident taxpayers under Czech law where a double tax treaty exists which indicates a tax credit as a method of avoidance of double taxation. The clearance or exemption method is available, according to the particular double tax treaty. If there is no tax treaty relief, the legal entity will include the foreign tax paid as a tax expense for the following period provided it was imposed on income which has been included in the Czech entity's taxable income.

## D. CORPORATE GROUPS

There is no group taxation in the Czech Republic. Each company is taxed as a standalone entity regardless of its ownership or control relationships.

## E. RELATED PARTY TRANSACTIONS

Non-arm's length pricing arrangements between related parties are addressed by transfer pricing legislation which allows the tax authority to adjust the prices to reflect third party arm's length values.

Where such adjustments are made by the tax authorities, which can be the result of an audit, additional tax liabilities and penalties can arise which can also affect a company's ability to claim investment incentives. As of the tax period 2014 qualified companies are obliged to file a special form describing arrangements between related parties together with the corporate income tax return. The Czech Republic tax authorities follow OECD pricing guidelines and an Advance Pricing Agreement (APA) between a company and its related parties can be agreed upon.

CFC legislation is in force since 2020. A Czech entity has to include in its tax base selected income of its controlled foreign company(ies), i.e. a company in whose capital the Czech company participates directly or indirectly for more than 50 %.

Another condition for the inclusion in the domestic tax base is that the foreign company does not carry out any substantial economic activity and its tax liability abroad is lower than one half of the tax liability that such company would have if it were taxed under domestic tax laws. If the foreign subsidiary qualifies as a controlled company under these conditions, its Czech parent company will have to include its selected income, such as income from dividends, interest and royalties in its own tax base. The Czech parent company may then offset any tax paid by the subsidiary on this foreign-sourced income against its tax liability.

## F. WITHHOLDING TAX

Certain types of income of companies are subject to withholding tax at source. In the case of resident taxpayers, dividends from Czech sources are subject to a final withholding tax at 15 % whereas interest and royalties are not subject to withholding tax and are included in the general tax base. In the case of non-residents, dividends, interest and royalties are all subject to 15 % withholding tax if an exemption does not apply – see more in particular above under the chapter 'Capital Gains Tax'. Income of residents of countries outside the EU or EEA which do not have a double tax treaty or tax information exchange agreement in force with the Czech Republic are subject to 35 % withholding tax.

In case the exemption applies a taxpayer paying income exceeding CZK 300,000 to a foreign resident needs to inform the Czech tax authority about this payment.

## G. EXCHANGE CONTROL

The Foreign Exchange Act allows the Czech currency to be used freely to pay for business and other costs, for direct investment and reinvestment and for purchase of real estate property abroad. Capital transfers have been deregulated but the reporting duty has been retained. Sales of foreign currency and gold are permitted where one of the parties is an entity holding a licence or foreign currency permit.

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## H. PERSONAL TAX

Income tax is payable by Czech resident individuals on income derived from worldwide sources. Non-resident individuals are only required to pay tax on Czech-sourced income. Tax residence is determined by reference to permanent home or whether the individual has spent at least 183 days of the relevant calendar year in the Czech Republic.

Income tax is payable on the total tax base from different types of income. Taxable income of individuals includes employment income, business income, certain capital gains, dividend income, rental income, interest income, annuities and other income including benefits in kind related to such income. Generally, the tax base is calculated as the difference between assessable income and tax-deductible allowable expenses. Expenses cannot be claimed for employment income or capital gains (most of which are subject to withholding tax). Employment income cannot be reduced by losses of any other categories of income. Income from business or rental operations can be reduced by losses derived from other categories. Income from employment is taxable on an individual basis and is reduced by some deductible items and personal allowances.

For 2021, the personal income tax rates are 15% and 23%. The 23% rate is applied to the amount which in aggregate exceeds 48 times the annual average salary (CZK 1,701,168 for 2021 and CZK 1,867,728 for 2022).

Employees hired under an employment contract under Czech law pay social security and medical insurance contributions at the rate of 11% withheld by their employers from their gross wages. This represents 6.5% for social security and 4.5% for health insurance. The contribution rates for the employer are 24.8% for social security and 9% for health insurance. Medical insurance and social security contributions are also paid by self-employed individuals.

The maximum annual social security contributions limit which applies to both employees and entrepreneurs is 48 times the average monthly wage per year ((CZK 1,701,168 for 2021 and CZK 1,867,728 for 2022).

A deduction of up to CZK 24,000 per year is available for private contributions paid on private life insurance. A deduction is also available for up to CZK 24,000 per year (subject to certain conditions) for private contributions paid to a private pension insurance fund.

- A deduction of up to CZK 150,000 per year is available for interest paid on a mortgage for the taxpayer´s permanent home, subject to certain strict conditions.
- Income from a sale of shares represents part of an individual’s total income tax base and is subject to a 15 % tax rate. Shares sold for less than CZK 100,000 in the course of one taxable period are exempt from taxation. Similarly, if an individual has owned property for longer than a certain time (depending on property), the gain arising from the sale of that property is exempt from tax.

Tax returns are due on 1 April (1 May in case of electronic submission) or 1 July if prepared by a chartered tax advisor. Instalments to income tax from employment income are paid monthly. Payments on account of tax on income from business operations, rental income, etc. are made semi-annually and quarterly, as for corporations, based on the last known tax liability.

Inheritance and Gift Taxes have been abolished. From 2014 any income from an inheritance and from gifts is part of personal income tax (and therefore subject to the flat rate of 15% and 23%). Any income from an inheritance is exempt from income tax whereas the exemption of the income from a gift depends on the level of kinship of the beneficiary of the gift to the donator.

From 1 January 2021 a personal income taxpayer may opt for the flat rate tax regime. Individuals shall apply to the competent tax authority until the 10th day of the beginning of the tax period.

## I. TREATY AND NON·TREATY WITHHOLDING TAX RATES

| | **Dividends[1] (%)** | **Interest[2] (%)** | **Royalties[3] (%)** |
|---|---|---|---|
| Non-treaty countries: | 15/35 | 15/35 | 15/35 |
| **Treaty countries:** | | | |
| Albania | 5/15 | 0/5 | 10 |
| Armenia | 10 | 5/10 | 5/10 |
| Australia | 5/15 | 10 | 10 |
| Austria | 0/10 | 0 | 5 |
| Azerbaijan | 8 | 5/10 | 10 |
| Bahrain | 5 | 0 | 10 |
| Bangladesh[4] | 10/15 | 10 | 10 |
| Barbados | 5/15 | 5 | 5/10 |
| Belarus | 10 | 0/5 | 5 |
| Belgium | 5/15 | 10 | 0/5 |
| Bosnia and Herzegovina | 5 | 0 | 0/10 |
| Botswana | 5 | 0/7.5 | 7.5 |
| Brazil | 15 | 10/15 | 15/25 |
| Bulgaria | 10 | 0/10 | 10 |
| Canada | 5/15 | 0/10 | 10 |
| Chile | 15 | 4/5/10/15 | 5/10 |
| China | 5/10 | 0/7.5 | 10 |
| Croatia | 5 | 0 | 10 |
| Cyprus | 0/5 | 0 | 0/10 |

| | Dividends[1] (%) | Interest[2] (%) | Royalties[3] (%) |
|---|---|---|---|
| Denmark | 0/15 | 0 | 0/10 |
| Egypt | 5/15 | 0/15 | 15 |
| Estonia | 5/15 | 0/10 | 10 |
| Ethiopia | 10 | 0/10 | 10 |
| Finland | 5/15 | 0 | 0/1/5/10 |
| France | 0/10 | 0 | 0/5/10 |
| Georgia | 5/10 | 0/8 | 0/5/10 |
| Germany | 5/15 | 0 | 5 |
| Ghana | 6 | 0/10 | 8 |
| Greece | Local rates | 0/10 | 0/10 |
| Hong Kong | 5 | 0 | 10 |
| Hungary | 5/15 | 0 | 10 |
| Iceland | 5/15 | 0 | 10 |
| India | 10 | 0/10 | 10 |
| Indonesia | 10/15 | 0/12.5 | 12.5 |
| Iran | 5 | 0/5 | 8 |
| Ireland | 5/15 | 0 | 10 |
| Israel | 5/15 | 0/10 | 5 |
| Italy | 15 | 0 | 0/5 |
| Japan | 10/15 | 0/10 | 0/10 |
| Jordan | 10 | 0/10 | 10 |
| Kazakhstan | 10 | 0/10 | 10 |
| Korea (North) | 10 | 0/10 | 10 |
| Korea (South) | 5 | 0/5 | 0/10 |
| Kuwait | 0/5 | 0 | 10 |
| Kyrgyzstan | 5/10 | 0/5 | 10 |
| Latvia | 5/15 | 0/10 | 10 |
| Lebanon | 5 | 0 | 5/10 |
| Liechtenstein | 0/15 | 0 | 0/10 |
| Lithuania | 5/15 | 0/10 | 10 |
| Luxembourg | 0/10 | 0 | 0/10 |
| Malaysia | 0/10 | 0/12 | 12 |
| Malta | 5 | 0 | 5 |
| Mexico | 10 | 0/10 | 10 |
| Moldova | 5/15 | 5 | 10 |
| Mongolia | 10 | 0/10 | 10 |
| Montenegro | 10 | 10 | 5/10 |
| Morocco | 10 | 0/10 | 10 |
| Netherlands | 0/10 | 0 | 5 |
| New Zealand | 15 | 0/10 | 10 |
| Nigeria | 12.5/15 | 0/15 | 15 |
| North Macedonia | 5/15 | 0 | 10 |
| Norway | 0/15 | 0 | 0/5/10 |
| Pakistan | 5/15 | 0/10 | 10 |
| Panama | 10 | 0/5/10 | 10 |
| Philippines | 10/15 | 0/10 | 10/15 |
| Poland | 5 | 0/5 | 10 |
| Portugal | 10/15 | 0/10 | 10 |
| Romania | 10 | 0/7 | 10 |
| Russia | 10 | 0 | 10 |
| Saudi Arabia | 5 | 0 | 10 |

| | Dividends[1] (%) | Interest[2] (%) | Royalties[3] (%) |
|---|---|---|---|
| Serbia | 10 | 0/10 | 5/10 |
| Singapore | 5 | 0 | 10 |
| Slovak Republic | 5/15 | 0 | 0/10 |
| Slovenia | 5/15 | 0/5 | 10 |
| South Africa | 5/15 | 0 | 10 |
| Spain | 5/15 | 0 | 0/5 |
| Sri Lanka | 15 | 0/10 | 0/10 |
| Sweden | 0/10 | 0 | 0/5 |
| Switzerland | 0/15 | 0 | 5/10 |
| Syria | 10 | 0/10 | 12 |
| Tajikistan | 5 | 0/7 | 10 |
| Thailand | 10 | 0/10 | 5/10/15 |
| Tunisia | 10/15 | 0/12 | 5/15 |
| Turkey | /10 | 0/10 | 10 |
| Turkmenistan | 10 | 0/10 | 10 |
| Ukraine | 5/15 | 0/5 | 10 |
| United Arab Emirates | 0/15 | 0 | 10 |
| United Kingdom | 5/15 | 0 | 0/10 |
| United States | 5/15 | 0 | 0/10 |
| Uzbekistan | 5/10 | 0/5 | 10 |
| Venezuela | 5/10 | 0/10 | 12 |
| Vietnam | 10 | 0/10 | 10 |

Notes:

1. If the recipient is a company that owns at least a certain amount of the capital, or a certain amount of the voting shares of the company paying the dividend directly, then the lower rate applies. Dividends paid to residents of countries outside the EU and the EEA which do not have an enforceable double tax treaty or tax information exchange agreement with the Czech Republic are subject to 35 % withholding tax.
2. When interest is received by the government or a state-owned institution or is paid by the government then the lower rate applies. Interest paid to residents of countries outside the EU and the EEA which do not have an enforceable double tax treaty or tax information exchange agreement with the Czech Republic are subject to 35 % withholding tax.
3. Cultural royalties are generally subject to the lower rate. Royalties paid to residents of countries outside the EU and the EEA which do not have an enforceable double tax treaty or tax information exchange agreement with the Czech Republic are subject to 35 % withholding tax.
4. Effective from 1 January 2022.

# DENMARK

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Copenhagen | Hans Munkebo Christiansen | +45 43 96 06 56<br>h.munkebo@pkf.dk |

## BASIC FACTS

| | |
|---|---|
| Full name: | Kingdom of Denmark |
| Capital: | Copenhagen |
| Main languages: | Danish |
| Population: | 5.9 million (2022 estimate) |
| Monetary unit: | 1 Danish Krone (DKK) = 100 Ore |
| Internet domain: | .dk |
| Int. dialling code: | +45 |

## KEY TAX POINTS

- Danish resident companies are subject to corporate income tax on Danish profits (including gains) and to some extent on foreign-sourced income. Non-resident companies pay tax on income sourced in Denmark.
- Branches of foreign companies are subject to tax on income derived from activities in Denmark.
- Danish companies within a group, along with Danish permanent establishments and real estate owned by foreign subsidiaries are subject to compulsory Danish joint taxation.

- Value added tax is applied at a standard rate, but subject to zero-rating and exemption. Danish legislation generally follows EU Directives.
- A property tax is levied locally.
- A controlled foreign company (CFC) system operates to attribute profits of a foreign subsidiary to a Danish parent where the activities of the subsidiary are mainly financial.
- Unilateral and tax treaty relief are available for foreign tax levied on profits subject to Danish corporate income tax.
- Dividends, interest and royalty payments are subject to withholding tax, unless exempted under a relevant double tax treaty.
- Individuals resident in Denmark are taxable on worldwide income, non-residents on Danish-sourced income.
- A special basis of assessment is available for some expatriates employed temporarily in Denmark for a maximum of 84 months.



## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

### COMPANY TAX

Resident corporations are subject to Danish corporate income tax on their profits in Denmark and, to some extent, on income sourced abroad. Non-resident companies are required to pay tax on income sourced in Denmark. Resident corporations include all Danish companies registered with the Danish Commerce and Companies Agency, as well as certain non-registered companies that are treated as residents. Companies incorporated under the laws of another country may be considered to be resident in Denmark if their central management and control is exercised in Denmark.

Corporate income tax is charged at 22%. Tax is paid on account on a current year basis in two instalments on 20 March and 20 November during the tax year, with a final instalment due on 20 November following the end of the tax year.

### CAPITAL GAINS TAX

Capital gains/losses on disposals of assets are, in general, included in taxable income and subject to tax at the normal corporate tax rate. Capital gains on disposals of shares are exempt unless the shareholding is less than 10% in a listed company. Capital losses on disposals of other shares are deductible, if they can be offset against gains on other shares in a listed company. Capital gains on disposals of assets and liabilities of a Danish permanent establishment are taxable in Denmark. This applies also to Danish real estate.

### BRANCH PROFITS TAX

Branches of foreign companies are taxed on income derived from their activities in Denmark. Tax is calculated at the corporate tax rate of 22%.

### VALUE ADDED TAX (VAT)

Danish value added tax (VAT) is levied at a standard rate of 25% of the sale price of most goods and services and the legislation generally follows EU Directives. No graduated rates exist. Certain services are exempt, including most banking and medical services. Instead, a payroll tax of between 3.54% and 15.3% is charged on the actual payroll or, in certain cases, on the result before interest and capital gains. Exports are zero rated.

### FRINGE BENEFITS TAX (FBT)

The tax value of most benefits in kind is, in principle, the fair market value. Employees are taxed on benefits in kind received. The cost of benefits in kind is deductible for tax purposes by the company.

## LOCAL TAXES

### PROPERTY TAX

Owners of real estate are subject to a local property tax based on the value of the land. The tax is levied at various local rates ranging from 1.8% to 4.4%.

### OTHER TAXES

Transfer tax is levied on registration only. A change in ownership of real estate is charged at the rate of 0.6% + DKK 1,750 and on mortgages at 1.45% + DKK 1,730. Different rates apply to registrations of ships and aircraft.

Stamp Duty only applies to certain insurance policies.

### SOCIAL SECURITY TAXES

Social security is funded almost entirely through income taxes. The only exceptions are the ATP and Health Contribution. ATP is a supplementary State pension scheme. The employer pays DKK 2,271 (2022) annually and employees pay DKK 1,136 (2022) annually.

Health Contribution is collected from employees and self-employed persons. The contribution is levied on gross salary and business income respectively at the rate of 8%. The employer withholds the contribution for the employee and the amount of the contribution is deductible when computing the employee’s personal income.

## B. DETERMINATION OF TAXABLE INCOME

Net or taxable income is arrived at by adjusting the accounting profits for non-taxable income and non-deductible items.

### DEPRECIATION

Assets which cost less than DKK 31,000 (2022) or have an estimated useful life of less than three years can be written off immediately. Ships of less than 20 tons, machinery, furniture and other equipment are generally depreciated collectively using the declining-balance method. The balance may be written off at a maximum rate of 25%.

Buildings for manufacturing etc. are depreciated under the straight-line method according to the useful life. The normal rate is 4% per annum. If the useful life is less than 25 years, the rate will be increased accordingly. Depreciation of office buildings and dwelling houses is not allowable for tax purposes.

The cost of goodwill, know-how, etc., may be depreciated over seven years using the straight-line method.

## STOCK / INVENTORY

Inventory may be valued at cost or market value.



## CAPITAL GAINS AND LOSSES

See discussion above.

## DIVIDENDS

Dividends received from a subsidiary are basically exempt from tax if the parent company owns 10% or more of the share capital during a 12-month period in which the dividend is received. It is a requirement that the dividend-paying company is resident within the EU or in a tax treaty country and that it is not a ‘flow-through’ entity. Specific rules apply to dividends received from a subsidiary in a non-EU and non-treaty country. Withheld tax will be considered as a tax payment on account.

## INTEREST

Interest income, except interest on overpaid corporate tax, is included in taxable income. Companies must compute this income on an accruals basis. In general, interest paid is deductible whether due to foreign or resident creditors and regardless of the purpose of the debt. However, limitations may apply due to Danish thin capitalisation rules and limitations apply if net financial expenses exceed DKK 21.3 million (2022). Interest on overdue tax is not deductible.

## LOSSES

Losses may normally be carried forward indefinitely. It is possible to deduct DKK 8,767,500 (2021). If the profit exceeds DKK 8,767,500 (2021), it is possible to deduct 60% of the remaining profit. However, losses may not be offset against interest and other capital income, net of interest paid, if more than 50% of the shares in the company have changed ownership since the loss was incurred. If a company enters into a settlement with creditors, losses carried forward are reduced by the nominal amount of debt cancelled.

In cases where the company receives a capital contribution in connection with a reconstruction from a principal creditor and the company subsequently repays its debts to the creditor, tax losses from income years up to and including the year of the capital contribution will be reduced by an amount equal to the capital reduction. Furthermore, tax losses cannot be offset against future taxable income if the company has no activity at the time the transfer was agreed. Losses cannot be carried back.

## CONTROLLED FINANCIAL COMPANY (CFC) INCOME

Profits made by Danish financial companies or foreign subsidiaries will be taxed in Denmark if the Danish parent company (directly/indirectly) controls the company (votes/decisive influence) and if the business of the company is mainly of a financial nature (i.e. more than half of its gross income is derived from certain financial activities).

Credit is given for foreign taxes paid on foreign income. Losses resulting from activities in foreign countries cannot generally be deducted from the Danish-sourced income unless voluntary global joint taxation has been chosen.

## C. FOREIGN TAX RELIEF

Danish tax law provides for unilateral relief for foreign taxes paid on some types of income (dividends, royalties, etc). Such relief may not exceed the Danish tax liability that relates to the foreign income concerned. If a tax treaty is in force, relief may be restricted to the tax that the foreign state is entitled to levy under the treaty. If income is earned in a country with which Denmark has no tax treaty, any foreign tax is relieved by the credit method under domestic tax rules. No Danish tax credit is given for foreign permanent establishment profit or real estate profit unless voluntary global joint taxation is elected for. Thus, Denmark has adopted the territoriality principle for Danish companies.

## D. CORPORATE GROUPS

Danish companies within a group, along with Danish permanent establishments and real estate of foreign subsidiaries are subject to compulsory Danish joint taxation. Such companies must have the same financial year. The group taxation allows the pooling of profits and losses. Losses of one company can be offset against profits of another company.

Such a group may elect to enter into a voluntary global joint taxation arrangement with foreign group companies and foreign permanent establishments and real estate. If voluntary global joint taxation is opted for, all foreign group companies, permanent establishments and real estate ‘above’ and ‘below’

Denmark must be included in the joint taxation (cf. ‘global’). In this case, capital gains derived by non-residents from disposals of Danish shares or bonds may be subject to tax in Denmark.

The foreign entities’ income, assessed according to Danish rules, is then included in the Danish taxable income of the group, but normally no additional Danish tax is imposed because a tax credit for foreign corporate tax paid is allowed. The inclusion may allow foreign tax losses to be offset against Danish taxable profits. Special rules apply with respect to exemption/credit for foreign taxes and claw back provisions respectively.

## E. RELATED PARTY TRANSACTIONS

Related party transactions must be in accordance with the arm’s length principle.

## F. WITHHOLDING TAX

Danish outbound dividends are generally subject to a 27% withholding tax. Outbound interest payments are generally subject to a

30% Danish withholding tax. However, several modifications apply, and under most tax treaties this withholding tax is reduced or refunded. Outbound royalty payments under industrial, commercial or scientific agreements are subject to a 30% withholding tax. Under most tax treaties, this withholding tax is reduced or refunded.

## G. EXCHANGE CONTROLS

In general, Denmark does not impose exchange controls on business activities.

## H. PERSONAL TAX

Individuals are deemed to be residents of Denmark for tax purposes if they occupy accommodation in Denmark as their permanent place of abode or remain in the country for a period of six months or more. Tax residency is normally terminated upon emigration. Some assets will be deemed to be taxed as sold at market value on the date of departure. Any profit will be taxed in Denmark.

Residents are subject to Danish taxation on their worldwide income. Non-resident individuals are subject to tax on Danish-sourced income, including dividends, royalties, profits from Danish permanent establishments, profits from real estate and salaries earned from work performed in Denmark.

Profits made by more than 50% held (shares/votes) financial companies established in low tax countries are taxable in Denmark at 22% (CFC). The CFC taxation generally only applies if the company's financial income is more than 50% of its total income but may not apply if the company is established in an EU or a tax treaty country. Dividends and gains and losses on the disposals of shares are taxed jointly. The tax rate on this income is 27% on amounts up to DKK 57,200 and 42% on the surplus (2022).

Personal income includes all remuneration received from the taxpayer's employer, whether in cash or kind, such as free lodging, free use of a car, free use of the telephone etc. Pension payments, unemployment benefits etc. are also included in personal income. After deduction of Labour Market Contributions of 8% (for 2022) on gross salary and business income, tax due on the total taxable income and its components is determined as follows:

- A basic charge of 24.6% (average) on taxable income is due to the municipality and church, in which the taxpayer lives;
- The basic State tax rate is 12.1% on taxable personal and positive interest income (2022); and,
- An additional higher rate of 15% is levied on income exceeding DKK 552,500 (2022).

Some expatriates who are employed in Denmark for a maximum period of 84 months can, under certain conditions, choose to be taxed on their gross salary by a final tax instead of ordinary income tax. The tax rate is 27% plus Labour Market Contributions of 8%.

| Maximum tax rates (including local and national taxes) | |
|---|---|
| **2022** | **(%)** |
| Personal income | 56.50 |
| Net capital expenses[1] | 25.60 |
| Deductions[2] | 25.60 |

NOTES:

1. Tax value of interest expenses and capital losses if deductible.
2. Tax value of other tax deductions such as car allowance etc.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest[1] (%) | Royalties (%) |
|---|---|---|---|
| **Treaty countries:** | | | |
| Argentina | 15/10[2] | 12 | 3/5/10/15 |
| Armenia | 15/0 | 0 | 0 |
| Australia | 15 | 10 | 10 |
| Austria | 0/15[3] | 0 | 0 |
| Azerbaijan | 15/5[16] | 0/8 | 5/10 |
| Bangladesh | 10/15[3] | 10 | 10 |
| Belarus | 15 | 0 | 0 |
| Belgium | 0/15[2] | 10 | 0 |
| Brazil | 25 | 15 | 15/25 |
| Bulgaria | 15/5[2] | 0 | 0 |
| Canada | 15/5[2] | 10 | 0/10 |
| Chile | 15/5[2] | 15 | 5/15 |
| China | 10 | 10 | 10 |
| Croatia | 10/5[2] | 5 | 10 |
| Cyprus | 15/0[15] | 0 | 0 |
| Czech Republic | 0/15 | 0 | 10 |
| Egypt | 20/15[12] | 15 | 20 |
| Estonia | 15/5[2] | 10 | 5/10 |

| | Dividends (%) | Interest[1] (%) | Royalties (%) |
|---|---|---|---|
| Faroe Islands | 0/15[4] | 0 | 0 |
| Finland | 0/15[4] | 0 | 0 |
| France[5] | N/A | N/A | N/A |
| Georgia | 0/5/10[3, 6] | 0 | 0 |
| Germany | 5/15[3] | 0 | 0 |
| Ghana | 15/5[3] | 0/8 | 8 |
| Greece | 18 | 8 | 5 |
| Greenland | 0/15[2] | 0 | 10 |
| Hungary | 0/15 | 0 | 0 |
| Iceland | 0/154 | 0 | 0 |
| India | 25/15[2] | 10/15 | 20 |
| Indonesia | 20/10[2] | 10 | 15 |
| Ireland | 0/15[2] | 0 | 0 |
| Israel | 15/5[8] | 25 | 10 |
| Italy | 0/15[2] | 10 | 5 |
| Jamaica | 15/10[2] | 12.5 | 10 |
| Japan | 15/10[2] | 10 | 10 |
| Kenya | 30/20[2] | 20 | 20 |
| Korea (Rep.) | 15 | 15 | 10/15 |
| Kuwait | 15/0/5[2, 17] | 0 | 10 |
| Kyrgyzstan | 15 | 0 | 0 |
| Latvia | 15/5[2] | 10 | 5/10 |
| Lithuania | 15/5[2] | 10/0 | 5/10 |
| Luxembourg[9] | 15/5[2] | 0 | 0 |
| Malaysia | 0 | 25 | 10 |
| Malta | 0/15[2] | 0 | 0 |
| Mexico | 15/0[2] | 5/15 | 10 |
| Montenegro | 15/5[2] | 0 | 10 |
| Morocco | 10/25[2] | 10 | 10 |
| Netherlands | 0/15[3] | 0 | 0 |
| New Zealand | 15 | 10 | 10 |
| North Macedonia | 15/5[2] | 0 | 0 |
| Norway | 0/15[3] | 0 | 0 |
| Pakistan | 15 | 15 | 12 |
| Philippines | 15/10[2] | 10 | 15 |
| Poland | 15/0/5[2,10] | 5 | 5 |
| Portugal | 0/10[7] | 10 | 10 |
| Romania | 15/10[2] | 10 | 10 |
| Russia | 10 | 0 | 0 |
| Serbia | 15/5[2] | 10 | 10 |
| Singapore | 10/0/5[2,10] | 10 | 10 |
| Slovak Republic | 15 | 0 | 5 |
| Slovenia | 15/5[2,10] | 5 | 5 |
| South Africa | 15/5[2] | 0 | 0 |
| Spain[5] | N/A | N/A | N/A |
| Sri Lanka | 15 | 10 | 10 |
| Sweden | 0/15[3] | 0 | 0 |
| Switzerland | 0/15[3] | 0 | 0 |
| Taiwan | 10 | 10 | 10 |
| Tanzania | 15 | 12.5 | 20 |
| Thailand | 10 | 10/15 | 5/15 |
| Trinidad and Tobago | 20/10[14] | 15 | 15 |

| | Dividends (%) | Interest[1] (%) | Royalties (%) |
|---|---|---|---|
| Tunisia | 15 | 12 | 15 |
| Turkey | 20/15[2] | 15 | 10 |
| Uganda | 10/15[2] | 10 | 10 |
| Ukraine | 15/5[2] | 0/10 | 10 |
| United Kingdom | 15/0[7] | 0 | 0 |
| United States | 0/15/5[3,11] | 0 | 0 |
| Venezuela | 15/5[2] | 0/5 | 5/10 |
| Vietnam | 15/5/10[12, 13] | 10 | 5/15 |
| Zambia | 15 | 0/10 | 15 |

NOTES:

1. Denmark imposes withholding taxes on outbound interest payments at a rate of 30%. However, Danish withholding tax does not generally apply to interest payments to a foreign group company in an EU Member State or protected by a tax treaty.
2. The lower rate applies to 25% ownership.
3. The lower rate applies to 10% ownership.
4. The zero rate applies to 10% ownership.
5. The treaty was terminated on 1 January 2009. A new treaty is expected.
6. The zero rate applies to 50% ownership.
7. The zero rate applies if the EU Parent/subsidiary Directive applies.
8. The lower rate applies if 50% of the votes are held.
9. The treaty does not apply to 1929 Luxembourg holding companies.
10. The 5% rate applies if paid to an approved entity.
11. The zero rate applies if 80% of the votes are held.
12. The 5% rate applies to 70% ownership or an investment of at least USD 12 million.
13. The 10% rate applies between 25% and 70% ownership.
14. The 10% rate applies if 25% of the votes are held.
15. 0% rate applies where recipient of the dividend holds at least 10% of the capital of the company paying the dividend, or is the Central bank, a Government agency or a pension fund in Cyprus.
16. The lower rate applies to 20% ownership and an investment of at least EUR 1 million.
17. The zero rate applies to a pension fund.

# DJIBOUTI

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Djibouti | Mohamed Youssouf | +253 21 35 25 55<br>+253 77 77 27 27<br>mohamed.youssouf@pkfdjibouti.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Djibouti |
| Capital: | Djibouti |
| Main languages: | French, Arabic, English |
| Population: | 1.015 million (2022 estimate) |
| Monetary unit: | DJF (Djibouti Franc) |
| Internet domain: | .dj |
| Int. dialling code: | +253 |

## KEY TAX POINTS

- In the Republic of Djibouti, the main taxes are: Value Added Tax (VAT), Domestic Consumption Tax (TIC), Tax on salaries (ITS), Minimum Lump-sum Tax (IMF), Business Profit Tax (IBP), and Exceptional Contribution (CE).
- Resident companies in Djibouti (Eurl, Sàrl, SA, SAS) are subject to income tax at 25% and must pay the business licence.
- Non-resident companies in Djibouti but operating on Djibouti territory are subject to tax on profits derived from within the country.
- Capital gains are taxed in the same way as standard income (Business Profit Tax (IBP) at 25%.
- The Minimum Lump-sum Tax is applicable on realised turnover excluding VAT and is set at a rate of 1%. It is due if it exceeds the amount of the tax on profits or in case of a loss. The minimum IMF is DJF 120,000.
- There are two main tax incentive schemes for investors. Regime A and Regime B. Regime A relates to investments with a

minimum amount of DJF 5 million (approximately USD 28,000) and Regime B to investments with a minimum amount of DJF 50 million (approximately USD 280,000).

- A zero % contribution is levied at the level of new companies and enterprises investing in the hotel sector, real estate (hire and sale) and processing industry under the Investment Code regime on their imports during the construction phase or set-up/ installation prior to the production phase (art. 19 of Finance Act 2022).
- Exceptional Contribution (CE): a rate of 1% on turnover or 10% on profits will be applied to the 2021 results of companies exempted under the Investment Code or located in freezones (art. 14 of Finance Act 2022). However, the tax authorities retain the higher of said rates.
- Dividends are not subject to tax in Djibouti.



## A. TAXES PAYABLE

### BUSINESS PROFIT TAX

- Companies (natural or legal persons) resident in or carrying out commercial activities in the Republic of Djibouti are subject to corporate income tax.
- The tax to which these companies are subject comes at a rate of 25%, is based on a calendar year (from 1 January to 31 December of the same year) and is established each year according to the profits made by the natural or legal person during the last year.
- This tax is settled, controlled and collected by the General Tax Directorate and must be declared before 31 March of the following year.
- Traders in freezones now need to pay an Exceptional Contribution (CE) on the 2021 turnover.

The following are exempt from business profit tax:

- Movie theatres;
- Agricultural cooperative societies and their unions;
- Companies whose sole purpose is trading in securities;
- Profits reinvested under the conditions referred to in articles 25 to 29 of the Code of investments.

### MINIMUM LUMP-SUM TAX (IMF)

Business profit tax is levied on net profits, i.e. on total revenue minus the expenses related to the exploitation (unless specifically excluded in the tax code) excluding the income and expenses of real estate, which is subject to property tax.

If the natural or legal person realises a loss during the year (expenses exceeding total income) it will have to pay the minimum lump-sum tax. The minimum lump-sum tax is the higher of 1% of the turnover, exclusive of VAT, and DJF 120,000. The minimum lump-sum tax cannot be offset against the corporate income tax liability.

### CAPITAL GAINS TAX

Capital gains realised by resident companies are generally treated as part of business income and subject to business profit tax at the standard rate.

### BRANCH PROFITS TAX

Branches of non-resident companies are subject to standard corporate income tax at a rate of 25%. There is no branch remittance tax.

### VALUE ADDED TAX (VAT)

- VAT is levied on transactions carried out in Djibouti by individuals and legal entities, such as purchasing goods for resale, industrial, commercial or handicraft making activities, including services.
- Companies or individuals that supply goods or services are subject to VAT if their annual turnover is equal to or exceeds DJF 10 million. The taxpayer is required to comply with VAT rules as of the financial year following the one in which the threshold is met.
- The standard VAT rate is 10%. A reduced 7% rate applies to freight forwarding services, port forwarding invoiced to freight forwarders and services of shipping agencies to freight forwarders. Exportations and related services are zero-rated.
- Subject to a commitment to the Directorate General of Taxes (DGI) to charge VAT at the start of their activity and to present a detailed estimate of the equipment to be imported or purchased locally, new companies and enterprises that invest in the hotel, real estate (rental, sale) and processing industry sector will benefit from a zero % rate for their imports during this construction phase, excluding services performed on their behalf. For local purchases, the invoice issued by the supplier will have to be previously checked by the DGI (art. 19 of Finance Act 2022). At the end of the construction or set-up phase these enterprises will mandatorily become subject to VAT.
- A Domestic Consumption Tax (TIC) is levied for the benefit of the State budget on all goods imported or produced on the territory and intended for consumption there, except for exemptions provided for by the Tax Code (CGI). The TIC rate depends on the type of goods and is comprised of five ad valorem rates: 0, 8, 10, 20, and 23% on the value of the goods (Art. 22 of Finance Act. 2022).

### OTHER TAXES

- Real property tax;
- Property tax on developed land;
- Property tax on undeveloped land;
- Stamp duties;
- Business licence tax;
- General solidarity tax.

## B. DETERMINATION OF TAXABLE INCOME

Tax is generally calculated on an accrual basis taking into account commercial accounts. Corporate income tax is then computed by applying the rules and regulations set out in the tax code (CGI).

Net profits are computed as total gross income less deductible expenses provided for by the tax code, excluding exempt income.

A resident company employing more than 5 foreign workers can only deduct 20% of their remuneration from its taxable base (art. 15 of Finance Act 2019). Remuneration constitutes all benefits in cash and in kind paid monthly in accordance with art. 13 and 17 of the Tax Code.

### DEPRECIATION

The tax code only provides for the straight-line method of depreciation.

| Assets | Rate (%) |
|---|---|
| Computer equipment | 33.33 |
| Buildings | 5 |
| Tractors | 20 |
| Office furniture | 10 |
| Machinery and equipment | 20 |
| Plantations | 5 |

### INTEREST DEDUCTIONS

There are no thin capitalisation rules in Djibouti.

### LOSSES

Losses may be carried forward for up to 3 years. Loss carry-back is not allowed.

## C. FOREIGN TAX RELIEF

No unilateral double taxation relief is granted under domestic tax law for foreign tax paid.

## D. CORPORATE GROUPS

There is no specific regime for groups of companies.

## E. RELATED PARTY TRANSACTIONS

**Transfer pricing**

Djibouti does not have specific TP rules, but the tax authorities can adjust the pricing of transactions between related parties.

**Controlled foreign company rules**

Djibouti does not have CFC rules.

**Thin capitalisation rules**

There are no formal thin capitalisation rules in Djibouti. However, interest paid by a company to its shareholders is deductible up to an amount computed on the basis of the average annual Central Bank interest rate, increased by 1 percentage point.

Interest paid to a majority shareholder of an SA or a limited liability company is deductible only if the loan does not exceed the capital of the company.

## F. WITHHOLDING TAX

- Dividends and interest paid to non-resident companies are exempt from withholding tax;
- Royalties derived by non-resident companies are subject to a final 15% withholding tax on the gross amount
- The following payments are subject to a 15% withholding tax on the gross amount, exclusive of VAT:
  - Payments for services of any kind, performed or used in Djibouti;
  - Management fees;
  - Head office costs paid by branches to their foreign headquarters;
  - Fees for technical assistance, commercial prospection or research of any kind; and
  - Amounts paid as consideration for the exercise on Djibouti territory of a non-commercial activity.
- A withholding tax of 10% for remunerations paid to local companies that cannot present a licence and 15% for foreign companies that cannot present a Djiboutian tax registration number.

## G. PERSONAL TAX

Progressive tax rates on employment income are as follows:

| Taxable income (DJF) | Rate (%) |
|---|---|
| Up to 30,000 | 2 |
| 30,000 – 50,000 | 12 |
| 50,001 – 150,000 | 15 |
| 150,001 – 300,000 | 22 |

| Taxable income (DJF) | Rate (%) |
|---|---|
| 300,001 – 600,000 | 25 |
| 600,001 – 1,000,000 | 30 |
| 1,000,001 – 2,000,000 | 35 |
| Over 2,000,000 | 45 |

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Djibouti has not signed any double tax treaties.



# DOMINICAN REPUBLIC

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Santo Domingo | Hector Guzman Desangles | +1809 540 6668<br>hguzman@guzmantapiapkf.com.do |

## BASIC FACTS

| | |
|---|---|
| Full name: | Dominican Republic |
| Capital: | Santo Domingo |
| Main languages: | Spanish |
| Population: | 11.04 million (2022 estimate) |
| Monetary unit: | Dominican Pesos (DOP) |
| Internet domain: | .do |
| Int. dialling code: | +1809 |

## KEY TAX POINTS

- The corporate tax system is based on the territoriality principle. Corporate income tax is only due on business income generated by enterprises operating in the Dominican Republic. Certain types of investment income derived by Dominican residents from sources outside the Dominican Republic are also subject to Dominican taxation.
- Non-resident companies operating through a permanent establishment in the Dominican Republic are taxed on income attributable to the permanent establishment as well as on Dominican-sourced income. Non-residents without a permanent establishment in the Dominican Republic are taxed on Dominican-sourced income only.
- Companies are subject to the higher of corporate income tax (at 27%) or alternative minimum tax (1% of the total asset value after deducting depreciation).
- The standard rate of VAT is 18%.

## A. TAXES PAYABLE

### COMPANY TAX – GENERAL REGIME

The corporate tax system is based on the territoriality principle, whereby tax is only levied on business income derived from Dominican sources. Companies are subject to the higher of corporate income tax (27%) or alternative minimum tax. Dividends paid to residents or non-residents out of Dominican-source income are subject to withholding tax at the rate of 10% on the gross amount. This is a final tax on dividends.

Corporate income tax is levied on residents and non-residents deriving Dominican-source income. Resident entities are subject to corporate income tax on certain items of investment income derived from foreign sources. Non-residents without a permanent establishment in the Dominican Republic are only taxed on Dominican-sourced income.

Corporate income tax on resident companies and branches of foreign companies is levied at a rate of 27% or alternative minimum tax is applied, whichever is higher. The latter is assessed at a rate of 1% on the assets registered in the taxpayer's accounting books.

Companies will make monthly advance tax payments, which are 1/12 of the equivalent of the tax amount paid in the prior year and at year-end they should correspond to the abovementioned 27% or 1% calculated taxes. When current year taxes are calculated, the monthly payment is compensated in the following period. If the monthly payment was insufficient then the corporation needs to make up for the payment.

### CAPITAL GAINS TAX

Capital gains derived from the sale of assets, immovable property or shares included in gross income and are subject to the 27% standard corporate income tax rate. The capital gain is calculated by deducting the acquisition cost – adjusted for inflation – from the sales price and adding the accumulated earnings/losses

### BRANCH PROFITS TAX

Only the income attributable to the Dominican branch (permanent establishment) is subject to corporation tax. Remittances by permanent establishments of non-residents are subject to a final withholding tax at the rate of 27%.

## VALUE ADDED TAX

VAT (ITBIS) is levied on taxable supplies of goods and services as well as on imports of taxable goods and services into the Dominican Republic. Exports are zero-rated. The standard rate is 18%.

Professional services, rental of movable goods and professional security services are subject to a withholding of the invoiced ITBIS at the rate of 30%.

## LOCAL TAXES

No local tax applies.



## OTHER TAXES

Municipal tax: owners of real estate property are subject to a 1% tax rate. For rural properties, no tax applies.

## FRINGE BENEFITS TAX

There is no fringe benefits tax in the Dominican Republic.

## B. DETERMINATION OF TAXABLE INCOME (ISR)

## GENERAL REGIME

Net income or taxable income is arrived at by adjusting the accounting profits for non-taxable income and non-deductible expenses. As a general principle, costs are only deductible when necessarily incurred for the purpose of producing income.

## SIMPLIFIED SCHEME

Companies who a) during the previous year had a total turnover under DOP 6 million and b) have not elected to be assessed under the General Regime referred to above, are subject to the simplified taxation scheme. Under this scheme, taxable income is computed as 27% of the turnover from sale of goods and merchandise.

## DEPRECIATION

All the items of fixed assets, except land, can be depreciated or amortized for tax purposes. The depreciation rates are set by specific legislation and include 5% for office buildings, 25% for cars and furniture and 15% for other assets.

## STOCK / INVENTORY

Inventory must normally be valued at the effective cost of acquisition or production (historic cost). Other methods which may be adopted include:

- The standard cost method, which must be calculated in accordance with the appropriate technical and accounting principles;
- The sale price method, based on the market value less a normal profit margin.

## CAPITAL GAINS AND LOSSES

Gains realised by resident entities from the disposal of shares are exempt from tax.

## DIVIDENDS

Dividends are normally subject to withholding tax at 10% (when it is paid in cash).

## INTEREST DEDUCTIONS

Interest is deductible on an accrual basis. The Fiscal Administration is entitled to disregard expenses related to interest where related parties are involved.

**Thin capitalisation**

Deductible interest may not exceed the result from multiplying the total amount of interest accrued in the tax period by three times the annual average net equity divided by the annual average balance of all of the taxpayer's interest-bearing debt. Non-deductible interest may be carried forward for 3 years as from the year in which the interest was accrued. The limitation in the interest deduction is not applicable to interest paid to resident individuals and entities and also not to regulated financial entities.

## LOSSES

Operating losses incurred by ordinary corporate taxpayers may be carried forward for 5 years to set off against taxable profits, but only 20 percent of the amount each year. No carry-back is allowed.

## FOREIGN SOURCE INCOME

Regarding active income, taxation of resident companies takes into account only their Dominican-sourced income. However, Dominican-resident companies, branches, and permanent establishments are subject to taxation on income from Dominican sources and on income from foreign sources arising from investments and financial gains, i.e. certain items of passive income.

## TAX INCENTIVES

Incentives under Dominican tax legislation include the free-trade zones, investment in tourism, and companies established in the border between Dominican Republic and Haiti.

## C. FOREIGN TAX RELIEF

Resident companies can obtain a credit for any foreign tax paid abroad on income that is also subject to Dominican corporate income tax. The foreign tax credit is limited to the amount of Dominican tax to which the foreign-source income would be subject in the Dominican Republic.

## D. CORPORATE GROUPS

None. There are no special measures for controlled foreign companies.

## E. RELATED PARTY TRANSACTIONS

Transfer pricing rules are based on the OECD guidelines. The following methodologies are accepted: (i) comparable uncontrolled price method (ii) resale price method (iii) cost plus method (iv) profit split method and (v) transactional net margin method. APAs (advance pricing agreements) are available for all taxpayers and sectors.

On 1 September 2017, the tax authorities published a new (the sixth) version of the transfer pricing information return. All taxpayers within the scope of the transfer pricing regulations must file the return on an annual basis within the first 180 days after the end of the fiscal year. The new version of the return requires taxpayers to:

- Summarise transactions by type;
- Report the profit level indicator of the tested party of each transaction;
- Use the same format as the previous version to allow the information to be validated;
- Complete the information regarding related parties and transactions on the tax administration's virtual platform.

This new version of the return applies for fiscal year 2017 and onwards and as of 1 September 2017 all taxpayers must adopt this new version.

## F. WITHHOLDING TAX

Income paid to non-residents is subject to withholding tax at the following rates:

- Dividends: 10% (final tax);
- Interest: 10%, subject to exceptions;
- Royalties: 27% (final tax);
- Management/technical service fees: 27% (final tax).

## G. EXCHANGE CONTROL

Capital movements are freely transferable.

## H. PERSONAL TAX

Income tax is payable by individuals on income obtained from employment, from a business, from an independent profession, from investment income, from immovable property, capital gains, pensions, and betting and gambling profits. Resident and non-resident individuals are subject to income tax on Dominican-sourced income only. When determining the taxable income, besides some specific deductions concerning each category of income, other deductions may be allowed, such as expenses on health and education.

Tax returns are due on 15 March of the subsequent tax year for taxpayers with income derived solely from employment or pension. The following rate table applies in tax year 2018 to the aggregate net result of employment income, business income, investment income (except interest on bonds and deposits), income from land, capital gains and income from pensions.

| Taxable Income (DOP) | Rate on Excess (%) |
|---|---|
| Up to 416,220 | 0 |
| 416,220.01 – 624,329 | 15% over DOP 416,220 |
| 624,329.01 – 867,123 | 20% over DOP 624,329 |
| In excess of 867,123 | 25% over DOP 867,123 |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-treaty countries** | 10 | 10 | 27 |
| **Treaty countries:** | | | |
| Canada | 0/10/18[3] | 18 | 18 |
| Spain | 0[1]/10 | 0/10[2] | 10 |

Notes:

1. The 0% rate applies in case of a 75% holding in the paying company.
2. The lower rate applies to interest paid by public bodies.
3. The rate for dividends under the treaty is 18%. However, by virtue of a most favoured nation clause the rate is reduced to 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 75% of the capital of the dividend-paying company and 10% in all other cases.

# DRC

## CORRESPONDENT FIRM

| City | Name | Contact Information |
|---|---|---|
| Douala / Buea | Christopher Awungjia | +237 676 548 777<br>+237 696 859 024<br>cawungjia@acncoaccountants.com |



## BASIC FACTS

| | |
|---|---|
| Full name: | Democratic Republic of Congo |
| Capital: | Kinshasa |
| Main languages: | French |
| Population: | 94.67 million (2022 estimate) |
| Monetary unit: | Congolese Franc (CDF) |
| Internet domain: | .cd |
| Int. dialling code: | +243 |

## KEY TAX POINTS

- The Democratic Republic of Congo (the 'DRC') operates a declarative tax system in which the taxpayer declares and pays monthly tax collections to the taxation authorities. False declarations are punishable by penalties and interest on late payment.
- In the DRC, there are two types of income taxes:
  - o Income tax on individuals;
  - o Income tax on entities.
- There is a tax on turnover, borne by the final consumer known as Value Added Tax (VAT).

## A. TAXES PAYABLE

## CORPORATE INCOME TAX

Congolese companies are taxed on the territoriality principle. As a result, companies carrying on a trade or business outside the Democratic Republic of Congo (DRC) are not taxed in the DRC on the related profits. Congolese companies are those registered in the DRC, regardless of the nationality of the shareholders or where the company is managed and controlled.

Foreign companies (for example, branches) engaged in activities in the DRC are subject to Congolese corporate tax on Congolese-source profits only. A company is considered to have a permanent establishment in the DRC if it satisfies either of the following conditions:

- It possesses a fixed or permanent place (for example, head office, branch office, factory, plant, workshop, or buying and selling counter);
- In the absence of such place, it carries out a professional activity under its corporate name for at least six months in the DRC.

Rate of corporate tax

The regular corporate income tax rate is 30%. The minimum tax payable is 1% of the annual turnover for larger corporations.

For small corporations with annual revenues of less than CDF 10 million, the corporate income tax is set at CDF 50,000.

For small corporations with annual revenues between CDF 10 million and CDF 80 million, the corporate income tax rate is 1% of the annual revenue for sales of goods and 2% for the provision of services. The corporate income tax rate is 30% for companies holding mining or quarry titles.

## BRANCH PROFITS TAX

Branches of foreign companies are subject to a 20% tax on movable capital levied on 50% of the net profit of the branch (i.e. profits after payment of corporate income tax) that is deemed to be distributed.

## CAPITAL GAINS

Increases resulting from capital gains and depreciation that are realised and either realised or expressed in the accounts or inventories are included in profits and are subject to tax at a rate of 30%.

Increases resulting from unrealised capital gains that are expressed in the accounts or inventories and that are not treated as profits are not yet taxable. This rule applies only if the taxpayer holds a regular accounting and if it fulfils its declarative obligations.

Increases resulting from realised capital gains on buildings, tools, materials and movable assets (regardless of whether they result from rent payments), as well as on participations and portfolios, are taxable to the extent that the sales price exceeds the acquisition price or cost. A deduction is made from the amount of the depreciation that has already been claimed for tax purposes.

## ADMINISTRATION

The fiscal year extends from 1 January to 31 December. Tax returns must be filed by 30 April.

Corporate tax must be paid in four instalments for medium-sized and large enterprises (two before the Finance Act 2020 came into force) before 1 June, 1 August, 1 October and 1 December at the latest. Each instalment must equal 20% of the preceding year's tax (increased by any tax reassessment received by the tax office during the current year).

Small enterprises still pay two instalments only (60% and 40%) by 1 February and 1 June.

The balance of tax due must be paid by the following 30 April. A penalty of 4% per month is assessed for late payment of tax.

Tax is fixed automatically if a tax return is not filed

## DIVIDENDS

In general, dividends paid are subject to a 20% withholding tax. The rate of dividend withholding tax for mining companies is 10%. A notional dividend withholding tax applies to branches. The rates of this tax are 8% for public limited liability companies and 10% for other limited liability companies.



## INTEREST DEDUCTIONS

There are no thin capitalisation rules in the DRC. However, under the 2014 Finance Law, outbound interest payments to a foreign resident shareholder or any other related party are deductible only if the loan is repayable within a maximum period of 5 years and the interest rate does not exceed the annual average rate applied by banks established in the country of the lending entity.

## LOSSES

Tax losses incurred in a tax year may be carried forward indefinitely. However, the deduction of the available tax losses is capped at 60% of the annual taxable income.

Loss carry-back is not allowed.

## OTHER TAXES

| Type of tax | Rate (%) |
|---|---|
| Value Added Tax (VAT) | |
| Standard rate | 16 |
| Reduced rate (applicable to certain food products) | 8 |
| Rate on exports and assimilated transactions | 0 |
| Payroll taxes: | |
| Annual income not exceeding CDF 43,200,000 (progressive rates) | 0 - 30 |
| Annual income exceeding CDF 43,200,000 (flat rate) | 40 |
| Exceptional income tax for expatriates (IERE) | |
| Mining companies | 10 |
| Other companies | 25 |
| Social Security National Institute (CNSS), contributions, payable monthly | 18 |
| Employers | 13 |
| Employees | 5 |
| National Institute for Professional Preparation (INPP), payable monthly by employers | 1 - 3 |
| National Agency for Labour (ONEM), payable monthly by employers | 0.2 |

Payroll taxes cannot exceed 30% of the taxable salary.

# B. DETERMINATION OF TRADING INCOME

## GENERAL

Taxable income is based on financial statements prepared in accordance with principles set by the Organisation for the Harmonisation of Business Law in Africa (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires, or OHADA*) Accounting Act, except for banks and insurance companies. The net amount of income is taxed. This amount equals gross income minus business expenses incurred during the tax year to acquire and retain the income. Business expenses are generally deductible unless specifically excluded by law. The following expenses are not deductible:

- Head office, remuneration or management fees for services paid to non-residents that are not justified;
- Head office overhead or remuneration for certain services (studies and technical assistance) paid to non-residents;
- Expenditure of a personal nature, such as maintenance of household, appraisal fees, holidays and other expenses not necessary for the profession;
- Corporate income tax, as well as real tax (tax on movable assets, tax on vehicles or tax on mining concessions), to the extent that the real tax does not constitute an operating expense;
- All judicial or administrative fines, and fees and charges relating to breaches by income beneficiaries;
- Certain specific charges, gifts, subsidies and penalties;
- Directors' fees allocated under the Corporations Act to members of the General Council;
- Expenditures on leased property, including depreciation of the property;
- Provisions for losses, expenses or depreciation of assets, excluding provisions for the recovery of mineral deposits and provisions for the recovery of bank capital;
- Commissions and brokerage fees if it cannot be proven that the tax on turnover has been paid for these items;
- Most liberalities (payments that do not produce a compensatory benefit, such as excessive remuneration paid to a director).

## TAX DEPRECIATION

Land and intangible assets, such as goodwill, are not depreciable for tax purposes. Other fixed assets may be depreciated using the straight-line method at rates specified by tax law. The following are some of the specified annual rates.

| Asset | Rate (%) |
|---|---|
| Buildings | 2 to 5 |
| Office equipment | 10 |
| Motor vehicles | 20 to 25 |
| Plant and machinery | 10 |
| Fixtures, facilities | 10 |
| Shipping and aviation equipment | 10 to 33 |



Companies can also opt for a regressive method for tax depreciation of specific assets with an annual rate of two to three times the straight-line rate.

## INVENTORIES

Inventories are normally valued at their historical cost or acquisition cost.

## PROVISIONS

In determining accounting profit, companies must implement certain provisions, such as a provision for risk of loss or for certain expenses. These provisions are not deductible for tax purposes. However, provisions for recovery of bank capital and provisions for the recovery of the mineral deposit are deductible for tax purposes.

## C. FOREIGN TAX RELIEF

In general, foreign tax credits are not allowed. Income subject to foreign tax that is not exempt from Congolese tax under the territoriality principle is taxable.

## D. CORPORATE GROUPS

The DRC does not have a fiscal integration system equivalent to a consolidated filing position.

## E. RELATED PARTY TRANSACTIONS

The DRC has several measures applicable to related-party transactions that are not conducted on an arm's length basis. The 2014 Finance Law introduced tighter provisions for deductions with respect to cross-border transactions carried out with related parties. These provisions include the disallowance of loan interest with respect to rates exceeding those offered on the international finance market (for example, the London Interbank Offered Rate [LIBOR]) and the repayment of principal beyond five years. Management fees paid to a related party may be deducted from the corporate income tax base if the following conditions are satisfied:

- The services rendered can be clearly identified (i.e., they are genuine services that are effectively rendered and directly related to operating activities);
- The services cannot be rendered by a local company (that is, overhead expenses recharged to the local entity are excluded);
- The amount paid for the services is not exaggerated in view of the nature of the services. These arm's-length requirements are consistent with those set forth in the Mining Code. The 2015 Finance Law introduced transfer pricing documentation requirements. As a result, companies must put at the disposal of the tax administration during a tax audit, general and specific information on an affiliated group of companies (Master File and Local File), including the following:
    - General description of the deployed activity, including changes that occurred during the year;
    - A general description of the legal or operational structures of the affiliated group of companies, including identification of the related companies engaged in transactions involving the company established in the DRC (local company);
    - A general description of the function performed and risk assumed by the affiliated companies as soon as they affect the local company;
    - A list of the main intangible assets owned, including patents, trademarks, trade names and know-how, relating to the local company;
    - A general description of the group's transfer pricing policy;
    - A description of transactions made with other affiliated companies, including the nature and amount of cash flows, such as royalties;
    - A listing of the cost-sharing agreement, copies of preliminary agreements related to transfer pricing that are concluded under the conditions of the regulation, and the prescription relating to the determination of transfer pricing, affecting the results of the local company;
    - Presentation of the method or methods for determining transfer pricing, in compliance with the arm's-length principle, including an analysis of the functions performed, assets used and risks assumed, and an explanation concerning the selection and application of the methods used;
    - An analysis of comparative elements considered as relevant by the company if the selected method requires it. In addition, the corporate income tax law disallows branches from deducting overhead charges incurred by the parent company and charged back to the branch.

## F. WITHHOLDING TAX

| Description | Rate (%) |
|---|---|
| Dividends | 20 (a) |
| Interest | 20 (b) |
| Royalties from patents, know-how etc. | 20 (c) |
| Fees for technical services, digital services and professional activities | 14 (d) |

a) The rate of dividend withholding tax for mining companies is 10%. A notional dividend withholding tax applies to branches (branch remittance tax). The rates of this tax are 8% for public limited liability companies and 10% for other limited liability companies.

b) Interest on loans abroad to mining companies is not subject to withholding tax.

c) The net amount of royalties is subject to tax. For this purpose, net royalties equal gross royalties minus professional expenses, or 30% of gross royalties (resulting in an effective tax rate of 14%).

d) This withholding tax applies to payments for services provided to Congolese companies by foreign companies and individuals without a permanent establishment in the DRC. The tax base is the gross amount of the applicable invoice.



## G. EXCHANGE CONTROL

The currency in the DRC is the Congolese franc (CDF). The exchange rate is variable. In the DRC, the Central Bank of Congo regulates foreign exchange controls. It also supervises the regulation on the transfer of currency. Cash transfers from or into the DRC are not subject to restrictions if they do not exceed the equivalent of USD 10,000. An exchange control fee of 0.2% is levied on payments to or from abroad.

## H. PERSONAL TAX

The standard progressive rates applicable to wages are as follows:

| Taxable income | Rate (%) |
|---|---|
| 0 – 1,944,000 | 3 |
| 1,944,001 – 21,600,000 | 15 |
| 21,600,001 – 43,200,000 | 30 |
| Above 43,200,000 | 40 |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 10/20 | 10/20 | 0/20 | 20 |
| Individuals | 10/20 | -- | 0/20 | 20 |
| **Treaty countries:** | | | | |
| Belgium | 15 | 10[1] | 10 | 10 |
| South Africa | 15 | 5[2] | 10 | 10 |

Notes:

1. The 15% rate applies if dividends are paid by a company whose profits are exempt from Congolese tax under the Investment Code or under a particular law organising investments in the sectors listed in Article 3 of the said Code, provided that the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company. The 10% rate applies in all other cases.
2. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.

# ECUADOR

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Guayaquil | Manuel García | +593 4 236 7833 |
| | | mgarcia@pkfecuador.com |
| | | pkf@pkfecuador.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Ecuador |
| Capital: | Quito |
| Main languages: | Spanish, indigenous languages |
| Population: | 18.13 million (2022 estimate) |
| Monetary unit: | US Dollar (USD) |
| Internet domain: | .ec |
| Int. dialling code: | +593 |



## KEY TAX POINTS

- Corporate tax is payable by Ecuadorian resident companies on non-exempt income derived from all sources. Non-resident companies are required to pay tax on income sourced in Ecuador.
- The corporate tax rate is 25%. Capitalised profits are subject to a 15% tax rate.
- Value Added Tax (VAT) is applied at a standard rate of 12% to all transactions including imports. There is a 0% rate on food items, agricultural inputs, medical goods, books and government purchases, and some professional services.
- No provisions exist for filing consolidated returns or relieving losses within a group.
- Dividends paid to resident individuals and companies and to non-resident individuals and companies are subject to a 25% withholding tax. The tax base will be 40% of the distributed dividends. Royalties, services, and rental fees are subject to the same 25% withholding tax.
- Income tax is payable by Ecuadorian resident individuals on non-exempt income derived from all sources. Non-resident individuals are required only to pay tax on Ecuadorian-sourced income.

## A. TAXES PAYABLE

## CORPORATE INCOME TAX

Corporate tax is payable by Ecuadorian resident companies on non-exempt income derived from all sources. Non-resident companies are required to pay tax on income sourced in Ecuador. Resident companies are those that are incorporated in Ecuador or carry-on business in Ecuador and have either central management and control in Ecuador or voting power controlled by shareholders who are Ecuadorian residents.

The standard corporate income tax rate is 25%. Small and Medium-sized Entities (SMEs) and regular exporters that meet certain requirements are subject to a tax rate of 22%.

Entrepreneurs and micro-enterprises are subject to a special tax regime.

An increased corporate income tax rate of 28% applies when (1) the resident company fails to fully disclose the required information about its ownership composition or (2) one of the shareholders is established in a tax haven, low-tax jurisdiction, or preferred tax regime and the true beneficial owner is an Ecuadorian tax resident. In such case, the higher tax rate of 28% will be fully applied to the resident company's income tax base if the shareholders reside in tax havens or low-tax jurisdictions, and together or individually own at least 50% of the company's share capital. When that ownership is less than 50%, the corporate tax rate of 28% will be applied proportionally to the income tax base for that ownership.

Capitalised profits are subject to a 15% tax rate.

The tax year runs from 1 January to 31 December. Tax is payable from 10 to 28 April, depending on the ninth digit of the tax identification number (RUC), as follows:

| Ninth digit | Filing deadline |
|---|---|
| 1 | 10 April |
| 2 | 12 April |
| 3 | 14 April |
| 4 | 16 April |
| 5 | 18 April |
| 6 | 20 April |
| 7 | 22 April |
| 8 | 24 April |
| 9 | 26 April |
| 0 | 28 April |

Corporate tax can be prepaid voluntarily at an amount equivalent to 50% of the previous period's income tax due less withholdings for that same period. This prepaid tax constitutes a tax credit for income tax purposes.

Entrepreneurs and micro-enterprises subject to the special tax regime are required to file a corporate income tax return in March (individuals) or April (companies) and pay special tax regime tax in March.

Purchases of goods and services are subject to the following withholding tax rates:

| Type of goods/services | WHT rate |
|---|---|
| Electricity | 1% |
| Private transport of passengers and public and private freight | 1% |

| Type of goods/services | WHT rate |
|---|---|
| Purchase of all types of goods (except oil products) | 1% |
| Interest and commissions derived from credit operations between financial institutions | 1% |
| Transfer on the sale of shares | 1% |
| Construction activities | 1.75% |
| Transfer of real estate property | 1.75% |
| Insurance and reinsurance premiums and cessions | 1.75% |
| Leasing quotes, including purchasing option | 1.75% |
| Media and advertising services | 1.75% |
| Low-skilled labour | 2% |
| Payments by credit card issuers to their merchants | 2% |
| Income from loans and investments | 2% |
| Interest paid by public entities to taxpayers | 2% |
| Any other payments | 2% |
| Fees, commissions, and other payments to professionals for services that are predominantly intellectual not related with their professional title; sport or artistic services; royalties, property rights, copyrights, patents, leasing of real estate property | 8% |
| Fees, commissions and other payments to professionals for services that are predominantly intellectual related to their professional title; image or name rights; capital gains on the sale of shares of listed companies | 10% |
| Payments to non-residents; dividends distributed to individuals or companies when the ultimate beneficial owner is not an Ecuadorian resident; interest on foreign loans | 25% |

The amounts paid become credits available for income tax purposes at the end of the period. Interest paid to financial institutions is not subject to withholding tax. Employment income is subject to a specific withholding regime.

## CAPITAL GAINS TAX

Capital gains on the direct or indirect transfer of shares of an Ecuadorian entity are subject to a standard rate of 10%.

When the seller is a non-resident, the Ecuadorian target entity must act as a “substitute agent” responsible for collecting and paying the tax.

## BRANCH PROFITS TAX

There is no specific income tax for branches. Income generated by branches is taxed according to general income tax rules. An important exception is the treatment of foreign oil companies involved in state contracts. There is no branch remittance tax in Ecuador.

## VALUE ADDED TAX (VAT)

Value Added Tax (VAT) is applied at a standard rate of 12% on the purchase of goods and services (including imports). Food (in natural state), agricultural machinery and equipment, drugs, medicines and other pharmaceutical products, water, electricity, sewage, and other public services, and exported goods and services, are subject to a 0% VAT rate.

The following transactions are exempt from VAT:

- In-kind contributions to companies;
- Inheritances and assets obtained from the liquidation of companies;
- Transfer of business, combinations, mergers, takeovers, and spin-offs;
- Donations to public entities and non-profit organisations;
- Transfers of shares and securities.

The VAT base for local purchases represents the selling price of the goods or services, including other taxes, fees and other related expenses, less discounts and/or refunds. The VAT base for imports represents the customs value (cost, insurance, and freight) plus taxes, tariffs, fees, duties and surcharges included in the import filing.

VAT must be filed and paid monthly depending on the ninth digit of the tax identification number (RUC), except for micro-enterprises subject to the special regime, which are required to file VAT on a bi-annual basis (in July and January), as follows:

| Ninth digit | Filing deadline (general regime) | First semester filing deadline (micro-enterprises subject to special regime) | Second semester filing deadline (micro-enterprises subject to special regime) |
|---|---|---|---|
| 1 | 10th day of following month | 10 July | 10 January |
| 2 | 12th day of following month | 12 July | 12 January |
| 3 | 14th day of following month | 14 July | 14 January |
| 4 | 16th day of following month | 16 July | 16 January |
| 5 | 18th day of following month | 18 July | 18 January |
| 6 | 20th day of following month | 20 July | 20 January |
| 7 | 22nd day of following month | 22 July | 22 January |

| Ninth digit | Filing deadline (general regime) | First semester filing deadline (micro-enterprises subject to special regime) | Second semester filing deadline (micro-enterprises subject to special regime) |
|---|---|---|---|
| 8 | 24th day of following month | 24 July | 24 January |
| 9 | 26th day of following month | 26 July | 26 January |
| 0 | 28th day of following month | 28 July | 28 January |

Entrepreneurs and micro-enterprises may also elect to file VAT on a monthly basis.

## FOREIGN MONEY TRANSFER TAX (ISD)

All remittances abroad are taxed at a standard rate of 5%. A progressive reduction by 0.25% of the tax rate on the remittance of funds during 2022 was established until reaching 4% in the last quarter of 2022, according to the following schedule:

- As of 1 January 2022 the tax rate will be 4.75%
- As of 1 April 2022 the tax rate will be 4.50%
- As of 1 July 2022 the tax rate will be 4.25%
- As from 1 October 2022 the tax rate will be 4%.

Banks act as withholding agents. Payments made from overseas are also subject to the ISD.

Payments on the import of capital assets, raw materials and supplies for production may be used as a tax credit, subject to certain requirements.

ISD on payments of capital and interest on loans provided by foreign financial institutions or non-financial entities qualified by the SB, and on dividends derived from new productive investments, are exempt from the ISD (subject to certain requirements).

Payments on the import of capital assets and raw materials to be used in the development of new productive investments which maintain investment contracts with the Ecuadorian government, and on dividends distributed, are exempt from the ISD (subject to certain requirements).

The ISD rate applicable for foreign airlines (transport, cargo, and courier) authorised to operate in Ecuador is 0%.

## FRINGE BENEFITS TAX

No fringe benefits are deductible as expenses for income tax liquidation purposes. The only exception is that the company can pay and expense its employee income tax and social security contribution if the company has contracted to do so.

## LOCAL AND REAL ESTATE TAXES

Other local taxes include real estate tax (which ranges from 0.025% to 0.3% for rural property and from 0.025% to 0.5% for urban property) and 1.5x1000 of previous year’s total assets.

## OTHER TAXES

### Transitory wealth tax

A transitory wealth tax is applicable to individuals with net assets equal to or greater than USD 500,000 (in the case of community property, the threshold is USD 1 million) as per 31 December 2020, is payable by 31 March 2022 and 2023, and is calculated as follows:

| From USD | Up to USD | Tax on the non-taxable allowance (USD) | Tax rate on the excess fraction (%) |
|---|---|---|---|
| - | 999,999.99 | -- | 0.0 |
| 1,000,000.00 | 1,199,999.99 | -- | 1.0 |
| 1,200,000.00 | Above 1,200,000.00 | 2,000 | 1.5 |

Individuals resident in Ecuador must take into account assets located in and outside of Ecuador while individuals not resident in Ecuador must only take into account assets located in Ecuador.

Investments in corporations required to pay the transitory wealth tax should not be taken into account nor should account payables to related parties.

The transitory wealth tax is also applicable to corporations with net assets equal to or greater than USD 5 million as per 31 December 2020, is payable by March 2022 and March 2023, and is calculated as follows:

| From USD | Up to USD | Tax rate on net assets (%) |
|---|---|---|
| - | 4,999,999.99 | 0.0 |
| 5,000,000.00 | Above 5,000,000.00 | 0.8 |

Payment of the transitory wealth tax is neither a tax credit nor is it tax deductible.

Investment holding companies are not required to file and pay the transitory wealth tax.

### Voluntary tax regime to legalise foreign-held assets and remittances

A voluntary tax regime has been established, applicable to Ecuadorian residents who have maintained assets abroad as per 31 December 2020, derived from operations subject to income tax and/or tax on the remittance of funds that were not declared and/or subject to payment of taxes.

The tax rate depends on the date on which the tax return is submitted and paid, according to the following table:

| Condition | Tax rate applicable |
|---|---|
| If the tax filing and payment are done by 31 March 2022 | 3.5% |
| If the tax filing and payment are done by 30 June 2022 | 4.5% |
| If the tax filing and payment are done by 31 December 2022 | 5.5% |

## B. DETERMINATION OF TAXABLE INCOME

### DEPRECIATION

Assets are subject to depreciation, which is deductible according to the following rates:

| Asset | Annual depreciation rate |
|---|---|
| Buildings, ships and airplanes | 5% |
| Facilities, machinery, equipment, furniture and fixtures | 10% |
| Vehicles and transport equipment | 20% |
| Computer equipment and software | 33% |

Accelerated depreciation is deductible only if authorised by the tax authorities.

Depreciation on the re-valuation of assets is not deductible.

### STOCK / INVENTORY

Losses on inventory written-off are deductible if justified by a notarised sworn statement.

Losses on the adjustment to the net realisable value are deductible when the corresponding stock item is sold. The previous recognition of a deferred tax asset is required.

### CAPITAL GAINS AND LOSSES

Net capital gains and losses are generally included in the determination of assessable income.

### DIVIDEND INCOME

Dividends received by resident companies from other resident companies are tax exempt.

### INTEREST DEDUCTIONS

Interest is deductible. The deduction of both interest and the cost of foreign financing charged by a financial institution or non-financial entity approved by the Superintendence of Banks of Ecuador are allowed provided that the loan has been registered within the Central Bank of Ecuador (BCE) and the interest rate is lower than the one set by the BCE. If not, a withholding of 25% is required on the excess amount to be deductible.

The deduction of both interest and the cost of foreign financing charged by third and related parties is allowed only if the loan has been registered with the BCE, the interest rate is lower than the one established by the BCE and a withholding of 25% has been applied. If the interest rate exceeds the interest rate set by the BCE, the excess will not be deductible, although the tax law requires a withholding of 25%.

The deduction of both interest and the cost of foreign financing charged by related parties are allowed provided that the net interest does not exceed 20% of Earnings before Interest, Tax, Depreciation, and Amortisation (EBITDA), and the loan has been registered with the Central Bank of Ecuador (BCE). The excess amount will not be deductible.

### LOSSES

Companies that have sustained operating losses in a tax year may carry forward such losses to subsequent tax years and offset them over five years at the rate of 20% per year, provided that no more than 25% of the profits obtained in each year are allotted for such purposes.

### FOREIGN SOURCE INCOME

Domestic corporations are subject to tax on their worldwide income with tax credits allowed for income taxes paid abroad.

### INCENTIVES

- Specific incentives are provided for the mining and primary oil production industries. Expenditure on research and development also qualifies for special treatment.
- A reduction of three points on the corporate income tax rate applies for new productive investments for a period of up to 15 years, and a reduction of five points if the taxpayer signs an Investment Agreement with the Ecuadorian Government.
- Remunerations of disabled persons can be considered as an additional deduction for income tax purposes.
- Additional deductions can be applicable to investments in environmental-friendly assets.

## C. FOREIGN TAX RELIEF

Ecuador has double tax treaties with countries listed under Chapter I (see further).

## D. CORPORATE GROUPS

No provisions exist for filing consolidated returns or relieving losses within a group.

## E. RELATED PARTY TRANSACTIONS

- Indirect costs assigned from foreign related parties are deductible given that they do not exceed 5% of the tax base plus those indirect costs.

- Interest, dividends, management and technical fees, consulting services and royalties are subject to a 25% withholding tax rate.
- Losses on the sale of fixed assets or shares and costs derived from leasing operations between related parties are non-deductible.
- Transactions between related parties must be carried out in accordance with the arm's-length principle. Taxpayers are required to submit the Transfer Pricing Annex when the amount of transactions with related parties exceeds USD 3 million in the tax year. If related-party transactions exceed USD 15 million in a tax year, the taxpayer must also file a transfer pricing report.

## F. WITHHOLDING TAX

- Dividends paid to resident individuals and companies and to non-resident individuals and companies are subject to a 25% withholding tax. The tax base will be 40% of the distributed dividends.
- Interest paid on foreign loans, including interest paid to non-resident suppliers financing export, is subject to a 25% final withholding tax. Interest paid to foreign governments, private international financial institutions and non-financial specialised companies is exempt from tax, even if the institutions are based in tax havens, provided that the transaction is registered with controlling agencies in Ecuador and the interest rate does not exceed the one set by the Central Bank.
- Royalties paid to non-residents are subject to a 25% final withholding tax. The rate increases to 35% when royalties are paid to a recipient in a tax haven or a low-tax jurisdiction.

## G. EXCHANGE CONTROL

Limited control is exercised. Direct foreign loans generally must be registered with Ecuador's Central Bank.

## H. PERSONAL TAX

Personal income tax is payable by resident individuals on their worldwide income. Non-residents are taxed only on Ecuador-sourced income. Residence is determined by reference to common law or to domicile or where the individual has spent more than 183 days of the relevant income year in Ecuador, unless he or she has a usual place of abode outside Ecuador and does not intend to take up residence in Ecuador.

Taxable income includes income from employment, income from a profession or business, capital gains, investment income such as dividends, and inheritances. Deductions are allowed up to a maximum threshold subject to certain conditions.

Diplomats, agents, official representatives, consuls, and ambassadors are exempt from paying personal income tax.

The following chart applies to determine personal income tax for the year 2022:

| Year 2022 (USD) | | | |
|---|---|---|---|
| **Minimum allowance** | **Maximum allowance** | **Minimum tax payable (accumulation of prior tax bands)** | **Personal income tax rate** |
| 0.00 | 11,310.00 | 0.00 | 0% |
| 11,310.01 | 14,410.00 | 0.00 | 5% |
| 14,410.01 | 18,010.00 | 155.00 | 10% |
| 18,010.01 | 21,630.00 | 515.00 | 12% |
| 21,630.01 | 31,630.00 | 949.40 | 15% |
| 31,630.01 | 41,630.00 | 2,449.40 | 20% |
| 41,630.01 | 51,630.00 | 4,449.40 | 25% |
| 51,630.01 | 61,630.00 | 6,949.40 | 30% |
| 61,630.01 | 100,000.00 | 9,949.40 | 35% |
| 100,000.01 | Above | 23,378.90 | 37% |

Income derived from an inheritance, legacies, donations, other income and any benefit obtained through an act or contractual agreement received for no consideration of goods and rights, is subject to tax at rates according to the following bands:

| Year 2022 (USD) | | | |
|---|---|---|---|
| **Minimum allowance** | **Maximum allowance** | **Minimum tax payable (accumulation of prior tax bands)** | **Tax rate** |
| 0.00 | 72,750.00 | 0.00 | 0% |
| 72,750.01 | 145,501.00 | 0.00 | 5% |
| 145,501.01 | 291,002.00 | 3,638.00 | 10% |
| 291,002.01 | 436,534.00 | 18,188.00 | 15% |
| 436,534.01 | 582,055.00 | 40,017.00 | 20% |
| 582,055.01 | 727,555.00 | 69,122.00 | 25% |
| 727,555.01 | 873,037.00 | 105,497.00 | 30% |
| 873,037.01 | Above | 149,141.00 | 35% |

**Individual Income tax (IIT)**

Progressive from 5% to 37%.

**Inheritance/ Gift Tax**

Progressive rates from 5% to 35%.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Decision 578 of the Cartagena Agreement has been adopted by Ecuador. This broadly means that relief from double taxation is provided for natural and juridical persons located in any of the Andean Pact countries (Bolivia, Colombia, Ecuador, Peru, and Venezuela).

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Individuals | 25/35[17] | -- | 25/35 | 25/35 |
| Companies | 0/25/35[16] | 25/35 | 0/25/35[18] | 25/35[18] |
| **Treaty countries:** | | | | |
| Belarus[7] | 10 | 5[6] | 10 | 10 |
| Belgium | 15 | 5/15[2] | 0/10 | 10 |
| Bolivia[10] | –[1] | –[1] | –[1] | –[1] |
| Brazil | 15 | 15 | 0/15 | 15/25 |
| Canada | 15 | 5[3] | 0/15 | 10/12/15 |
| Chile | 15 | 5[3] | 4/5/10/15[11] | 10/15[12] |
| China | 3/5[13] | 3/5[13] | 0/8/10[14] | 8/10[15] |
| Colombia[10] | –[1] | –[1] | –[1] | –[1] |
| France | 15 | 15 | 0/10/15 | 15 |
| Germany | 15 | 15 | 0/10/15 | 15 |
| Italy | 15 | 15 | 0/10 | 5 |
| Japan[9] | 5 | 5 | 0/10 | 10 |
| Korea (South) | 10 | 5[4] | 0/12 | 5/12 |
| Mexico | 5 | 5 | 0/10/15 | 10 |
| Peru[10] | –[1] | –[1] | –[1] | –[1] |
| Qatar | 10 | 0/5[4] | 10 | 10 |
| Romania | 15 | 15 | 10 | 10 |
| Russia | 10 | 5[6] | 10 | 10/15 |
| Singapore | 5 | 0[5] | 0/10 | 10 |
| Spain | 15 | 15 | 0/5/10 | 5/10 |
| Switzerland | 15 | 15 | 0/10 | 10 |
| Uruguay | 15 | 10[8] | 15 | 10/15 |
| Venezuela[10] | –[1] | –[1] | –[1] | –[1] |

NOTES:

1. There is no reduction under the tax treaty, the domestic rates apply. The source state has the exclusive right to tax.
2. The treaty rate is 15% which is reduced to 5% under the application of a most favoured nation clause (China-Ecuador treaty).
3. The 5% reduced rate applies if the beneficial owner is a company that controls directly or indirectly at least 25% of the voting power in the dividend-paying company.
4. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
5. The 0% rate applies where the beneficial owner of the dividend is the government of any of the contracting states, their central banks or any institution wholly owned by any of the states.
6. The 5% reduced rate applies if the beneficial owner is a company (other than partnerships) which holds directly at least 25% of the capital of the dividend-paying company.
7. Entry into force: 16 August 2017. Effective date: 1 January 2018.
8. The 10% reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the voting shares of the dividend-paying company.
9. Effective date: 28 December 2019 (exchange of information); 1 January 2020 (other tax matters).
10. In application of Decision 578 of the Andean Community.
11. The treaty rate is 15%. However, a reduced rate got triggered by the Chile-Japan treaty by virtue of a most favoured nation clause as follows:
    - As from 1 January 2017, the rate for certain types of interest is reduced to 4% and 5%;
    - As from 1 January 2019, the general rate is reduced to 10%.
12. The 10% rate applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment. The general rate under

the treaty is 15%. However, a 10% reduced rate got triggered by the Chile-Spain treaty by virtue of a most favoured nation clause.

13. The reduced 3% rate applies if the dividend payment from Ecuador to China is subject to foreign exchange control tax in Ecuador (see Protocol, item 3).
14. The 8% reduced rate applies if the interest payment from Ecuador to China is subject to foreign exchange control tax in Ecuador (see Protocol, item 3).

    The 0% rate applies if the interest is paid to any financial institution resident in China, or to the government, a political subdivision or a local authority, the China Central Bank or any institution wholly owned by the government of China or on loans guaranteed or insured by any of the aforementioned governmental bodies of China, in relation to exportation or investment financing programmes.
15. The 8% reduced rate applies if the royalty payment from Ecuador to China is subject to foreign exchange control tax in Ecuador (see Protocol, item 3).
16. A 25% withholding tax applies on 40% of dividends distributed, giving an ETR (effective tax rate) of 10% on the gross amount. However, if the dividend-paying company did not disclose the complete chain of its shareholders up to the ultimate beneficial owner, a 35% withholding tax applies on 40% of dividends distributed, giving an ETR of 14%.

    In case dividends are paid to non-resident entities whose ultimate beneficial owner is an Ecuador resident individual, progressive rates from 0% to 25% apply.
17. A 25% withholding tax applies on 40% of dividends distributed, giving an ETR (effective tax rate) of 10% on the gross amount. However, if the dividend-paying company did not disclose the complete chain of its shareholders up to the ultimate beneficial owner, a 35% withholding tax applies on 40% of dividends distributed, giving an ETR of 14%.
18. Ecuador-sourced income derived by non-residents without a permanent establishment (PE) in Ecuador is generally subject to a final 25% withholding tax rate on the gross amount. However, if the income is derived by residents in tax havens or zero/low-tax jurisdictions, the income is subject to a 35% withholding tax rate on the gross amount.

E

# EGYPT

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Cairo | Hany Rashed | +20 2 2354 7340<br>rashed@pkf.com.eg |

## BASIC FACTS

| | |
|---|---|
| Full name: | Arab Republic of Egypt |
| Capital: | Cairo |
| Main languages: | Arabic |
| Population: | 105.97 million (2022 estimate) |
| Monetary unit: | Egyptian Pound (EGP) |
| Internet domain: | .eg |
| Int. dialling code: | +20 |

## KEY TAX POINTS

- Egyptian resident companies are taxable on their worldwide income, except for profits derived from permanent establishments abroad. Non-residents are only taxed on Egyptian-sourced income.
- Dividends paid to residents and non-residents are not subject to withholding tax. Companies and individuals are not taxed on dividends received from resident companies but are taxed on dividends and other payments from non-residents.
- A credit system is available for relief of double taxation on foreign source income. The credit is subject to a maximum of the Egyptian tax paid on the overseas income concerned.
- There are provisions which limit the tax deductibility of interest based on the rate of interest charged and the debt to equity ratio of the company concerned.
- Transfer pricing rules are based on at arm’s length principles. An advance pricing arrangement is available.
- Domestic tax law provides for a 20% withholding tax applicable to the payment of interest and royalties to non-residents. Double tax treaties with various countries reduce the rate of withholding tax to be applied.
- General sales tax is payable on the supply of goods and services and imports. The standard rate of tax is 10% although rates vary from 0% to 30%.
- Resident individuals are subject to income tax on their worldwide income whereas non-residents are taxed on Egyptian-sourced income.

## A. TAXES PAYABLE

## CORPORATE INCOME AND GAINS TAX

Egyptian corporations are subject to corporate profits tax on their profits derived from Egypt, as well as on profits derived from abroad, unless the foreign activities are performed through a permanent establishment located abroad. Foreign companies resident in Egypt are subject to tax only on their profits derived from Egypt. Oil prospecting and production companies are subject to tax on their profits at a rate of 40.55%. The Suez Canal Company, Egyptian General Petroleum Company (EGPC) and Central Bank of Egypt are subject to tax on their profits at a rate of 40%.

## ADMINISTRATION

Companies must file their annual tax returns, together with all supporting schedules and the original financial statements, before 1st May each year or four months from the financial year-end. The tax return should be signed by the taxpayer. Taxpayers can file a request to extend the due date of filing of the tax return provided they pay an estimated amount of tax. The request must be filed at least 15 days before the due date and the estimated tax due must also be paid before the due date. The extended period can be up to 60 days. An amended tax return can be filed within 30 days from the due date. Any tax due must be paid when the tax return is filed. A late penalty is applied at the rate of 2% plus the credit and discount rate issued by the Central Bank of Egypt as of January each year.

The law has set up appeals committees at two levels - the Internal Committee and the Appeal Committee. The Appeal Committee's decision is final and binding on the taxpayer and on the tax department unless a case is appealed by either of them to the court within 30 days of receiving the decision, which is usually in the form of an assessment.



## DIVIDENDS

Dividends distributed by an Egyptian company are not subject to withholding tax because they are paid out of corporate profits that are taxed under the normal rules. Dividends received by residents from foreign sources are not taxed in Egypt. Interest on bonds listed on the Egyptian stock exchange is exempt from tax subject to certain conditions. Certain exemptions may be provided in some cases.

## CORPORATE TAX RATES

| Nature of Tax | Rate |
|---|---|
| Corporate income tax | 22.5% |
| Capital gains tax | 22.5% |
| Branch tax | 22.5% |
| Withholding tax: | |
| Dividends | 5% - 10%* |
| Interest | 20%** |
| Royalties from patents, know-how, etc. | 20%** |
| Certain services provided from non-resident entities | 20%** |
| Branch remittance tax | 0% |
| Net operating losses (years) | |
| • Carry back | 3 years |
| • Losses incurred in long-term projects can be carried back within the same project without limitation | |
| • Carry forward | 5 years |

NOTES:

* Dividends are subject to tax at a rate of 5% provided that:

1. The acquisition percentage is 25% or more; and,
2. The acquisition period is 2 years

If not the dividends will subject to tax 10%

** Final tax imposed on gross payments. The rate may be reduced under a double tax treaty.

## TAKAFUL CONTRIBUTION 2.5%

- Law No. 2 of 2018, applicable as from 12 July 2018, was issued on the comprehensive health insurance law;
- Unincorporated businesses and companies of whatever nature or legal form are subject to a 25 per mille levy on their total revenues;

## OTHER TAXES

The table below summarises other significant taxes.

| Nature of Tax | Rate |
|---|---|
| General VAT | 14% as from 1 July 2017 |
| • Customs Duties: | |
| • General, ad valorem | Various |
| On value of machinery needed for investments by companies | 5% |
| Stamp duties on bills, promissory notes and letters of guarantee as well as most types of documents, contracts, checks and receipts (shares and bonds listed on the Egyptian Stock Exchange are exempt) | Various |

The amounts paid become credits available for income tax purposes at the end of the period.

## SOCIAL INSURANCE

- The employee contribution percentage is 11% of the total social insurance salary while the employer contribution percentage is set at 18.75%;
- The social security contributions are subject to a contribution base minimum amount of EGP 1,400 and a maximum of EGP 9,400 per month for 2022. These thresholds are increased by 15% on 1 January of each year for a seven-year period, as from 1 January 2020.

| Year | Minimum amount (EGP) | Maximum amount |
|---|---|---|
| 2020 | 1,000 | 7,000 |
| 2021 | 1,200 | 8,100 |
| 2022 | 1,400 | 9,400 |
| 2023 | 1,700 | 10,900 |
| 2024 | 2,000 | 12,600 |
| 2025 | 2,300 | 14,500 |
| 2026 | 2,700 | 16,700 |
| 2027 | 3,200 | 19,300 |



## B. DETERMINATION OF TAXABLE INCOME

Corporate income tax is based on taxable profits computed in accordance with generally accepted accounting and commercial principles, modified for tax purposes by certain statutory provisions primarily concerning depreciation, provisions, inventory valuation, inter-company transactions and expenses. Start-up and formation expenses may be capitalised and amortised in the first year.

The deductibility of a branch's share of head office overhead expenses is limited to approximately 7% of general expenses. Head office expenses other than overhead and general administration expenses are subject to negotiation with the tax authorities. They are fully deductible if they are directly incurred by the branch and are necessary for the performance of the branch's activity in Egypt. Such expenses must be supported by original documents and approved by the head office auditors.

### DEBIT INTEREST

Debit interest of loans/overdraft used in the company's activity is a deductible item after offsetting the interest income. Interest expense paid to individuals who are not subject to tax or exempted from tax is not deductible. Interest expense is limited to the interest rate which will not exceed twice the discount rate determined by the central bank of Egypt.

### DEBT-TO-EQUITY RULES

The tax law has determined the maximum debt to equity ratio to be 4:1. In the event the debt exceeds such ratio, the excess interest is not considered by the Tax Authority to be a deductible expense.

### INVENTORIES

Inventories are normally valued for tax purposes at the lower cost or market value. Cost is defined as purchase price plus direct and indirect production costs. Inventory reserves are not permissible deductions for tax purposes. For accounting purposes, companies may elect to use any acceptable method of inventory valuation such as first-in, first-out (FIFO) or average cost. The method should be applied consistently and the reasons for such change should be stated if the method is changed.

### PROVISIONS

Provisions are not considered as deductible costs except for the following:

- 80% of loan provisions made by banks (required by the Central Bank of Egypt);
- Insurance companies' provisions determined by Law No. 10 of 1981.

### BAD DEBTS

Bad debts are a deductible cost if the company provides a report from an external auditor certifying the following:

- The company is maintaining regular accounting records;
- The debt is related to the company's activity;
- The debt appears in the company's records; and,
- The company has taken the necessary actions to collect the debt.

### DEPRECIATION AND AMORTISATION ALLOWANCES

Depreciation is deductible for tax purposes and may be calculated using either the straight-line or declining-balance method. Depreciation rates are as follows:

| Type of Asset | Rate | Method of Depreciation |
|---|---|---|
| Buildings | 5% | Straight-line |
| Intangible assets | 10% | Straight-line |
| Computers | 50% | Declining-balance |
| Heavy machinery and equipment | 25% | Declining-balance |
| Small machinery and equipment | 25% | Declining-balance |
| Vehicles | 25% | Declining-balance |
| Furniture | 25% | Declining-balance |
| Other tangible assets | 25% | Declining-balance |

Accelerated depreciation is allowable only once at a rate of 30% on new machines and equipment in the year they are placed into service. Normal depreciation is calculated after considering the accelerated 30% depreciation on the net value of new assets, provided that proper books of account are maintained.

Tax losses may be carried forward for five years. Losses incurred in long-term projects can be also carried back within the same project.

## REAL ESTATE TAX

Law No. 196 of 2008 was introduced and applied with effect from 1 January 2009. Tax rate: 10% of the annual rental value after excluding the following assumed maintenance expenses:

- 30% of the rental value for properties used for living accommodation;
- 32% of the rental for properties used for other purposes.

On 7 May 2020, Law No.23 for the year 2020 was issued amending the provisions of the 2008 Law as follows: exemption of real estate used in production and service activities determined by the Council of Ministers from tax on built real estate provided that the decision includes the percentage and duration of the exemption for each production or service activity.



## C. FOREIGN TAX RELIEF

Foreign tax paid by a resident entity outside Egypt can be deducted provided there is supporting documentation. Losses generated outside Egypt cannot be offset against the taxable amount in Egypt. Double tax treaties concluded between Egypt and other countries regulate the credit for taxes paid abroad on income subject to corporate income tax in Egypt.

## D. CORPORATE GROUPS

Associated or related companies in a group are taxed separately for corporate income tax purposes. Egyptian law does not contain a concept of group assessment under which group losses may be offset against profits within a group of companies.

## E. RELATED PARTY TRANSACTIONS

Egyptian tax law contains provisions for transfer pricing. The transfer pricing provisions are based on the at arm's-length principle. Under these provisions, the tax authorities may adjust the income of an enterprise if its taxable income in Egypt is reduced as a result of contractual provisions that differ from those that would be agreed to by unrelated parties.

However, it is now possible to enter into arrangements with the tax department to agree on a transfer pricing policy in advance (Advance Pricing Arrangement). This provides assurance that transfer prices will not be challenged after the tax return is submitted, with the consequent exposure to penalties and interest on late paid taxes.

### Country-by-Country (CbC) reporting

According to the Egyptian TP Guidelines 2018:

- Egyptian parent companies of an MNE group, with an annual consolidated group revenue of equal to or exceeding EGP 3 billion (approximately EUR 168 million), will be required to prepare and file a CbC report with the tax authority; and
- Egyptian subsidiaries of foreign-parented MNE groups, with an annual consolidated group revenue of EUR 750 million, will be subject to the OECD threshold of EUR 750 million, and required to file a CbC report with the jurisdiction in which the ultimate parent entity is resident.

### Submitting a Master and Local File

Any taxpayer who carried out business transactions with related parties should file a Master File and Local File if the value of related-party transactions is EGP 8 million or greater. Furthermore, there is a separate section in the tax return about transactions with related parties. The Master File should be prepared at the ultimate parent level of the group and should be made available to the tax authority by the taxpayer in due course.

### Penalties

- Penalty for transfer pricing non-compliance, including 2% of the value of the related party transactions, if a taxpayer fails to submit the CbC report or CbC notification (fails to submit, non-timely filing, incomplete or incorrect filing);
- Penalty for transfer pricing non-compliance, including 3% of the value of the related party transactions, if a taxpayer fails to submit the Local File or Master File (fails to submit, non-timely filing, incomplete or incorrect filing, not having the Master or Local File available);

## F. WITHHOLDING TAX

No withholding tax is levied on dividends distributed by resident companies, regardless of the residence status of the recipient. Interest derived by non-resident legal persons is subject to a final withholding tax at the rate of 20% on the gross amount, unless a lower treaty rate applies. Royalties derived by non-resident legal persons are subject to a final withholding tax at the rate of 20% on the gross amount, unless a lower treaty rate applies.

## G. EXCHANGE CONTROL

Egypt has a free market exchange system. Exchange rates are determined by supply and demand without interference from the central bank or the Ministry of the Economy.

## H. PERSONAL TAX

Income tax is imposed on the worldwide income of Egyptian residents. Non-residents are subject to tax on income earned or realised in Egypt. An individual is deemed to be a resident of Egypt if:

- The individual is present in Egypt for more than 183 days in a fiscal year;
- The individual's principal place of residence is Egypt. Article 2 of the Executive Regulations states that an individual is considered to have a permanent residence in Egypt if:
  a) The taxpayer stays in Egypt for the majority of the year, either in his own property, in a rented property or in any other place;
  b) The taxpayer has a local commercial presence, professional office, industrial site or any other place where he carries on his activities in Egypt;

c) The individual is an employee who performs his duties abroad and receives a salary from an Egyptian public or private source.

Income tax is assessed each year on the aggregate of the net amounts from each category of income realised during the preceding year. There are four recognised categories of income, namely:

1) Employment income;
2) Business income (which includes income from commercial and industrial activities);
3) Non-commercial income;
4) Income from real estate assets.

**Note:** there is a personal allowance equal to EGP 9,000 per annum.

Graduated rates apply with effect from 1 July 2020 to the aggregate of the six categories of income, as follows:

| **Annual net income (EGP)** | | | | | | |
|---|---|---|---|---|---|---|
| **Less than 600,000** | **600,000 – 700,000** | **700,000 – 800,000** | **800,000 – 900,000** | **900,000 – 1,000,000** | **Over 1,000,000** | **Income tax rate (%)** |
| 1 – 15,000 | | | | | | 0 |
| 15,001 – 30,000 | 1 – 30,000 | | | | | 2.5 |
| 30,001 – 45,000 | 30,001 – 45,000 | 1 – 45,000 | | | | 10 |
| 45,001 – 60,000 | 45,001 – 60,000 | 45,001 – 60,000 | 1 – 60,000 | | | 15 |
| 60,001 – 200,000 | 60,001 – 200,000 | 60,001 – 200,000 | 60,001 – 200,000 | 1 – 200,000 | | 20 |
| 200,001 – 400,000 | 200,001 – 400,000 | 200,001 – 400,000 | 200,001 – 400,000 | 200,001 – 400,000 | 1 – 400,000 | 22.5 |
| Over 400,000 | Over 400,000 | Over 400,000 | Over 400,000 | Over 400,000 | Over 400,000 | 25 |

Individuals are not subject to tax on capital gains except in the case of the disposal of real estate or building sites within the boundaries of Egyptian cities. Such gains are not subject to income tax but are taxed at the rate of 2.5% on the value of the property.

## I. TREATY WITHHOLDING TAX RATES

Dividends paid to non-residents are not subject to withholding tax under Egyptian domestic law. Consequently, the following table sets forth maximum withholding rates provided in Egypt's tax treaties for interest and royalties only.

| | **Interest (%)** | **Royalties (%)** |
|---|---|---|
| Non-treaty countries | 20 | 20 |
| **Treaty countries:** | | |
| Albania | 10 | 10 |
| Algeria | 5 | 10 |
| Austria | 15 | 0 |
| Bahrain | –[1] | –[1] |
| Belarus | 10 | 15 |
| Belgium | 15 | 15/20 |
| Bulgaria | 12.5 | 12.5 |
| Canada | 15 | 15 |
| China | 10 | 8 |
| Cyprus | 15 | 10 |
| Czech Republic | 0 | 10 |
| Denmark | 15 | 20 |
| Finland[2] | | |
| • From Finland | 0 | 20 |
| • From Egypt | 20 | 20 |
| France | 20 | 15/20[3] |
| Germany | 15 | 15/20[3] |
| Georgia | 10 | 10 |
| Greece | 15 | 15 |
| Hungary | 15 | 15 |
| India | 20 | –[1] |
| Indonesia | 15 | 15 |
| Iraq: | | |
| • From Iraq | 10 | 15 |

| | Interest (%) | Royalties (%) |
|---|---|---|
| • From Egypt | 20 | 15 |
| Ireland | 10 | 10 |
| Italy | 20 | 15 |
| Japan | 20 | 15 |
| Jordan | 15 | 20 |
| Korea (South) | 10/15 | 15 |
| Kuwait | 10 | 10 |
| Lebanon | 10 | 5 |
| Libya | 20 | 20 |
| Malaysia | 15 | 15 |
| Malta | 10 | 12 |
| Mauritius | 10 | 12 |
| Montenegro | 15 | 15 |
| Morocco | 20 | 10 |
| Netherlands | 12 | 12 |
| Norway: | | |
| • From Norway | 0 | 0 |
| • From Egypt | 20 | 15 |
| Pakistan | 15 | 15 |
| Palestine | 15 | 15 |
| Poland | 12 | 12 |
| Romania | 15 | 15 |
| Russia | 15 | 15 |
| Saudi Arabia | 10 | 10 |
| Serbia | 15 | 15 |
| Singapore | 15 | 15 |
| South Africa | 12 | 15 |
| Spain | 10 | 12 |
| Sudan | 20 | 10/3[4] |
| Sweden | 15 | 14 |
| Switzerland | 15 | 12.5 |
| Syria | 15 | 20 |
| Tunisia | 10 | 15 |
| Turkey | 10 | 10 |
| Ukraine | 12 | 12 |
| United Arab Emirates | 10 | 10 |
| United Kingdom | 15 | 15 |
| United States | 15 | 15 |
| Yemen | 10 | 10 |
| Yugoslavia[5] | 15 | 15 |

NOTES:
1. According to domestic law in each country.
2. A final draft of a new tax treaty with Finland was initiated on 17 September 1997, but the new treaty has not yet been ratified.
3. The higher rate applies to trademarks.
4. Films, otherwise 10%.
5. The treaty with Yugoslavia applies to the republics that formerly comprised Yugoslavia.

## EL SALVADOR

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| San Salvador | Horacio A. Castellanos Chacón | +503 2273 2555<br>ha.castellanos@pkfelsalvador.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of El Salvador |
| Capital: | San Salvador |
| Main languages: | Spanish |
| Population: | 6.54 million (2022 estimate) |
| Monetary unit: | US Dollar (USD) |
| Internet domain: | .sv |
| Int. dialling code: | +503 |



## A. TAXES PAYABLE

### COMPANY INCOME TAX

El Salvador's income tax law affects annual revenue from business activities conducted in El Salvador when any of the causes of such revenue occur within the national territory. Income Tax - A tax rate of 25% is applied to the net profit of companies whose taxable income does not exceed USD 150,000. For all others it is 30%.

A corporation is required to prepay its estimated tax liability on a monthly basis of 1.75% of gross revenue. This is deducted as a credit in the annual income tax return. Corporate tax returns are due by the end of the fourth month following the end of the fiscal year. An extension of six months may be granted if requested for the payment only. The tax year of companies corresponds to the calendar year.

### CAPITAL GAINS TAX

The tax involved is a 10% income tax on the net profit of the transaction. Net profit is calculated by deducting the cost of the property plus any related expenses from the sales price. Income from the sale of securities is taxable as follows: the buyer will withhold 10% of the profit and remit it to the Tax Department.

### BRANCH PROFITS TAX

Branches of foreign companies are subject to the same tax rates as Salvadoran companies. There is no branch remittance tax in El Salvador.

### SALES TAX/VALUE ADDED TAX (VAT)

Services and goods are subject to 13% VAT. The following items are exempt from VAT: public health, home rentals, education, state titles, public water, public transportation, pension funds and public lottery.

### AD VALOREM/ SPECIFIC TAXES

Two taxes are paid for alcoholic beverages:

- Ad Valorem taxes at a 5% tax rate;
- A specific tax on the alcoholic grade per litre ranging from 0.04 to 0.16 cents.

For cigarettes a specific tax of USD 0.0225 is levied per cigarette.

### TAX ON FINANCIAL TRANSFERS

1) **TAX ON CHECKS**

   Check payments over USD 1,000 are subject to 0.25% on the operation base. This tax is non-refundable and the bank will charge it to the company bank account.

2) **TAX ON LIQUIDITY CONTROL**

   A tax of 0.25% will be paid on cash payments and deposits, if the accumulated sum is more than USD 5,000 per month. This tax is a credit against any future payment of VAT, Income Tax, or Ad valorem Tax. The bank will charge it to the company bank account.

### LOCAL TAXES

El Salvador's income tax law affects the whole national territory equally.

### OTHER TAXES

Other taxes that are applicable in their various manifestations include:

### MUNICIPAL OFFICE TAXES

Taxes are paid according to a table and total assets. There are different tables for every city in El Salvador. In San Salvador, the table varies depending on whether the company is industrial, commercial or other.

### NATIONAL REGISTRATION TAX

All industrial or commercial businesses are required to have an annual license to operate. This tax is paid according to the total assets and according to the following rates:

- From USD 2,000.00 to USD 57,150.00 a tax of USD 91.43 is levied;
- From USD 57,151.00 to USD 114,286.00 a tax of USD137.14 is levied;
- From USD114,287.00 to USD 228,572.00 a tax of USD 228.57 is levied.

If the asset is worth more than USD 228,572.00 then USD 11.43 will be added to every USD 100,000 in assets or fraction thereof, up to a limit of USD 11,428.57.

## SOCIAL SECURITY TAX

These are payments that are made monthly by employers and employees on the payroll of companies for the purpose of guaranteeing the functioning of the employee's social security system benefits at the national level. The table is as follows:

- Company 7.50% of salary;
- Employee 3.00% of salary.

Maximum salary of USD 1,000 per employee. Social Security has a special education tax called INSAFORP which is 1% of the total amount that the company pays (this applies to companies with more than 10 employees).



## PENSION TAX

These are payments that are made monthly by employers and employees on the payroll of companies for the purpose of guaranteeing the functioning of the employee's pension system and retirement benefits at the national level. The table is as follows:

- Company 7.75% of salary;
- Employee 7.25% of salary.

Maximum salary of USD 6,500.00 per employee.

## B. DETERMINATION OF TAXABLE INCOME

The net taxable income of a corporation or partnership is determined by subtracting all allowable deductions from gross taxable income. Generally, expenditures and/or losses are deductible provided they are incurred in gaining or producing taxable income, or preserving the source of income. Special rules apply in respect of certain expenditures.

## DEPRECIATION

Depreciation is normally calculated by the straight-line method over the estimated useful life of the asset.

## STOCKS / INVENTORY

The Income Tax regulations only allow the use average-cost method according to the normal course of operations. No other method is allowed.

## DIVIDENDS

Dividends are subject to 5% income tax. If the stockholder is located in a country with low or zero taxation (tax havens), the dividends will be subject to 25% income tax. Dividends for profits earned before 2011 are exempt. A decrease in stockholder´s equity is subject to 5% income tax, if the equity originated from capitalisation of profits.

## INTEREST INCOME

Banks will withhold 10% income tax on interest income. Loans given by local companies to its stockholders, related parties, headquarters, or residents/companies located in tax havens are subject to a 5% withholding tax.

## INTEREST EXPENSE

If a loan is made to a Salvadoran company by a foreign bank that was registered by the Central Bank of El Salvador before 2009, the interest expense is exempt from withholding tax. If the foreign bank is registered by the Central Bank from 2010 onwards, a 10% withholding tax will apply. If the loan is made by a foreign company or a bank that is not registered by the Central Bank, withholding tax will be applied at a rate of 20%.

## LOSSES

Losses incurred in any given year can be taken as a valid deduction only for the current year. There is no carry forward or carry back of losses.

## SOURCE OF THE INCOME

Foreign-sourced income is not subject to income tax. Only income earned on the territory of El Salvador is subject to El Salvador income tax. Interest income and gains on market values are the exception. Foreign-sourced income is not subject to VAT. Income received by persons or companies domiciled outside El Salvador will be considered as being from an El Salvadoran source if it arises from services or actions that benefit persons or companies located in El Salvador, including fees, interests and royalties.

## INCENTIVES

The following incentives are available to certain qualifying industries and corporations:

- Companies operating in Free Zones or under the Law of International Services are tax-exempt on profit derived from sales to foreign countries, for a period of 15 years after the companies have been approved by the Ministry of Economy.
- 15 year tax holiday; from 15 to 25 years, 12% income tax; from 25 years onwards, 18% income tax.
- The 5% payment on dividends will become effective after 12 years.
- Dividends paid to stockholders of companies located in Free Zones will be subject to 5% after 12 years.

## C. RELATED PARTY TRANSACTIONS

Transfer Pricing (TP) policies are applicable in El Salvador. If the Company does not have a TP Study, the government is entitled to determine differences between related party transactions and a transaction done by independent parties. If a difference is detected, this would not be deductible for income tax purposes and a 25% or 30% tax would be levied on the difference.

## D. WITHHOLDING TAX

Services (not in payroll) and fees paid to local individuals are subject to a 10% withholding tax. Services and fees paid to foreign corporations or non-resident individuals for work done in El Salvador are subject to a 20% withholding tax rate. Interest, commissions, royalties or technical assistance fees paid to foreign recipients are subject to a 20% withholding tax. International transportation services are subject to 5% withholding tax. Purchases of intangible assets are subject to 20% withholding tax.

Any payment done to non-resident individuals or non-resident companies located in tax havens is subject to a 25% withholding tax. A list of tax havens may be consulted on the Ministry of Finance web page: www.mh.gob.sv

## E. PERSONAL TAX

a) The monthly withholding tax rates set out below are applicable to any individual included in payroll for permanent service:

**Taxable Monthly Income (in USD)**

| From: | To: | Withholding tax |
|---|---|---|
| 0.01 | 472.00 | No withholding tax/exempt |
| 472.01 | 895.24 | USD 17.67 plus 10% in excess of USD 472 |
| 895.25 | 2038.10 | USD 60 plus 20% in excess of USD 895.24 |
| 2,038.11 | In excess of | USD 288.57 plus 30% in excess of 2,038.10 |

b) The annual income tax rates set out below are applicable to any individual included in payroll for permanent service (in USD):

| From: | To: | Withholding tax |
|---|---|---|
| 0.01 | 4,064.00 | Exempt |
| 4,064.01 | 9,142.86 | USD 212.12 plus 10% in excess of USD 4,064.00 |
| 9,142.87 | 22,857.14 | USD 720.00 plus 20% in excess of USD 9,142.86 |
| 22,857.15 | In excess of | USD 3,462.86 plus 30% in excess of USD 22,857.14 |

## F. TREATY AND NON-TREATY WITHHOLDING TAX RATES

El Salvador has a Free Commerce Treaty with the USA, Chile, Mexico and the Dominican Republic. There is a double tax treaty with Spain.

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Non-treaty countries** | | | | |
| Companies | 0/5/25[1] | 0/3/25[1] | 0/10/20/25[1] | 5/20/25[1] |
| Individuals | 0/5/25[1] | -- | 20/25[1] | 5/20/25[1] |
| **Treaty countries** | | | | |
| Spain | 12 | 0[2] | 0/10 | 10 |

Notes:

1. The 25% rate applies to payments made to residents of countries considered to be tax havens or territories with a preferential tax regime.
2. With respect to a minimum 50% participation in capital.

# ESTONIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Tallinn | Rein Ruusalu | +372 66 30 829<br>rein.ruusalu@pkf.ee |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Estonia |
| Capital: | Tallinn |
| Main languages: | Estonian, English, Russian |
| Population: | 1.33 million (2022 estimate) |
| Monetary unit: | Euro (EUR) |
| Internet domain: | .ee |
| Int. dialling code: | +372 |

## KEY TAX POINTS

- Estonian resident companies do not pay tax on their profits until they are distributed to shareholders. The taxable period is the calendar month.
- There is no separate capital gains tax. Gains derived by resident companies or branches of foreign companies are exempt until a distribution is made.
- Value added tax applies to most goods and services.
- Local taxes are imposed by only a few municipalities.
- Foreign tax is mostly relieved by exemption by virtue of the provisions of the double tax treaties with most overseas jurisdictions.
- Withholding taxes apply only to certain royalties and in special cases (fees to artists and sportsmen from Estonian source).
- Income tax applies to individuals at a single, flat rate.



## A. TAXES PAYABLE

### COMPANY TAX

Estonian resident companies are liable for corporate income tax on their worldwide income. Corporate income tax is not levied when the company makes profits but when those profits are distributed to the company's shareholders. The standard rate is 20% on the gross profits distributed or 20/80 (i.e. 25%) on the net amount of the dividend distributed to the shareholders. Although the tax applies like a withholding tax on the recipient of the dividend it is, strictly speaking, a tax on the company. The taxable period is the calendar month.

As from 2019, dividends distributed at an amount lower than or equal to the amount of the average of distributed dividends (i.e. excluding distributions of tax-exempt dividends, liquidation proceeds, capital reductions and permanent establishments income) in the previous 3 years, on which income tax has been paid by the resident taxpayer, are taxed at the rate of 14% of the distribution tax (the tax rate on the net amount being 14/86 instead of the regular 20/80). According to the transitional rules, one third of taxed profits of 2018 and one third of taxed profits of 2018 and 2019 may be distributed at the lower rate in 2019 and 2020, respectively.

If dividends are paid to resident or non-resident individuals and the distributing company has paid the distribution tax at the lower 14% rate, the individual recipient is subject to an additional withholding tax of 7%. A lower withholding rate may apply under an applicable tax treaty. Withholding tax will not apply if the recipient of the dividends is a company.

### CAPITAL GAINS TAX

There is no separate capital gains tax in Estonia. Gains derived by resident companies or branches of foreign companies are exempt until a distribution is made.

### BRANCH PROFITS TAX

There is no specific branch profits tax in Estonia. Branches of foreign companies are taxed under the same principles as resident companies, i.e. taxed on the distribution of profits at a rate of 20%.

### VALUE ADDED TAX (VAT)

The supply of most goods and services is subject to VAT. Some goods and services are exempt from VAT. The standard VAT rate is 20%. A lower rate of 9% applies to certain items such as books, medicinal products etc. Exports from Estonia are zero rated.

### FRINGE BENEFITS TAX

Fringe benefits are taxed as income. With effect from 1 January 2008, 20% income tax is levied on the gross value of the benefit plus 33% social security contribution.

### LOCAL TAXES

The local government has the right to impose local taxes but presently only a few municipalities do so.

## B. DETERMINATION OF TAXABLE INCOME

As the income of Estonian-resident companies is exempt from tax, there is no requirement for determining trading income for tax purposes. Tax is levied on the payment of dividends and distributions of profit in other forms such as fringe benefits, gifts and other non-business related payments.

## C. FOREIGN TAX RELIEF

Under Estonia's double tax treaties, foreign tax is mostly relieved by exemption.

## D. CORPORATE GROUPS

Corporations are taxed separately in Estonia. There is no concept of consolidated tax returns.

## E. RELATED PARTY TRANSACTIONS

Related party transactions may be adjusted for tax purposes if the transactions are not at arm's length.

## F. WITHHOLDING TAX

Withholding taxes apply only to certain royalties (see table below) and in special cases (fees to artists and sportsmen from Estonian source).

## G. EXCHANGE CONTROL

There are no exchange controls in Estonia.

## H. PERSONAL TAX

The income tax depends on the person's annual income. The annual income is tax-free up to an amount of EUR 6,000. From a gross annual income of EUR 14,400, the tax-free income will start to decrease until it reaches zero at a gross annual income of EUR 25,200. The income tax rate of 20% applies to income over the annual tax-free threshold of EUR 6,000.

Employers are obliged to withhold income tax from employees' salaries. In addition, the following social security rates apply:

- Social security tax of 33% of gross salary;
- Unemployment insurance:
  - o Employer 0.8% of gross salary;
  - o Employee 1.6% of gross salary.

Dividends received from resident companies and interest received from EU credit institutions are tax free.



## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

There is no withholding tax on dividends nor on interest in Estonia.

| | Royalties[1] (%) | Royalties[2] (%) |
|---|---|---|
| Non-treaty countries | 10 | 10 |
| **Treaty countries:** | | |
| Albania | 5 | 5 |
| Armenia | 10 | 10 |
| Austria | 5 | 10 |
| Azerbaijan | 10 | 10 |
| Bahrain | 0 | 0 |
| Belarus | 10 | 10 |
| Belgium | 10 | 0 |
| Bulgaria | 5 | 5 |
| Canada | 10 | 0 |
| China | 10 | 10 |
| Croatia | 10 | 10 |
| Cyprus | 0 | 0 |
| Czech Republic | 10 | 10 |
| Denmark | 10 | 0 |
| Finland | 10 | 0 |
| France | 10 | 0 |
| Georgia | 0 | 0 |
| Germany | 5 | 10 |
| Greece | 5 | 10 |
| Guernsey | 5 | 5 |
| Hong Kong | 5 | 5 |
| Hungary | 10 | 0 |
| Iceland | 10 | 0 |
| India | 10 | 10 |
| Ireland | 10 | 0 |
| Isle of Man | 0 | 0 |
| Israel | 0 | 0 |
| Italy | 10 | 0 |
| Japan | 10 | 5 |
| Jersey | 0 | 0 |
| Kazakhstan | 15 | 15 |
| Korea | 5 | 10 |
| Kyrgyzstan | 10 | 5 |
| Latvia | 5 | 10 |
| Lithuania | 10 | 10 |
| Luxembourg | 10 | 0 |

| | Royalties[1] (%) | Royalties[2] (%) |
|---|---|---|
| Malta | 10 | 10 |
| Mauritius[4] | 0[3] | 5 |
| Mexico | 10 | 10 |
| Moldova | 10 | 10 |
| Netherlands | 10 | 0 |
| North Macedonia | 5 | 5 |
| Norway | 10 | 0 |
| Poland | 10 | 10 |
| Portugal | 10 | 10 |
| Romania | 10 | 10 |
| Serbia | 5 | 10 |
| Singapore | 7.5 | 7.5 |
| Slovak Republic | 10 | 10 |
| Slovenia | 10 | 10 |
| Spain | 10 | 0 |
| Sweden | 10 | 0 |
| Switzerland | 10 | 0 |
| Thailand | 8 | 10 |
| Turkey | 5 | 10 |
| Turkmenistan | 10 | 10 |
| Ukraine | 10 | 10 |
| United Arab Emirates | 0 | 0 |
| United Kingdom | 10 | 0 |
| United States | 5 | 10 |
| Uzbekistan | 10 | 10 |
| Vietnam | 10 | 7.5 |

NOTES:

1. Rate applicable to royalties for equipment rental.
2. Other royalties.
3. 0% if the beneficial owner is a company. 5% in all other cases.
4. Effective date: 1 January 2022.

## ESWATINI

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Ezulwini | Charmain Young | +268 2417 1008<br>charmain@pkf.co.sz |

### BASIC FACTS

| | |
|---|---|
| Full name: | Kingdom of Eswatini |
| Capital: | Mbabane |
| Main languages: | English and Siswati |
| Population: | 1.18 million (2022 estimate) |
| Monetary unit: | Swazi lilangeni (SZL) |
| Internet domain: | .sz |
| Int. dialling code: | +268 |

## KEY TAX POINTS

- Company income tax in Eswatini is a 27.5% flat rate on the taxable profit as adjusted for income tax purposes.
- Resident and non-resident companies are subject to income tax on income accrued or derived from Eswatini. Different rates apply to resident and non-resident companies.
- Currently there is no tax is payable on capital gains.
- VAT Act no. 12 of 2011 was introduced in Eswatini on 1 April 2012. VAT is chargeable on imports and the supply of goods and services in Eswatini. It is imposed at 14% on most goods and services supplied by a vendor. Certain goods and all exports are zero rated. Exempt supplies are provided for in the first schedule and zero rated supplies are provided for in the second schedule of the said VAT Act.
- There is no wealth tax, real estate tax or inheritance tax, sales tax or gift tax in Eswatini.
- Relief for double taxation is provided by means of a credit for overseas tax suffered on overseas income.
- Eswatini has entered into a limited number of double tax treaties with certain countries, including South Africa, the United Kingdom, Taiwan and Mauritius.



## A. TAXES PAYABLE

### COMPANY TAX

The income tax system is source-based, i.e. income from a source within or deemed to be within Eswatini will be subject to taxation. Taxes are paid in two instalments in advance based on a provisional assessment, which should be at least 90% of the prior year tax charge. The tax year is the year ending 30th June. The Eswatini Revenue Authority (SRA) has implemented an electronic system for filing and paying taxes which benefits both the tax authorities and the taxpayer. E-tax is an electronic platform through which taxpayers may submit returns as well as access tax information and forms online. This platform is a live feed into the SRA Revenue Management System (RMS) and was rolled out in 2014.

With effect from 1 July 2013, the standard corporate income tax rate is 27.5%. A reduced corporate income tax rate is applicable for certain qualifying businesses.

The estimate of taxable income may not be less than the taxable income assessed for the preceding year of assessment (where an assessment has been issued not less than twenty one (21) days before the date such an estimate is made), unless the taxpayer can satisfy the Commissioner General that the taxable income for the current year will be less than that of the preceding year. Provisional tax payments are made as follows:

- **First payment:** This payment must be made within six months from the commencement of the year of assessment or approved financial year-end date. The estimate of taxable income may not be less than the taxable income assessed for the latest preceding year of assessment, unless the taxpayer can satisfy the Commissioner General that the taxable income for the current year will be less than that for such preceding year.
- **Second payment:** This payment must be made not later than the last day of the year of assessment or approved financial year end date. Where there has been an increase in the taxable income during the course of the current tax year, all taxpayers are obliged to make good for the difference realised when paying either the first or second provisional tax.
- **Third payment:** It must be paid on or before the due date of the income tax return. Interest at the rate of 18% per annum will be charged on any amount not paid by the date stated and in addition a penalty equal to 20% of such amount may be imposed.

### TRUSTS

(1) Every trustee who makes any payment from trust income to a beneficiary who has a vested right to such income shall withhold tax at the rate of thirty-three per cent of the gross amount.

(2) The tax withheld shall be on account of the liability to tax of such beneficiary on the income derived from the trust.

(3) Every trustee who has withheld any tax shall:

   (a) Within fifteen days from the date of payment remit to the Commissioner the amount of tax so withheld; and,

   (b) Furnish within thirty days after the end of the year of assessment to the beneficiary to whom the payment is made a certificate, showing the amount of the payment made and the tax withheld during the year of assessment.

(4) Every trustee making any payment shall maintain a record showing in relation to each year of assessment:

   (a) The payment made to each beneficiary; and,

   (b) The tax withheld from such payment, and such record shall be kept for the period specified for examination by the Commissioner as and when required.

(5) The deduction of tax shall not relieve a beneficiary from the obligation to furnish a return for the assessment of the tax or any return from any other obligation imposed by the Income Tax Order of 1975 Amended.

(6) A trustee who fails to withhold any tax or having withheld such tax fails to remit such tax to the Commissioner, as required shall, in addition to any penalty for which he may be liable, be personally liable to pay the Commissioner that amount of tax as if it were tax due and payable by such person under Part VII of the Income Tax Order of 1975 as Amended.

### BRANCH PROFITS TAX

Branches of non-resident Companies are subject to tax on Eswatini profits as if they were resident companies. In addition, branch profits tax of 15% is charged on the deemed repatriated income. Such branch profits tax being paid or payable to a company incorporated or registered as such in a neighbouring country (South Africa, Botswana, Lesotho, Mozambique and Namibia) and that it is neither a subsidiary nor a branch of a company incorporated or registered outside a neighbouring country, the rate of tax for which such first mentioned company shall be liable is 12.5%.

### SALES TAX / VALUE ADDED TAX

There is no sales tax in Eswatini. This was replaced by Value Added Tax (VAT) introduced in Eswatini in April 2012. It is administered by the VAT Act No.12 of 2011 as well as the VAT Regulations of 2012. VAT is tax that is charged on the consumption of goods and services in Eswatini and on the importation of goods and services into Eswatini.

**Standard rated supplies:**

These are taxable supplies that are neither exempt nor zero rated. VAT charged on standard rated supplies is 15%.

**Exempt supplies (first schedule of the VAT Act no. 12 of 2011)**

- These are goods and services that do not attract VAT at all;
- Suppliers of these goods and services cannot register for VAT purposes;
- Businesses dealing in exempt goods and services when purchasing taxable supplies have to pay VAT;
- They cannot claim the VAT they incurred from their purchases as input tax because they are not VAT registered.



**Zero-rated supplies (second schedule of the VAT Act no. 12 of 2011)**

- These are goods and services that attract VAT at 0%;
- Suppliers of these goods and services can register for VAT;
- Such businesses can claim the VAT they incurred from their purchases as input tax at the end of each tax period.

**VAT Declaration – Payment /VAT Return**

There are two applicable tax periods:

**Category A - One month tax period**

Businesses who make annual taxable supplies of E20 million and above, or, businesses approved to deferred import VAT.

**Category B – three month tax period**

Businesses that make annual taxable supplies of less than E20 million are required to submit returns at three months intervals (quarterly).The return must be accompanied by proof of payment when applicable.

## SEKULULA/VAT EASY

A Memorandum of Understanding for Processing and Administration of VAT Refunds System between Eswatini Revenue Authority and South African Revenue Services for Sekulula / VAT Easy was rolled out on 1 April 2015. This is a procedure for claiming VAT paid in South Africa to pay import VAT for imports into Eswatini. It covers goods bought from an entity registered for VAT in South Africa on which VAT was charged. The provisions for regulating matters relating to VAT is for the reduction of fiscal invasion.

**Qualifying Purchasers:**

- Companies – registered for business in Eswatini
- Individuals – residing in Eswatini

Qualifying purchasers will submit original tax invoices to SRA to claim and offset import VAT. SARS will refund VAT paid in South Africa on movable goods imported into Eswatini only to SRA. No other VAT administrator will operate in Eswatini. There is no possibility for companies/ persons to directly claim VAT refund from SARS.

**Benefits of the System:**

- No additional border clearance requirements - special simplifications for non-commercial declarations;
- To improve compliance in import declarations;
- Reduced incentive for non-declaration – import VAT settled through invoice instead of cash;
- To improve traders' cash-flow position –no extra cash to settle import VAT liability in Eswatini;
- To increase government revenue;
- Reduced administrative burden.

**Conditions for valid claims:**

- Declaration of imported goods;
- Import goods within 90 days from date of invoice;
- Valid tax invoice and required documents to be submitted to SRA;
- Passport number of the qualifying purchaser.

**Definition of a qualifying purchaser:**

- Must be a non-South African resident;
- The entity must be registered for business purposes in Eswatini.

**Documents required to validate the status of qualifying purchaser:**

- Passport/Travel Document;
- Valid SRA Tax Identity Number (TIN) and trading licence.

**THE BASIS FOR THE CLAIM SHALL BE A TAX INVOICE THAT IS FULL OR ABRIDGED AS FOLLOWS:**

| Full (consideration ≥ E5, 000) | Abridged (consideration < E5, 000) |
|---|---|
| The words "TAX INVOICE" | The words "TAX INVOICE" |
| Name, address and VAT registration number of the supplier | Name, address and VAT registration number of the supplier |
| Invoice number and date of issue | Invoice number and date of issue |

| Full (consideration ≥ E5, 000) | Abridged (consideration < E5, 000) |
|---|---|
| Full and proper description of goods | Full and proper description of goods |
| Price of goods and VAT amount or rate | Price of goods and VAT amount or rate |
| State whether goods are new or used | State whether goods are new or used |
| Name and address of recipient | |
| Quantity or volume of goods supplied | |
| Services supplied shown separately on the invoice | |



**Designated Borders:**
- Ngwenya Border Post;
- Matsamo Border Post;
- Sandlane Border Post;
- Mahamba Border Post;
- Lavumisa Border Post;
- Mananga Border Post.

**Exclusions:**
Refund claims will not be paid in respect of:
- VAT levied and paid on services rendered in South Africa;
- Claims below ZAR 250.00 (VAT incl.);
- A claim made of consolidated invoices – must be from one supplier for commercial declarations
- Goods imported through non-designated borders: Bulembu, Lundzi, Sicunusa, Gege, Nsalitje, Lomahasha and Mhlumeni;
- Goods imported by post or through the airport fall under direct exports and importers must claim from the South African airport.

**Procedure – Commercial:**
- Claims must be submitted with Refund Envelope;
- Businesses must designate and provide passport copy for authorised person;
- VAT on insurance, freight & other costs must be paid at time of entry, using the prepayment account or point of sale;
- Deferred accounts will not be used for "Sekulula/VAT easy" declarations;
- You must provide invoice copies to comply with other requirements, e.g. tax returns, audit.

**Procedure – Motor Vehicles:**
- Declare and pay VAT as per the current procedure;
- Claims to be submitted within 75 days from date of import with, proof of authorised release by SARS;
- A valid original tax invoice;
- The proof of registration in Eswatini;
- The owner's passport copy and SRA Customs Clearance Certificate;
- The manufacturer's certificate (for a new motor vehicle).

**Procedure – Used Goods:**
- 15 % import VAT shall be paid at the time of entry;
- The client applies through SRA for refund;
- SRA remittance form is completed and submitted with proof of payment;
- SARS will verify claims prior to payment;
- The amount refunded will be less any tax reduction on previous claims on the same transaction; (notional input tax) claimed by South African vendor from SARS;
- SRA will then remit upon refund by SARS (amount paid into client's bank account).

**Roles of the parties:**

**SRA**
- Training and sensitization of stakeholders;
- Invoice vetting to ensure validity;
- Collection of invoices and required documents for valid claims;
- Notify and collect payment from importer on non- paid invoices;
- Refund importer where claim for used goods and motor vehicles has been paid by SARS.

**SARS**
- Pay refunds in respect of submitted claims;
- Advise on reasons for rejections;
- Provide database for registered vendors;
- Exchange information where collusion is suspected.

**IMPORTERS**

- Fully declare goods imported into Eswatini;
- Submit original valid invoices and relevant supporting documents to facilitate claim;
- Pay import VAT on rejected invoices;
- Only applies to “Qualifying Purchasers”;
- It applies to Swazi residents;
- It is meant only for businesses registered in Eswatini;
- The importer must have a valid SRA (TIN) and Trading licence;
- VAT paid on movable goods only will be refunded;
- Goods must be imported within 90 days from invoice date through designated borders;
- Goods must be declared at the designated borders.



## ADVANCE PAYMENT ON VAT

Advance payments on VAT came into effect on 1 April 2015:

a. Monthly and quarterly filers are allowed to make advance payments of the VAT due even before the end of their tax period. The return will only be submitted on or before the 20th day of the month following the end of the tax period.
b. Taxpayers must have made all VAT payments relating to that particular tax period on or before the 20th day of the month following the end of the tax period.
c. Advance payment does not absolve the taxpayer from submitting the required VAT Returns as stipulated in Section 32 of the VAT Act. Failure to submit on or before the due date shall continue to attract penalties in terms of Section 57 of the VAT Act.
d. The facility provided by this Practice note is given as an option to both “Category A” and “Category B” taxpayers. Taxpayers who are comfortable with the payment intervals as prescribed in the legislation may continue to make payments in that manner.

## FRINGE BENEFITS TAX

In general, benefits provided to employees are added to their remuneration and taxed accordingly. There are, however, some exceptions, these include all other benefits in kind that an employee may enjoy at the expense of the employer, e.g. remuneration of domestic assistants by the employer on behalf of the employee (the amount of the remuneration paid to the assistants is added to the employee’s salary before calculation of tax). The value of free passage by road, rail, ship, or air that are paid for an employee. Such value is not taxable if the duration for the employment contract is two years or more. If the contract is less than two years the contract should not be renewable.

## STAMP DUTY

Stamp duty is levied on legal instruments relating to the sale, mortgage or lease of immovable property and the sale or mortgage of stocks and shares.

## LOCAL TAXES

Employment income is taxed on a withholding tax (WHT) basis known as Pay As You Earn (PAYE) at a graduating scale of 33% per annum.

**Companies – 2012 to date:**

| Tax rate date from | Tax rate date to | Tax rates |
|---|---|---|
| 1 July 2012 | 30 June 2013 | 30% |
| 1 July 2013 | To date | 27.5% |

**Individuals – 2013 to date:**

| Taxable income (SZL) | Tax rate |
|---|---|
| 0 – 100,000 | 20% |
| 100,001 – 150,000 | SZL 20,000 + 25% of the excess of SZL 100,000 |
| 150,001 – 200,000 | SZL 32,500 + 30% of the excess of SZL 150,000 |
| Above 200,000 | SZL 47,500 + 33% of the excess of SZL 200,000 |

**Part-time employee remuneration:**

| Remuneration income (SZL) | Tax rate |
|---|---|
| 0 – 8,333 | 20% |
| 8,333 – 12,500 | 25% |
| 12,500 – 16,666 | 30% |
| Above 16,666 | 33% |

**Withholding tax for residents and non-residents:**

| Resident and Non-resident Tax | Rate of Tax | Due Date |
|---|---|---|
| Non-resident shareholders’ tax (NRST) on dividends | SACU Area 12.5%.<br>Outside SACU 15% | Within 30 days from the day on which the dividend is declared |

| | | |
|---|---|---|
| Non-resident tax on interest | 10% | Within 15 days after the date of accrual |
| Withholding tax on royalties and management fees | 15% | Within 15 days from the date of payment. |
| Withholding tax on non-resident contractors | 15% | Within 15 days from the date of payment. |
| Withholding tax on entertainers and sportsmen | 15% | Within 15 days from the date of payment. |
| Repatriated Branch Profits | 15% | Within 15 days from the date of payment. |
| Withholding tax on non-resident persons | 15% | Within 15 days from the date of payment. |



**Concessionary rates of normal tax in the case of redundant or retiring individuals – 2013 to date:**

Lump-sum payments in excess of SZL 60,000 made in respect of retirement or redundancy are taxed as follows:

| Taxable income (SZL) | Tax rate |
|---|---|
| 0 – 200,000 | 25% |
| 200,001 – 300,000 | SZL 50,000 + 30% of the excess of SZL 200 000 |
| Above 300,000 | SZL 80,000 + 33% of the excess of SZL 300 000 |

## OTHER TAXES

These include amongst others, customs and excise duties and graded tax. The following are the rates relating to graded tax:

a) The rate for all Swazi adults in receipt of income is E18/annum and this is payable via the first PAYE remittance system.

b) The rate for an adult male person not in receipt of income is E4.20/annum.

c) Female adults not in receipt of any income are not obliged to pay Graded tax.

## EXCISE DUTY

Special excise duties apply to the following:

- Alcohol;
- Tobacco products;
- Perfumes, etc.

**Temporary importation**

Security is provided for the payment of customs duties and other taxes due in the event that the goods are not re-exported within the required deadline. This is to ensure that goods that were imported for other than home consumption are not diverted to such consumption.

**Permanent importation**

Release for free circulation (The term “free circulation” is used to describe imported goods on which all import formalities have been complied with and any customs duties or other charges have been paid and not repaid in whole or in part). At point of entry - obtain data to identify the goods and apply non-tariff measures (e.g. licenses):

- Perform point of entry controls - if necessary;
- Collect or secure import duties;
- Release the goods.

Transit – suspension of duties and other charges, security required.

## B. DETERMINATION OF TAXABLE INCOME

## CAPITAL ALLOWANCES

**Wear And Tear Allowance:**

| Description | Write Off Period |
|---|---|
| Computers software (pc’s); special patterns and tooling; video cassettes | 2 |
| Bulldozers; calculators; computers (pc’s); computers software; concrete transit mixers; Dictaphones; fax machines; motorized concrete mixers; patterns, tooling and dyes; textbooks; trucks (heavy duty) | 3 |
| Aircraft (light – passenger / commercial / helicopters); bicycles; compressors; debarking equipment; delivery vehicles; excavators; fork-lifts trucks; front-end loaders; graders; mobile cranes; mobile refrigeration units; motorcycles; motorized chain saws; pallets; portable concrete mixers; refrigerated milk tankers; tractors; excavators; trucks (others); track mounted cranes; water tankers | 4 |
| Battery chargers; cinema equipment; cash registers; computers (main frame); curtains; dental and doctors equipment; drilling equipment (water); engraving equipment; fire extinguishers (loose units); garden irrigation equipment (movable); hairdressers equipment; laboratory research equipment; Laundromat equipment; mobile caravans; motor mowers; musical instruments; passenger cars; photocopying equipment; portable generators; power tools (hand operated); public address systems; radio communication equipment; scales; solar energy units; staff training equipment; surveyors field equipment; tape recorders; telephone equipment; trailers; washing machines; workshop equipment; x-ray equipment. | 5 |

| Description | Write Off Period |
|---|---|
| Adding machines; air conditioner (movable); arc welding equipment; balers; cheque writing machines; cold drink dispensers; crop sprayers; demountable partitions; drills; electric saws; electrostatic copiers; fertilizers spreaders; fitted carpets; furniture and fittings; gantry cranes; gas cutting equipment; gas heaters; and cookers; gear shapers; grinding machines; guillotines; harvesters; heat dryers; heating equipment; incubators; ironing and pressing equipment; kitchen equipment; knitting machines; lathes; medical theatre equipment; milling machines; ovens and heating devices; ovens for heating food; perforating equipment; photographic equipment; planers; ploughs; refrigeration equipment; refrigerators; sanders; seed separators; sewing machines; shop fittings; spin dryers; spot welding equipment; television sets; video machines; decoders; typewriters; vending machines (including video game machines); water tanks | 6 |
| Burglar alarms (removable); gymnasium equipment; neon signs and advertising boards; surveyors instruments; weighbridges (movable parts) | 10 |
| Lift installation (goods); lift installations (passengers); water distillation and purification plant | 12 |



## DEPRECIATION

Wear and Tear allowances or depreciation in respect of machinery, plant, implements, utensil and articles (including vehicles and equipment) Under Section 14(1)(c):

| Group | Assets Included | Rate |
|---|---|---|
| 1 | Computer hardware and software; lorries; buses; video recorders | 33.33% |
| 2 | Aircraft; construction equipment (mobile) (including – bulldozers, concrete mixers, graders, road scrapers); lifts and elevators; light delivery vehicles (LDV's); motor cycle; tractors; videotapes; plant and machinery working 24 hours per day | 25% |
| 3 | Casino equipment, hotel soft furnishings (including carpets); medical equipment; sound and projection equipment; televisions; trailers; plant and machinery working two shifts per day | 20% |
| 4 | Furniture and fittings; legal and professional libraries; musical equipment; office equipment including (accounting machines, air conditioning plant, binds and curtaining, fans) and any depreciable asset not included in any other group, including plant and machinery working one shift per day | 10% |
| 5 | Railroad cars, locomotives and railroad equipment; engines and turbines; public utility plant | 5% |
| 6 | Industrial Buildings | 4% |

Where a taxpayer elects to claim the deduction of wear and tear allowances on a straight-line basis, such taxpayer shall obtain approval from the Commissioner of Taxes before claiming the wear and tear on straight-line basis. Requests for allowances to be granted on the "straight-line" will be considered if the following conditions in respect of the assets to which such method will be applied are satisfied:

(a) The taxpayer maintains adequate records;

(b) The straight-line basis will apply to all assets of the same class;

(c) The annual return of income contains a schedule disclosing in respect of each asset disposed of during the year of assessment:

  (i) The date of acquisition and the original cost;

  (ii) The income tax value as at the end of the immediately preceding tax year;

  (iii) The price realised on disposal or scrapping as well as the tax value of any profit or loss.

(d) The rates of allowance granted will be such that the rate per annum reduces the value of the asset to nil at the end of its agreed estimated life;

(e) An asset written off in full shall be brought into account at a residual value of E1 for record purposes.

Where a taxpayer applies the straight-line method, the asset shall be written off in equal annual instalments over its estimated useful life. The wear and tear deduction must be reduced proportionately if the asset was acquired and commissioned during the year of assessment. Where a taxpayer has been granted permission to apply the straight-line method, the write-off periods shall be in line with the periods prescribed by the Commissioner. Taxpayers must obtain prior approval to apply a different write-off period to an asset approved, for the proposed write off period from the Commissioner of Taxes.

## TRADING STOCK

(1) There shall be taken into account, in the determination of the taxable income derived by any person, during any year of assessment, from carrying on any trade (other than farming), the value of all trading stock held and not disposed of by him (hereinafter referred to as "the value of trading stock held") at the beginning and end of each year of assessment.

(2) The cost of trading stock disposed of during the year of assessment is determined by adding to the opening value of trading stock the cost of trading stock acquired during the year, and subtracting the closing value of trading stock.

(3) The value of trading stock held by any person at the beginning of any year of assessment shall be deemed to be:

  (a) Where the person carried on trade on the last day of the previous year of assessment, the value of trading stock held on that date; or,

  (b) Where the person commenced the trade during the year of assessment, the cost to the person of any stock acquired prior to the commencement of the trade.

(4) The value of trading stock held at the end of a year of assessment shall be deemed to be the lower of cost or market value to the person carrying on the trade.

(5) For the purposes of this subsection, the cost of any trading stock in relation to any date shall be:

(a) The cost incurred in acquiring such trading stock; and,

(b) Any further costs incurred up to such date in getting such trading stock into its then existing condition or location.

(6) Where any trading stock has been acquired by any person:

(a) For a consideration which cannot be valued; or,

(b) Otherwise than by way of a transaction at arm's length, such trading stock shall be deemed to have been acquired at a cost equal to the price which, in the opinion of the Commissioner, was the current market price of such trading stock on the date of acquisition.

(7) Where particular items of trading stock are not readily identifiable, a person may account for that trading stock on the first-in-first-out method or the average cost method but, once chosen, a stock valuation method may be changed only with the written permission of the Commissioner



## DIVIDENDS

Payments to non-residents and residents:

| Non-residents Tax | Rate of Tax | Due Date |
|---|---|---|
| Dividends for companies in Botswana, Lesotho, Namibia and South Africa | 12.5% | Within 30 days from the day on which the dividend is declared |
| Dividends - for other countries | 15% | Within 30 days from the day on which the dividend is declared |

| Residents Tax | Rate of Tax | Due Date |
|---|---|---|
| Dividends | 10% | Within 15 days from the date of payment |

## INTEREST DEDUCTIONS

**Levy of non-residents tax on interest:**

If any amount of interest accrues to or in favour of:

(a) Any person, other than a company, not ordinarily resident in Eswatini;

(b) The estate of any deceased person who, at the date of his death, was not ordinarily resident in Eswatini; or,

(c) A company not registered in Eswatini; and the debtor in respect of such amount is ordinarily resident or carries on business in Eswatini, there shall be levied and paid a tax (in this Part referred to as non-residents tax on interest) equal to ten per centum of such amount.

**Application of provisions:**

For the purpose of this Part:

(a) If interest is payable or is credited to any person having an address outside Eswatini such interest shall, until the contrary is proved, be deemed to have accrued to any person, estate or company, as the case may be;

(b) If the debtor in respect of any amount of interest is the estate of any deceased person, such estate shall be deemed to be ordinarily resident or to be carrying on business in Eswatini, if such person at the date of his death, was ordinarily resident or was carrying on business in Eswatini;

(c) If the debtor in respect of any amount of interest is a company, such company shall be deemed to be ordinarily resident in Eswatini if it is registered, managed or controlled in Eswatini; and,

(d) Any amount accruing to any shareholder in a building society out of the profits of such society shall be deemed to be interest.

## LOSSES

Tax losses can be carried forward to offset against future profits. Losses that are offset may be carried forward indefinitely. Losses cannot be carried back against profits of previous years.

## FOREIGN SOURCED INCOME

Foreign tax relief is limited only to countries which have a double tax treaty (DTT) with Eswatini.

## INCENTIVES

The Memorandum of Understanding (MOU) sets out terms and conditions, which shall apply in respect of the grant of a Development Approval Order (DAO) by the Minister of Finance to whichever company that has applied for the (MOU). The tax concession is granted under the DAO for a period of 10 years.

## C. FOREIGN TAX RELIEF

Relief for double taxation is provided by means of a credit for overseas tax suffered on overseas income. The credit is the lower of the foreign tax paid and the Eswatini tax on the income concerned. Foreign tax relief is limited only to countries with double taxation relief. These include; Mauritius, South Africa and the United Kingdom.

## D. CORPORATE GROUPS

There is no special regime for the taxation of groups of companies. Each Company is taxed as a separate entity. Losses incurred by one affiliate may not be offset against profits made by another affiliate.

## E. RELATED PARTY TRANSACTIONS

Inter-company pricing between affiliated companies must be carried out on an arm's length basis or the income of both companies is adjusted for income tax purposes. Taxpayers are obliged to provide the tax authorities with documentation containing data about the activities of the taxpayer and other parties to the transaction. This includes a list of the parties to the transaction, the description of the transaction, the terms of the transaction, methods of pricing, terms and conditions of payments etc. Functions of the parties of the transaction, information about accepted risks considered by the taxpayer when concluding the transaction and so on.

## F. EXCHANGE CONTROL

The currency in Eswatini is Lilangeni (SZL). There are no exchange controls in effect.

## G. ASYCUDA WORLD

ASYCUDA (Automated System for Customs Data Administration) is a computerized customs management system which covers most foreign trade procedures and was rolled out as of 1 February 2016 whereby importers/exporters are required to lodge declarations with Customs electronically through ASYCUDA. Capturing of data can be done remotely or at the border post or any one of the inland offices and the airport.



**Registration**

Businesses that have the newly introduced Taxpayer Identity Numbers (TIN) for VAT are not required to be registered on ASYCUDA. Their TINs will be used for all Customs related transactions.

Traders who have not yet been registered for TINs are required to register with ASYCUDA; the following are required on registration:

- Tax clearance certificate
- Trading licence
- Contact details including physical address.

A declarant, other than the owner of the goods, must be licensed as an agent with Customs. Individuals are required to submit a copy of the national identity document and contact details which include the physical address.

**Declarations may be made by:**

Remote Connection (also known as the Direct Trader Input (DTI)): This allows a trader to capture a declaration at his own premises and forward hard copies to customs at his convenience. This has benefits including:-

- Entries can be lodged prior to arrival of goods at the border
- Trader can access any of his declarations passed through Customs at any time.

Using the Bureau at the port of entry (border post or airport or any of the inland offices)

- Provided (at a fee) for people who are not remotely connected
- Mainly used by once off importers/exporters.

## ASYCUDA PREPAYMENT ACCOUNTS

1. **Pre-payment accounting**

The prepayment facility is to be used at all SRA Customs offices where duties / taxes are not deferred but payable upon entry. Under this facility declarants need to pay first the amount of duties / taxes that are reflected on the SAD500 on presentation of their entries to SRA for processing.

2. **Prepayment (Cash) Account Numbers**

a. Each declarant / importer is allocated an 8-digit account number (Series 500) which is attached to their Taxpayer Identification Number (TIN). The TIN is an SRA wide number that is to be used across all SRA tax heads while the Prepayment Account Number and deposits therein is managed at and confined to the Customs office of clearance.

b. The account number must be inserted/captured in Box 48 of the SAD 500. As a security measure the account number may be validated by a secret PIN code. The security of the PIN code is the responsibility of the account holder.

3. **Submission of Entries and Payment of Duties / Taxes due**

a. All entries are to be submitted to Customs through the Cash Office at the port of entry concerned. Once received at the Cash Office the entry will remain always within Customs control and will not be returned to the declarant until it is assessed and released after validation of payment due.

b. No entry will be accepted without being paid for. The SRA will not accept responsibility for delays in clearance of goods arising from an insufficient balance existing in the prepayment account. No entries will be cleared until the account is restored to a credit balance covering the duties / taxes payable.

c. The payment being made will be recorded in ASYCUDA against the prepayment account declared in Box 48 of the SAD500. Where payment is made into a single account, a single receipt for the whole amount being deposited will be issued to the declarant as an acknowledgement of payment.

d. Payment may be effected by any of the methods approved by the SRA. This may be by:
   - Confirmed Electronic Funds Transfer (EFT);
   - Point of Sale (POS);
   - Limited Cash (not more than E10,000.00 per declarant);
   - Company cheque for approved clients or bank cheque (only at remote border posts).

e. A statement of the prepayment account can be produced by the account holder and Customs when required. This will detail entries cleared against the account number, any credit amounts paid in during the selected period and the account balance. Remotely connected declarants will be able to view their accounts status at any time.

4. **Assessment**

a. Upon assessment of a declaration, funds equal to the duties / taxes due on the entry will be automatically transferred from the prepayment account into the SRA Revenue Account. A combined assessment notice and payment receipt will be printed for each assessed entry. If the duties / taxes due are less than the balance in the prepayment account, a credit balance will remain in the account. Such balance will be used for future imports.

b. Where there is an insufficient credit balance in the prepayment account, the entry will not be assessed. Resultantly the goods will not be released from the Customs controlled area.

c. Declarants / importers will get a combined assessment notice and receipt for each consignment declared on a separate SAD500.
   - It is proof of duties / taxes paid for imported goods;
   - It is proof of legitimate release by Customs; and
   - It can be used to support VAT input tax credit claims (along with a copy of the SAD500 and supporting invoices etc.).



5. **Benefits to trade:**

Prepayment Accounts have been put in place for the following reasons:

- To reduce delays associated with the cashier issuing a receipt against each declaration;
- To ensure once a declaration is submitted SRA may be held fully responsible for the time taken to release cargo;
- Confirmation of cash received will be combined with the assessment stage of the declaration as well as the generation of the Customs receipt;
- The assessment notice / receipt shall will support VAT input credit claims.

## H. PERSONAL INCOME TAX

Personal income tax is levied on resident and non-resident individuals, whether or not they are citizens of Eswatini.

**Individuals – 2013 to date:**

| Taxable income (SZL) | Tax rate |
|---|---|
| 0 – 100,000 | 0 + 20% of the excess of SZL 0 |
| 100,001 – 150,000 | SZL 20,000 + 25% of the excess of SZL 100,000 |
| 150,001 – 200,000 | SZL 32,500 + 30% of the excess of SZL 150,000 |
| Over 200,000 | SZL 47,500 + 33% of the excess of SZL 200,000 |

When applying the above rates the following should be taken into account:

- Tax payable by a natural person will be reduced by a tax rebate amount not exceeding SZL 8,200 per tax year (with a further SZL 2,700 for persons over the age of 60 years);
- The rates are applicable on total income exceeding SZL 41,000 per annum;
- The tax rebate does not apply in the case of redundant or retiring individuals.

Taxpayers who are liable to tax on business income are obliged to submit their income tax declarations on business income to the Eswatini Revenue Authority by 31st October of every year. All taxpayers must keep records of their income. They are obliged to keep records for at least five years from the year to which they relate. To avoid double taxation, Eswatini has concluded a number of double tax treaties.

**Exemptions**

There are a number of exemptions within each category of income which are defined in Section 12 of The Income Tax order of 1975 Amended. There shall be exempt from normal tax:

(a) The receipts and accruals of:
   (i) A pension fund, a retirement annuity fund, a benefit fund or a provident fund;
   (ii) Any company, society or other association of persons, whether or not registered under any law, the profits or gains of which, other than profits or gains from investments, are derived solely from transactions with or on behalf of its individual members, and the constitution of which does not admit of the distribution of its profits or gains to any persons other than the members with whom or on whose behalf the transactions took place, and does not confer upon any person any benefit other than benefits accruing to that person from transactions with or on behalf of such person, except as regards any receipts or accruals from investments by any such company, society, or association of persons; and,
   (iii) Any exempt organisation other than business income that is not related to the function constituting the basis for the existence of the organisation.

(b) The income of any person entitled to privileges under the Diplomatic Privileges Act to the extent provided in such Act;

(c) The salaries and emoluments of any person in respect of services rendered to the Government of any country other than Eswatini if that person is not ordinarily resident in Eswatini or is ordinarily resident solely for the purpose of performing such services;

(d) War pensions or gratuities;

(e) Dividends received by or accrued to or in favour of:
   (i) Any person not ordinarily resident or carrying on business in Eswatini;
   (ii) The estate of any deceased person who at the date of his death was not ordinarily resident or carrying on business in Eswatini, if, but for this exemption, such estate would have been liable for normal tax in respect of such dividend; and,
   (iii) Any company.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Non-treaty countries** | | | | |
| Companies | 12.5/15[4] | 12.5/15[4] | 10 | 15 |
| Individuals | 12.5/15 | -- | 10 | 15 |
| **Treaty countries:** | | | | |
| Mauritius | 7.5 | 7.5 | 5 | 7.5 |
| Seychelles | 10 | 7.5[1] | 7.5 | 10 |
| South Africa | 15 | 10[1] | 10 | 10 |
| Taiwan | 10 | 10 | 10 | 10 |
| United Kingdom | 15 | 15 | -[2] | 0[3] |

Notes:
1. The reduced rate applies if the beneficial owner is a company which holds at least 25% of the capital of the dividend-paying company.
2. No reduction under the tax treaty, the domestic rate applies.
3. Subject to tax in the state of residence of the recipient only.
4. A final 15% withholding tax is levied on dividends distributed by resident companies to non-resident companies while the rate is reduced to 12.5% in respect of dividends paid to a company registered or incorporated in Botswana, Lesotho, Namibia or South Africa, which is not a branch of a company registered or incorporated outside these countries.

# FIJI

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Suva | Dr. Nur Bano Ali (Managing Partner) | +679 992 7017 dr_nurali@pkf.com.fj |
| Suva | Sunil Sharma | +679 992 7016 sunil@pkf.com.fj |
| Nadi | Zarin Khan | +679 992 7015 zarin@pkf.com.fj |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Fiji |
| Capital: | Suva |
| Main languages: | English |
| Population: | 908,371 (2022 estimate) |
| Monetary unit: | Fiji Dollar (FJD) |
| Internet domain: | .fj |
| Int. dialling code: | +679 |

## KEY TAX POINTS

- The standard corporate tax rate is 20% (10% for companies listed on the South Pacific Stock Exchange).
- Losses incurred in a FY starting on or after 1 January 2019 can be carried forward for up to 8 years (4 years before 2019). Losses cannot be carried back.
- According to domestic tax law, as from 1 August 2017 there is no withholding tax on dividends paid to non-residents.
- Interest paid to non-residents is subject to a 10% final withholding tax on the gross amount.
- Royalties paid to non-residents are subject to a 15% final withholding tax on the gross amount.
- Management fees, professional fees or other independent services, and rental income (i.e. on films) paid to non-residents are subject to a 15% final withholding tax on the gross amount.
- With effect from 1 January 2016, the standard VAT rate is 9%.

## A. TAXES PAYABLE

### COMPANY TAX

Fiji resident companies are subject to tax on their worldwide income. Non-resident companies are required to pay tax in various forms on income derived from Fiji sources. Resident companies are those that are incorporated in Fiji or have their place of management and control in Fiji.

The corporate tax rate is 20%. The tax year in Fiji is the calendar year but companies can opt for a taxable year other than the calendar year. Companies are required to make three advance payments of corporate tax based on the previous year's profit. Corporate tax returns' due date is 3 months after the financial year unless a further extension has been provided by the Fiji Revenue Customs Service.

### CAPITAL GAINS TAX

Capital Gains Tax (CGT) is a tax that is levied on profits or gains realised on the disposal of capital assets and depreciable assets at the rate of 10%. The tax applies to gains arising from the disposal of taxable assets by Fiji residents, irrespective of whether the asset is located in Fiji or not. Resident persons can claim a foreign tax credit in relation to the disposal of foreign capital assets if tax was paid offshore. However, for non-residents, the tax only applies to gains arising from the disposal of taxable assets that are Fiji assets. An exemption may apply subject to certain conditions.



### BRANCH PROFITS TAX

Branch remittance tax was repealed as from 2010.

### VALUE ADDED TAX (VAT)

This is a tax on the supply of goods and services, other than exempt supplies and services, rendered in Fiji by a VAT registered entity only at the rate of 9%.

### FRINGE BENEFITS TAX

Taxable benefits include any non-cash benefits or benefits received in kind that are provided for free by the employer to the employee or persons associated with the employee (e.g. housing, telephone, water, etc.). The value of non-cash fringe benefits received by an employee from his/her employer is subject to fringe benefits tax. It is a final tax on employers and shall not be recovered from the employee. Fringe Benefits Tax (FBT) is a tax levied at the rate of 20% on the fringe benefit taxable amount (non-cash benefits) of the employer for each quarter.

### SUMMARY OF ALL APPLICABLE TAXES

| Tax type | Rate |
|---|---|
| Corporate income tax (CIT) | 20% |
| Stock Exchange Listed Companies | 10% |
| Multinational Headquarters | 17% |
| Pay As You Earn (PAYE) | 7%, 18% 20% |
| Provisional tax (PT) | 5% |
| Fringe benefit tax | 20% |
| Social responsibility tax | 13% to 19% - range over FJD 270,000 |
| Withholding tax | 15% |
| Value Added Tax | 9% |
| Capital gains tax (CGT) | 10% |
| Environmental levy (EL) | 6% |
| Stamp duties (SD) | Not applicable – Act repealed WEF 01/08/20 |
| Fish levy (FL) | FJD 450/tonne |
| Departure tax (DT) | FJD 200 |
| Telecommunication levy (TL) | 1% |
| Credit card levy (CCL) | 3% |
| Third party levy (TPL) | 20% |
| Health levy (HL) | 6% |
| Customs Duty bands | 0%, 5%, 15%, 32% |

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company is determined by ascertaining assessable income and then subtracting all allowable deductions. Business expenses are generally deductible for tax purposes. Donations to non-registered charitable organisations are not deductible.

## C. INVESTMENT ALLOWANCES/INCENTIVES

### FILM MAKING & AUDIO VISUAL

**Income tax deductions**

- 150% deduction for capital expenditure on an F1 audio-visual production;
- 125% deduction for capital expenditure on an F2 audio-visual production;
- Levels of expenditure in Fiji for an audio-visual production for F1 and F2 status should not be less than:
  - 40% for a large format film, a feature film or broadcast television programme;
  - 50% for a direct to video programme or video disk programme; and
  - 55% for an audio recording.

**Income tax exemptions**

- Net income from an F1 production is exempt until taxpayer has received a 60% return on capital expended. Thereafter, net income will be fully taxed at the marginal rate;
- Net income from an F2 production is exempt until taxpayer has received a 50% return on capital expended. Thereafter, net income will be fully taxed at the marginal rate;
- Allowable expenditure incurred for services rendered by the producers (producers fees) – provided that such expenditure shall not exceed 10% of the total Fiji Expenditure. Producers are not restricted to remain in Fiji throughout the production of the film;
- 75% of the expenditure incurred to purchase costumes, make-up and set design properties not available in Fiji that will be used in relation to the film production in Fiji provided that any such costumes, make-up and set design properties shall be left in Fiji at the end of the production;
- Expenditure incurred to purchase the writer's story and rights for the production of the film provided that the producer submits the following documentary evidence:
  - Notarised legal contract with the writer which is registered in Fiji with the Registrar of Deeds upon payment of the appropriate stamp duty;
  - Evidence of payment made directly into the writer's bank account from the Fiji bank account; and
  - Receipt of acknowledgment of payment received;
- Approved post-production expenditure on the film paid from a Fiji bank account to the extent that it is incurred or reasonably attributable to approved post-production services in relation to the completion of the film made in Fiji. The maximum payable in rebate shall be granted upon the production of documentary evidence of the expenditure. Rebate is around 2% to 2.5% of production budget;
- Expenditures incurred on the hiring of cameras and filming equipment from outside Fiji, where such cameras and filming equipment are not available in Fiji.

**Additional requirements**

- Companies should engage Audio Visual Agents;
- Fiji as a location needs to be accredited and acknowledged in the film's credits and other accreditation as stipulated by Film Fiji in their approval letter.

**Film tax rebate**

- 75% tax rebate or a credit on production cost spent in Fiji;
- Films and television production as per existing Sixth schedule;
- Minimum spend in Fiji FJD 250,000, for feature films and broadcast television; and FJD 50,000 for production intended as an advertising programme or commercial in at least one significant international market;
- The maximum rebate payable per approved final certificate will not be more than FJD 15 million.

## ENVIRONMENT TAX INCENTIVE

**Biofuel Production**

- Tax holiday is available to a taxpayer undertaking a new activity in processing agricultural commodities into bio-fuels as approved by the Commissioner from 1 January 2009 to 31 December 2028. To qualify, the taxpayer shall be exempt from tax as follows:
  - Capital Investment from FJD 250,000 to FJD 1,000,000 for a period of 5 consecutive fiscal years; or
  - Capital Investment from FJD 1,000,000 to FJD 2,000,000 for a period of 7 consecutive fiscal years; or
  - Capital Investment above FJD 2,000,000 for a period of 13 consecutive fiscal years;
- Employ 20 local employees or more for every income year.

Approved companies involved in the production of biodiesel and ethanol are eligible for various duty concessions under code 262 of the Customs Tariff Act.

**Electric vehicles charging stations**

- The income of any business setting up electric vehicle charging stations shall:
  - be granted a seven-year tax holiday; and
  - be granted a subsidy up to a maximum of 5% of the total capital outlay incurred in the development of electric vehicle charging stations provided that the capital expenditure is not less than FJD 100,000.
  - be allowed to carry losses forward to 8 years.
- Any business investing in electric buses shall be allowed a tax deduction of 55%.

**Renewable energy projects and power co-generation**

- 5-year tax holiday is available for a taxpayer undertaking a new activity in renewable energy projects and power co-generation as approved by the Tax Department;
- Duty-free importation of renewable energy goods is also available.

## HOTEL INVESTMENT ALLOWANCE

### STANDARD ALLOWANCE

An investment allowance of 50% of total capital expenditure is allowed as a deduction.

**Conditions**

- Applicable to the building of new hotel including renovations, refurbishments, an extension of the existing hotel and International Retiree Facilities;
- Recipients shall complete the project within two years from the date the provisional approval was granted;
- Investment Allowance can only be written off against the income of the hotel business or income from the hotel premises;
- Loss carry-forward for 4 years;
- Investors would only need to provide a sketch plan to obtain provisional approval for the investment allowance, and not necessarily a certified approval;
- There should not be any shift of tax revenue to other countries;
- There will be no Investment Allowance from 2017 for existing hotels.

**Extend SLIP to renovations and refurbishments of existing hotels or resorts**

- 5 -year tax holiday for investments of more than FJD 2,000,000. The incentive will be available for the next 18 months effective from 1 August 2021. This incentive can be claimed only once.

### SHORT LIFE INVESTMENT PACKAGE

The existing will be repealed and replaced with the following:

| Capital Investment ($) | Tax Holiday |
|---|---|
| $250,000 to $1 million | 5 years |
| $1 million to $2 million | 7 years |
| $2 million to $40 million | 13 years |
| In excess of $40 million | 25 years |

**Conditions**

- Short Life Investment Package (SLIP) Incentives is available for retirement facilities and hospital resorts;
- SLIP Incentives is also available for New Apartments provided the length of stay is not more than 6 months;
- Recipients of the provisional approval for SLIP shall complete the project within two years from the date the provisional approval was granted;
- Investors would only need to provide a sketch plan to obtain provisional approval for the investment allowance, and not necessarily a certified approval.

**Duty on Importation**

- Duty-free importation for all hotels and resorts for 18 months effective from 1 August 2022. 5% ECAL will also be waived on all imports.

### BACKPACKER OPERATIONS

- Income tax exemptions will be introduced for locally-owned backpacker operators with annual sales turnover of FJD 1 million or less;
- Customs Duty exemption on the importation of raw materials and equipment used for the establishment of a backpacker hotel. (This incentive will only be available to backpacker businesses who are granted the income tax holiday)

## RECYCLING BUSINESS

**Tax Exemption Structure**

| Capital Investment ($) | Tax Holiday |
|---|---|
| $250,000 to $500,000 | 3 years |
| $500,000 to $2 million | 5 years |
| $2M to $5 million | 10 years |
| $5M to $10 million | 15 years |
| In excess of $10 million | 20 years |

**Customs Exemption**

Customs import duty exemption for the establishment of the business which includes raw materials, machinery and equipment including spare parts.

## INFORMATION COMMUNICATION TECHNOLOGY

### INFRASTRUCTURE FOR ICT PURPOSES

- Any new investment in the infrastructure for businesses engaged in the ICT Sector will be granted a tax holiday and a duty concession package, provided that 90% of the income for the investor shall be derived from the ICT businesses.
  1. Tax Exemption Structure

| Capital Investment ($) | Tax Holiday |
|---|---|
| $2 million to $5 million | 10 years |
| $5million to $10million | 15 years |
| In excess of $10 million | 20 years |

  2. If the investor is also involved in developing strata titles and selling it to ICT/Business Process Outsourcing (BPO) companies, the sale proceeds will also be exempt from income tax.
  3. Customs Exemptions

     Customs import duty exemption for the establishment of the business will be available on the importation of raw materials, machinery and equipment including spare parts.



### INVESTMENT IN ICT PARK

Any new investment in an ICT Park (including data storage services) will be granted a tax holiday and a duty concession package.

1. Tax Exemption Structure

| Capital Investment ($) | Tax Holiday |
|---|---|
| $10 million to $30 million | 20 years |
| In excess of $30 million | 25 years |

2. Customs Exemptions

   Customs import duty exemption for the establishment of the business will be available on the importation of raw materials, machinery and equipment including spare parts.

### INVESTMENT IN NETWORK CABLING AND INFRASTRUCTURE

Any company that wishes to invest in network cabling (submarine cable) and associated infrastructure development will be provided a tax holiday and duty concession package. The cable should land in Fiji.

1. Tax Exemption Structure

| Capital Investment ($) | Tax Holiday |
|---|---|
| In excess of $40 million | 30 years |

2. Customs Exemptions

   Customs import duty exemption for the establishment of the business will be available on the importation of raw materials, machinery and equipment including spare parts.

### Research and development incentive

A 250% tax deduction is applicable on any expenditure incurred by an eligible ICT company investing in Research and Development.

### ICT accredited training institutions

The income of any new operator setting up internationally accredited ICT training institutions who is granted a licence from 1 January 2015 is to be exempt from tax for a period of 13 years.

- Any new operator may apply and pay a licence fee of FJD 1,000 per annum to the CEO of Fiji Revenue Customs Service (FRCS);
- The tax exemption is granted from the date of the initial licence;
- Income tax exemption is available to investors under the following criteria:
  - Business employs 50 employees or more for any 6 months within the income year; and
  - 50% of its total services is exported.

### Application design and software development

The income of any new operator setting up ICT businesses involved in Application design and Software development who is granted a licence from 1 January 2015 is to be exempt from tax for a period of 13 years

- Any new operator may apply and pay a licence fee of FJD 1,000 per annum to the Commissioner of Inland Revenue. The tax exemption is granted from the date of the initial licence;
- Income tax exemption is available to investors under the following criteria:
  - Business employs 50 employees or more for any 6 months within the income year; and
  - 50% of its total services is exported;
- Duty free and VAT exemption on the importation of all items required for the establishment of the business.

### Small ICT start-ups

For small ICT start-ups, a 150% deduction on all start-up costs will be made available with no employment conditions/requirements attached.

## MEDICAL INVESTMENT

### PRIVATE HOSPITAL

A private hospital means a building or premises where persons suffering from any sickness, injury or infirmity are given medical or surgical treatment, but does not include a hospital or other establishment or institution operated or maintained by the Government or a sick bay or first aid post maintained by a commercial or industrial undertaking for the benefit of its employees and their families. The income of any business setting up Private Hospitals on or after 1 August 2020:

- Shall be exempt from tax for a period of 10 years with a minimum capital investment level of FJD 2.5 million;
- 60% Investment Allowance will apply for refurbishments, renovations and extensions with a minimum capital investment of FJD 10 million (30% with minimum of FJD 5 million);
- Duty Concession (free Fiscal Duty, free Import Excise & free VAT) on medical, hospital, surgical, dental goods that are used and imported by the business;
- Recipients of the provisional approval for setting up Private Hospitals shall complete the project within two years from the date the provisional approval was granted;
- Loss carry-forward of 8 years;
- Hospitals under Private Public Partnership (PPP) arrangements are eligible for the medical tax incentives.

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### Ancillary medical services

Ancillary Medical Services means those ancillary medical services provided by a company, including pathology lab services, Magnetic Resonance Imaging services (MRI) and other diagnostic services.

The income of any business setting up Ancillary Medical Services such as Pathology Lab, MRI, other diagnostics on or after 1 August 2020:

- Shall be exempt from tax for a period of 7 years with a minimum capital investment level of FJD 2 million (13 years with minimum of FJD 5 million and 20 years with minimum of FJD10 million);
- 60% Investment Allowance will apply for refurbishments, renovations and extensions with a minimum capital investment of FJD 500,000;
- Duty Concession (free Fiscal Duty, free Import Excise & free VAT) on medical, hospital, surgical, dental goods that are used and imported by the business;
- Recipients of the provisional approval for setting up Ancillary Medical Services shall complete the project within two years from the date the provisional approval was granted;
- Loss carry-forward of 8 years;
- Hospitals under Private Public Partnership (PPP) arrangements are eligible for the medical tax incentives. Legislative Provision: Part 2, Income Tax (Medical Investment Incentives) Regulations 2016.

## RESIDENTIAL HOUSING DEVELOPMENT

Under this incentive the income of the company:

- shall be exempt from tax on developer profits from the sale of residential units; and shall be granted a subsidy up to a maximum rate of 5% of the total capital expenditure incurred in the residential housing development;
- Shall be eligible for duty concession under Code 293 for capital goods including capital equipment, plant, machinery and other goods at a concessionary rate of free Fiscal Duty;
- Free Import Excise and 9% VAT. This does not include kitchen ware, raw materials, furniture and other prescribed goods.

### Conditions

This incentive is available to companies with:

- Capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land over FJD 2 million with at least 20 residential housing units; and
- The project commences on or after 1 January 2016 and the building is completed within 2 years from the date the provisional approval was granted;
- The development should comprise of residential units targeting low, medium and high-end users;
- Provisional approval is granted after the Minister consults the Minister responsible for Housing.

## SMALL & MICRO ENTERPRISE

Income tax exemption is applicable to selected sectors with maximum turnover threshold of FJD 500,000. The sectors include:

- Agriculture and fishing (for agriculture, this will cover activities in the entire agriculture sector);
- Tourism (sea cruise and river tour operators);
- Community and social services (amusement, recreation services; traditional handicraft producers (not “middlemen” or agents);
- Supportive projects to tourism industry (flora, fauna and other natural characteristics of Fiji; and history, traditions, cultures and ways of life of its peoples).

## AGRICULTURE INCENTIVE

In the bid to encourage investment in the agriculture sector, the Government has further incentivized the agriculture industry, whereby any new activity in commercial agricultural farming and agro-processing qualify for income tax exemption based on the following capital investment levels:

| Capital Investment ($) | Tax Holiday |
|---|---|
| $100,000 to $250,000 | 5 years |
| $250,001 to $1 million | 10 years |
| $1 million to $2 million | 15 years |
| In excess of $2 million | 20 years |

Duty-free importation of all machinery, plants, equipment, and tools will continue for the agriculture sector.

## EXPORT INCOME DEDUCTIONS

The Export Income Tax Deduction (EID) is available to business of exporting goods and services but excludes re-exports. The percentage of export income to be deducted is 60% for tax years until 31 December 2024. The agriculture and fisheries sector will qualify Export income deduction of 90%.

## LOSSES CARRIED FORWARD

Losses carried forward can be claimed up to 8 years. Losses carried forward by an entity are allowed if that entity satisfies the continuity of ownership test or the same business test.

## ACCELERATED DEPRECIATION

100% write off available for construction of a new commercial and industrial building provided approvals are obtained prior to 31 December 2020.

## DEBT FORGIVENESS

- Debt forgiveness is not subject to income tax for all debt outstanding forgiven from 1 April 2020 to 31 December 2022;
- Debt creation period is prior to 31 December 2022.

## EMPLOYMENT TAXATION SCHEME

- 300% tax deduction on wages paid on a first full-time employee for a year;
- 200% tax deduction on wages paid for work placements in the related area of study up to 6 months in a year before graduation, as part of the course requirements;
- 200% tax deduction on wages paid to students employed on a part-time basis (in the related area of study up to 3 months in a 12-month period);
- 400% tax deduction on wages paid in the employment of disabled people employed for 3 consecutive years;
- 300% deduction allowed on salaries and wages paid to an employee quarantined and/or tested positive for COVID-19 until 31 December 2022;
- 150% tax deduction on tuition fees paid by an employer on an employee's formal education to study in a tertiary institution during the course of employment.

These incentives are available until 2023.

## OTHER TAXATION SCHEME

- 150% tax deduction allowed for donation to the Sports Funds;
- 150% tax deduction allowed to hotels and resorts that hire local artists such as craftsmen, dancers and musicians;
- 150% tax deduction allowed to companies' listing of the corporate bonds with the SPSE (Stock Exchange). This deduction will be applied on the cost of listing;
- All Unit Trusts will be exempted from Income Tax;
- 200% tax deductions allowed on the development or upgrade of online shopping websites with integrated payment platforms;
- 200% tax deduction allowed for investment in fogging machines specifically used for decontamination and sanitising purposes;
- 200% tax deduction given to landlords for the amount reduction on commercial rent;
- 300% deduction allowed to employers exceeding the 6% mandatory FNPF contribution up to 10%;
- 150% deduction allowed on interest paid on corporate bonds.

## D. PERSONAL TAX

- Resident individuals are liable for tax on taxable income accruing in or derived from Fiji or elsewhere. Non-residents are liable for tax only on taxable income accruing in or derived from Fiji;
- Pensions received by non-resident pensioners from a Fiji source will not be taxed;
- When a non-Fiji citizen is in Fiji mainly for employment purposes under a contract of employment of not more than three years, income other than employment income is not subject to tax in Fiji if it is not derived from or does not accrue in Fiji;
- Income tax is assessed on taxable (chargeable) income. Where the taxable income of a resident exceeds FJD 50,000, income tax is FJD 3,600 plus 20% in excess of FJD 50,000;
- In the case of non-residents, income tax is 20% of the taxable income;
- In addition to income tax, social responsibility tax (SRT) and environment and climate adaptation levy (ECAL) are imposed on chargeable income.

**Residents - Income tax, SRT (social responsibility tax) and ECAL (Environment and climate adaptation levy) rates**

| Chargeable income (FJD) | Tax payable (FJD) | SRT (FJD) | ECAL (JFD) |
|---|---|---|---|
| 0 – 30,000 | 0 | Nil | Nil |
| 30,001 – 50,000 | 18% of excess over 30,000 | Nil | Nil |
| 50,001 – 270,000 | 3,600 + 20% of excess over 50,000 | Nil | nil |
| 270,001 – 300,000 | 47,600 + 20% of excess over 270,000 | 13% of excess over 270,000 | 5% of excess over 270,000 |
| 300,001 – 350,000 | 53,600 + 20% of excess over 300,000 | 3,900 + 14% of excess over 300,000 | 5% of excess over 270,000 |
| 350,001 – 400,000 | 63,600 + 20% of excess over 350,000 | 10,900 + 15% of excess over 350,000 | 5% of excess over 270,000 |
| 400,001 – 450,000 | 73,600 + 20% of excess over 400,000 | 18,400 + 16% of excess over 400,000 | 5% of excess over 270,000 |
| 450,001 – 500,000 | 83,600 + 20% of excess over 450,000 | 26,400 + 17% of excess over 450,000 | 5% of excess over 270,000 |
| 500,001 – 1,000,000 | 93,600 + 20% of excess over 500,000 | 34,900 + 18% of excess over 500,000 | 5% of excess over 270,000 |
| Over 1,000,000 | 193,600 + 20% of excess over 1,000,000 | 124,900 + 19% of excess over 1,000,000 | 5% of excess over 270,000 |

**Non-residents - Income tax, SRT (social responsibility tax) and ECAL (Environment and climate adaptation levy) rates**

| Chargeable income (FJD) | Tax payable (FJD) | SRT (FJD) | ECAL (JFD) |
|---|---|---|---|
| 0 – 30,000 | 20% of excess of FJD 0 | Nil | Nil |
| 30,001 – 50,000 | 6,000 + 20% of excess over 30,000 | Nil | Nil |
| 50,001 – 270,000 | 10,000 + 20% of excess over 50,000 | Nil | nil |
| 270,001 – 300,000 | 54,000 + 20% of excess over 270,000 | 13% of excess over 270,000 | 5% of excess over 270,000 |
| 300,001 – 350,000 | 60,000 + 20% of excess over 300,000 | 3,900 + 14% of excess over 300,000 | 5% of excess over 270,000 |
| 350,001 – 400,000 | 70,000 + 20% of excess over 350,000 | 10,900 + 15% of excess over 350,000 | 5% of excess over 270,000 |
| 400,001 – 450,000 | 80,000 + 20% of excess over 400,000 | 18,400 + 16% of excess over 400,000 | 5% of excess over 270,000 |
| 450,001 – 500,000 | 90,000 + 20% of excess over 450,000 | 26,400 + 17% of excess over 450,000 | 5% of excess over 270,000 |
| 500,001 – 1,000,000 | 100,000 + 20% of excess over 500,000 | 34,900 + 18% of excess over 500,000 | 5% of excess over 270,000 |
| Over 1,000,000 | 200,000 + 20% of excess over 1,000,000 | 124,900 + 19% of excess over 1,000,000 | 5% of excess over 270,000 |

## E. DIVIDENDS

Dividends declared from tax-paid profits are not subject to any tax – this includes dividends paid to non-residents.

## F. EXCHANGE CONTROL

- There are Exchange Control rules in Fiji;
- Reserve Bank of Fiji (RBF) approval is required where there is any foreign shareholding in a Fiji incorporated company;
- RBF rules for debt-to-equity are in place for local borrowing by foreign companies;
- Exchange control rules are also in place for remittances of funds abroad;
- Rules are reviewed annually and any latest information on Exchange Control Rules can be accessed on https://www.rbf.gov.fj

## G. TREATY AND NON-TREATY WITHHOLDING TAX RATES

- According to domestic tax law, as from 1 August 2017 there is no withholding tax on dividends paid to non-residents;
- Interest paid to non-residents is subject to a 10% final withholding tax on the gross amount;
- Royalties paid to non-residents are subject to a 15% final withholding tax on the gross amount;
- Management fees, professional fees or other independent services, and rental income (i.e. on films) paid to non-residents are subject to a 15% final withholding tax on the gross amount.

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 0 | 0 | 10 | 15 |
| Individuals | 0 | -- | 10 | 15 |
| **Treaty countries:** | | | | |
| Australia | 0 | 0 | 10 | 15 |
| India | 0 | 0 | 10 | 10 |
| Japan | 0 | 0 | 10 | 10 |
| Korea (South) | 0 | 0 | 10 | 10 |
| Malaysia | 0 | 0 | 15 | 15 |
| New Zealand | 0 | 0 | 10 | 15 |
| Papua New Guinea | 0 | 0 | 10 | 15 |
| Singapore | 0 | 0 | 10 | 10 |
| United Arab Emirates | 0 | 0 | 0 | 10 |



# FINLAND

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Helsinki | Rantalainen Audit | +358 103 243 116<br>mikael.hedlund@rantalainen.fi |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Finland |
| Capital: | Helsinki |
| Main languages: | Finnish, Swedish |
| Population: | 5.56 million (2022 estimate) |
| Monetary unit: | Euro (EUR) |
| Internet domain: | .fi |
| Int. dialling code: | +358 |

## KEY TAX POINTS

- Finnish resident companies are liable to corporate income tax on worldwide income. Non-resident companies are taxed on their Finnish-sourced income only.
- Capital gains are normally taxed as ordinary income. In specific circumstances, capital gains arising on the disposal of shares in a subsidiary are exempt.
- In principle, all sales of goods and services are subject to value added tax, subject to reduced rates and exemptions.
- A local real estate tax is levied on properties owned by companies.
- The transfer of immovable property attracts a transfer tax.
- A controlled foreign company (CFC) system applies.
- Under double tax treaties, foreign tax is most frequently relieved by way of credit, sometimes the exemption method is also applied. Where there is no relevant tax treaty, Finnish domestic tax law grants a credit for foreign tax paid once that foreign tax is final.
- Dividends and royalties paid to non-resident companies are subject to withholding taxes. Tax treaties may provide benefits and exemptions to this.
- Finnish resident individuals are subject to tax in respect of their worldwide income. Non-residents are taxed on their income derived from Finland.
- Individuals are taxed separately on earned income and investment income.

## A. TAXES PAYABLE

### COMPANY TAX

Finnish resident companies are liable to corporate income tax on their worldwide income. Non-resident companies are taxed on their Finnish-sourced income only. Corporate residence is not defined in the tax legislation, but residency is usually associated with registration. The corporate income tax rate is 20% of the taxable income. The tax year consists of the financial period (or periods) that ends during the calendar year. The final tax assessment for the tax year is determined based on the tax return. Corporate bodies must file the tax return within four months of the end of their accounting period. Tax returns are processed within ten months of the end of the accounting period.

## CAPITAL GAINS TAX

Capital gains are normally taxed as ordinary business income. Where shares or land have been held for business purposes, the disposal is subject to normal income tax. In specific circumstances, capital gains from the disposal of shares of a subsidiary are tax exempt. The shares need to be owned for at least one year prior to disposal and the seller has to have owned at least 10% of the company whose shares are being disposed of. There is more detailed legislation for applying this exemption.

## BRANCH PROFITS TAX

There is no specific branch profits tax in Finland. The taxable income for branches of foreign companies in Finland is calculated on the same basis as for Finnish resident companies at a rate of 20%. There is no branch remittance tax in Finland. If the branch is only a cost centre a cost-plus method may be applied.



## VALUE ADDED TAX (VAT)

VAT is paid on the sale of goods and services, on the importation of goods, on intra-community acquisitions and on the removal of the goods from a fiscal warehousing arrangement when the removal takes place in Finland. In principle, all sales of goods and services are subject to VAT. However, there are some supplies of goods and services which are exempt under the conditions defined in the VAT Act. The general VAT rate is 24%. Other applicable rates are as follows:

- 14% for individuals' food and animal feed and restaurant services;
- 10% for medicines, books, cultural events, passenger transportation, hotel accommodation and other services;
- Exports outside the European Union are zero rated.

## FRINGE BENEFITS TAX (FBT)

The benefits in kind are added to the gross salary according to the annual decision of the Finnish Tax Administration on the valuation of taxable in-kind benefits to be applied. However, the employer has a legal responsibility to withhold income taxes and social security contributions from salaries and benefits paid to their employees.

## LOCAL TAXES

Basically, there are no local taxes imposed on companies. However, municipal real estate tax is levied on properties owned by companies. It is normally 0.41% to 1% (residential buildings) and 0.93% to 2.00% (other buildings) of the taxation value of the immovable property, depending on the municipality where the property is situated, and is deductible, up to certain limits, for income tax purposes.

## OTHER TAXES

Employers must make social security contributions to cover the costs of health insurance at the rate of 1.34% on gross remuneration paid to employees between 16 and 68 years of age. Pension insurance contributions are also payable at 17.40% (on average), unemployment contributions (0.50% on the first EUR 2,197,500 and 2.05% on the excess) and accidental injury insurance contribution of approximately 0.7% (average 2022) of annual gross wages and salaries. This varies considerably depending on the work performed by the employees.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is determined based on financial accounting income adjusted for non-taxable and non-deductible items. In practice, the determination of taxable income is closely connected to the determination of net income for financial statement purposes. Generally, all expenses incurred in acquiring or maintaining business income are deductible (however, e.g. entertainment expenses are 50% deductible only).

## DEPRECIATION

Buildings and other constructions are depreciated for tax purposes using the declining balance method. Depreciation for each building is calculated separately, with the maximum percentage varying from 4% to 20%, depending on the type of the construction. Depreciation of machinery and equipment is calculated using the declining balance method with a maximum rate of 25%. Patents and other intangible rights, such as goodwill, are amortised on a straight-line basis for ten years for tax purposes, unless the taxpayer demonstrates that the asset has a shorter useful life.

Assets with a useful life of less than three years may be written off using the free depreciation method, i.e. deduct up to 100% of the costs of assets in a single tax year where the value for each item is less than EUR 850 and the total value of such assets is no more than EUR 2,500 per tax year. The allowable annual rates of depreciation are doubled for the tax years 2020 – 2023 for the following: New machinery and equipment used for production activities, as specified in the act (increase from 25% to 50%).

## STOCK / INVENTORY

In principle, the acquisition costs of inventories are deducted when assets are sold, consumed or lost. Inventories on hand at the end of the tax year are valued at an amount not exceeding the lower of acquisition cost or market value. Acquisition cost is usually calculated on a FIFO basis, other methods may also be possible. Certain overhead costs can be included in the acquisition cost of products.

## CAPITAL GAINS AND LOSSES

As discussed above, capital gains are usually taxable as ordinary income. Broadly speaking, gains on the disposal of shares in resident companies in which the seller had at least a 10% interest throughout the year ending on the date of disposal are exempt from tax. There are more prerequisites in the relevant act for this exemption.

## DIVIDENDS

Inter-company dividends are tax exempt in most cases, although they are fully taxable if they are distributed by a quoted company to a non-quoted company that holds less than 10% of the capital in the distributing company, or 75% taxable if the recipient company is a financial or insurance company holding the shares as investment assets. Tax agreements may entitle non-residents either to benefit from a lower withholding tax rate or to receive an imputation credit. Dividends are exempt from withholding tax when paid to a company resident in a European Union country if the company pays national corporate tax and holds at least 10% of the share capital in the distributing company. Tax exemption does not apply if the recipient is entitled to an imputation credit. The individual treaty in question must always be verified.

## INTEREST DEDUCTIONS

Normally, interest on loans obtained for business purposes is deductible in full on an accruals basis. New thin capitalisation rules have been introduced from tax year 2014 onwards which apply to interest paid between related parties. Broadly speaking, a company may deduct up to EUR 500,000 of interest expense per year without restriction. Similarly, if a company can demonstrate that its equity ratio (equity/total assets) is at least as high as the group's consolidated equity ratio, then the thin capitalisation rules will also not apply, as specified in more detail in the relevant legislation.



Where neither of these exemptions apply, the maximum deductible amount of interest paid to related parties is 25 % of EBITDA determined for tax purposes. Any interest restricted under these rules can be carried forward to use in future years, but similar restrictions on e.g. EBITDA apply each tax year.

## LOSSES

Losses may be carried forward and set off in the subsequent ten tax years. If more than 50% of the shares of the company are sold during a loss year or thereafter, losses from previous years cannot usually be deducted. There is a dispensation procedure possible to this main rule.

## FOREIGN SOURCED INCOME

If a foreign company falls under the Finnish controlled foreign company (CFC) legislation, then the foreign company's undistributed profits can be allocated to the taxable income of a Finnish shareholder. The preconditions for the application of the CFC legislation are as follows:

- One or more Finnish resident shareholders directly or indirectly own at least 25% of the capital or of the voting rights in the CFC or they are entitled to at least 25% of the yield of the net wealth of the CFC;
- The Finnish resident shareholder owns, directly or indirectly, at least 25% of the CFC;
- The effective tax rate of the CFC in its country of residence is less than three-fifths of the tax of an equivalent company resident in Finland (currently 12%).

## C. FOREIGN TAX RELIEF

Under tax treaties, foreign tax is most frequently relieved by a tax credit. If a tax treaty does not apply, Finnish domestic law grants a credit for foreign tax paid, as specified in more detail. The credit is granted only if the foreign tax is final. From 2010, a requirement to calculate available credits on a source country-by-country basis was removed and the ability to carry forward unused credits was extended from one year to five years.

## D. CORPORATE GROUPS

Corporations are taxed separately in Finland. There is no concept of consolidated tax returns. However, it is possible to make group contributions if the parent company owns at least 90% of the subsidiary during the whole financial year. The payments will be tax deductible at the level of the payer and taxable at the level of the recipient. There are additional requirements in the relevant act.

## E. RELATED PARTY TRANSACTIONS

Related party transactions are usually accepted if they are at arm's length. Arm's-length pricing applies to transactions of all types including the purchasing of inventory and the provision of services and financial facilities.

Mandatory transfer pricing documentation requirements apply to foreign-owned subsidiaries and branches in Finland and Finnish Groups who exceed one of the following limits:

- More than 250 employees;
- Annual turnover in excess of EUR 50 million and balance sheet of more than EUR 43 million;
- The company does not meet the requirements of a small and medium-sized business as defined in EU Commission Recommendation 2003/361/EY.

## F. WITHHOLDING TAX

Withholding tax is not imposed on dividends paid to resident companies. Dividends paid to non-resident companies are generally subject to a withholding tax of 20% which may be reduced or eliminated under tax treaties. Non-resident shareholders are not entitled to an imputation credit unless a tax treaty provides otherwise. Interest paid to resident companies is not subject to withholding tax. Interest paid to non-residents is generally exempt from tax. However, the abovementioned thin capitalisation restrictions may apply.

Withholding tax is not imposed on royalties paid to resident companies. Royalties paid to non-resident companies are generally subject to a withholding tax of 20% which may be reduced or eliminated under a tax treaty. Royalties are, in certain cases, exempted from withholding tax when paid to a company resident in a European Union country. In certain circumstances, tax must be withheld on payments for work carried on by non-residents if they are not registered in Prepayment Register.

## G. EXCHANGE CONTROL

In principle, there are no exchange controls in Finland.

## H. PERSONAL TAX

Finnish resident individuals are subject to tax in respect of their worldwide income. Non-residents are taxed on their income derived from Finland. The tax year for individuals is the calendar year. Married persons are taxed separately both on earned income and investment income. Interest and insurance deductions may be dependent, in certain circumstances, on the marital status of the taxpayer. In general, married persons will have their own deductions.

Individuals are entitled to deduct from their investment income and earned income all expenses incurred in acquiring and maintaining such income, as regulated in more detail. Individuals usually have a right to deduct interest expenses from investment income. Interest expenses are deductible if the debt is related to the acquisition of taxable income. In 2020, 15% of interest on a loan used to purchase the individual's permanent home is deductible.

An individual is taxed separately on earned income and on investment income. Earned income is subject to national income tax, municipal income tax and church tax. Earned income includes salaries, wages and benefits in kind. The rate table for the national income tax levied on earned income is as follows as from 1 January 2022.

| Taxable income (EUR) | Tax on lower amount (EUR) | Rate on excess (%) |
|---|---|---|
| 18,100 – 27,900 | 8 | 6.00 |
| 27,901 – 45,900 | 566 | 17.25 |
| 45,901 – 80,500 | 3,671 | 21.25 |
| Over 80,500 | 11,023.50 | 31.25 |

Investment income includes dividend income, capital gains, certain interest income and income from rental activities. Capital income up to EUR 30,000 is taxed at 30% whereas amounts over EUR 30,000 are taxed at 34%.

Finnish nationals are, in addition, subject to the three-year rule. According to this rule, a Finnish national is considered to remain resident in Finland for three years after the end of the year in which he left the country, unless he shows that he has not maintained essential ties in Finland during the tax years concerned. However, under the terms of tax treaties, the three-year rule may be excluded if the individual is deemed resident in another country. Finland imposes both inheritance and gift tax. The minimum taxable amount for inheritance taxation is EUR 20,000 and for gift tax EUR 5,000. Tax rates for both inheritance and gift tax vary from 7% to 33%, depending on who is the receiver of the inheritance and the value inherited or gifted.

Wages and salaries paid by an employer are subject to an employee withholding tax. The amount withheld is based on the amount of wages or salary as well as on the individual circumstances of the employee.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The tax treaty withholding tax rates in 2022 are as follows (always check the relevant tax treaty application both source and recipient country before decision making).

For countries not included in the table, the rate is 20% (corporate entity) and 30% (individual or other than corporate entity). In the table the note is 20/30.

| | Dividends[1] (%) | Dividends[2] (%) | Interest[3] (%) | Royalties[7] (%) |
|---|---|---|---|---|
| **Treaty countries:** | | | | |
| Argentina | 15 | 10 | 20/30 | 15 |
| Armenia | 15 | 5 | 0 | 10 |
| Australia | 15 | 5 | 20/30 | 5 |
| Austria | 10 | 0 | 0 | 5 |
| Azerbaijan | 10 | 5 | 20/30 | 5 |
| Barbados | 15 | 5 | 20/30 | 5 |
| Belarus | 15 | 5 | 0 | 5 |
| Belgium | 15 | 5 | 0 | 5 |
| Bosnia-Herzegovina[4] | 15 | 5 | 0 | 10 |
| Brazil6 | 20/30 | 20/30 | 20/30 | 20/30 |
| Bulgaria | 10 | 10 | 0 | 5 |
| Canada | 15 | 5 | 20/30 | 10 |
| China | 10 | 5 | 20/30 | 10 |
| Croatia[4] | 15 | 5 | 0 | 10 |
| Cyprus | 15 | 5 | 0 | 0 |
| Czech Republic | 15 | 5 | 0 | 10 |
| Denmark | 15 | 0 | 0 | 0 |
| Egypt | 10 | 10 | 20/30 | 25 |
| Estonia | 15 | 5 | 20/30 | 0 |
| Faroe Islands | 15 | 0 | 0 | 0 |
| France | 0 | 0 | 0 | 0 |
| Georgia | 10 | 0/5 | 0 | 0 |
| Germany | 15 | 5 | 5 | 0 |
| Greece | 13 | 13 | 0 | 10 |

| | Dividends[1] (%) | Dividends[2] (%) | Interest[3] (%) | Royalties[7] (%) |
|---|---|---|---|---|
| Hong Kong | 10 | 5 | 20/30 | 3 |
| Hungary | 15 | 5 | 0 | 5 |
| Iceland | 15 | 0 | 0 | 0 |
| India | 10 | 10 | 20/30 | 10 |
| Indonesia | 15 | 10 | 20/30 | 15 |
| Ireland | 0 | 0 | 0 | 0 |
| Israel | 15 | 5 | 0 | 10 |
| Italy | 15 | 10 | 0 | 5 |
| Japan | 15 | 10 | 0 | 10 |
| Kazakhstan | 15 | 5 | 0 | 10 |
| Korea (South) | 15 | 10 | 0 | 10 |
| Kosovo[4] | 15 | 5 | 0 | 10 |
| Kyrgyzstan | 15 | 5 | 0 | 5 |
| Latvia | 15 | 5 | 20/30 | 10 |
| Lithuania | 15 | 5 | 20/30 | 0 |
| Luxembourg | 15 | 5 | 0 | 5 |
| Malaysia | 15 | 5 | 20/30 | 5 |
| Malta | 15 | 5 | 0 | 0 |
| Mexico | 0 | 0 | 20/30 | 10 |
| Moldova | 15 | 5 | 0 | 7 |
| Montenegro[4] | 15 | 5 | 0 | 10 |
| Morocco | 10 | 7 | 20/30 | 10 |
| Netherlands | 15 | 0 | 0 | 0 |
| New Zealand | 15 | 15 | 20/30 | 10 |
| North Macedonia | 15 | 0 | 0 | 0 |
| Norway | 15 | 0 | 0 | 0 |
| Pakistan | 20 | 12 | 20/30 | 10 |
| Philippines | 20/30 | 15 | 20/30 | 25 |
| Poland | 15 | 5 | 0 | 5 |
| Romania | 5 | 5 | 0 | 5 |
| Russia | 12 | 5 | 0 | 0 |
| Serbia[4] | 15 | 5 | 0 | 10 |
| Singapore | 10 | 5 | 20/30 | 5 |
| Slovak Republic | 15 | 5 | 0 | 10 |
| Slovenia | 15 | 5 | 0 | 5 |
| South Africa | 15 | 5 | 0 | 0 |
| Spain | 15 | 5 | 0 | 0 |
| Sri Lanka | 10 | 7.5 | 20/30 | 10 |
| Sweden | 15 | 0 | 0 | 0 |
| Switzerland | 10 | 0 | 0 | 0 |
| Tajikistan | 15 | 5 | 0 | 5 |
| Tanzania | 20 | 20 | 0 | 20 |
| Thailand | 20/30 | 20 | 20/30 | 15 |
| Turkey | 15 | 5 | 20/30 | 10 |
| Turkmenistan | 15 | 5 | 0 | 10 |
| Ukraine | 15 | 5 | 0 | 10 |
| United Arab Emirates[5] | 20/30 | 20/30 | 20/30 | 20/30 |
| United Kingdom | 0 | 0 | 0 | 0 |
| United States | 15 | 5 | 0 | 0 |
| Uruguay | 15 | 5 | 0 | 10 |
| Uzbekistan | 15 | 5 | 0 | 10 |
| Vietnam | 15 | 10/5 | 20/30 | 10 |
| Zambia | 15 | 5 | 20/30 | 15 |

NOTES:

1. Tax at source on dividend.
2. The recipient is a company whose share in the company making the payment is at least the percentage indicated in the tax treaty. In some cases, the holding refers to share capital and in others to voting power. The relevant tax treaty should be checked to determine the exact requirements.
3. According to domestic tax law, interest paid to a non-resident is usually exempt from taxation in Finland.
4. The treaty concluded between Finland and the former Yugoslavia.
5. No tax, if the recipient proves that he is domiciled (individual) or incorporated in the UAE.
6. A double tax treaty with Brazil is in force. However, the tax-sparing articles only applied for the first ten years since the signing of the treaty. This timeframe ended on 25 December 2007.
7. Payments made for the use of commercial or scientific equipment are not taxable in Finland, although some tax treaties would allow taxing right (article 10 (8) of the Income Tax Act and Supreme Court decision 1986-B-II-501).



## FRANCE

### MEMBER FIRMS

| City | Name | Contact Information |
|---|---|---|
| Paris | Stéphane Malmonté | +33 1 72 28 35 65<br>s.malmonte@hedeos-avocats.fr |
| Paris | Jean-Gabriel Boulic | +33 1 42 94 42 42<br>jean-gabriel.boulic@arsilon.com |
| Rouen | Olivier Lefort | +33 2 79 18 01 45<br>olivier.lefort@williamexpertise.fr |

### BASIC FACTS

| | |
|---|---|
| Full name: | French Republic |
| Capital: | Paris |
| Main languages: | French |
| Population: | 65.54 million (2022 estimate) |
| Monetary unit: | 1 Euro (EUR) = 100 cents |
| Internet domain: | .fr |
| Int. dialling code: | +33 |

### KEY TAX POINTS

- Companies are subject to French corporate tax on the profits of any business carried on in France. There is a lower rate for SMEs.
- Capital gains generated by companies are generally deemed to be ordinary income. Under the participation exemption, 88% of the gains derived from the disposal of qualifying shares are tax exempt. The remaining 12% is taxed in the normal manner.
- The standard tax system is territorial and applies to each company individually. Foreign branch profits are exempt from French corporate tax. French branches of foreign companies will generally only be taxed in France on French-sourced income.
- In general, all supplies of goods and services and importations of goods and most services are subject to Value Added Tax (VAT) at a standard rate of 20% in mainland France.
- Territorial Economic Contribution; which has two elements: a tax on real estate utilized by the business and a tax on the value added generated by the company.
- Other significant government levies include: a land tax (based on the rental value of real estate) and residential tax on the occupation of property.
- Credit for foreign tax on dividends, royalties and interest is allowed under double tax treaties. Where no tax treaty applies relief is granted by way of deduction.
- Transfer pricing requirements apply to related party transactions with overseas parties. Certain transfer pricing documentation must now be provided annually.
- Withholding tax applies to dividends, interest and royalty payments to non-residents, the rate being subject to the status of the recipient and the terms of tax treaties. There are significant exceptions for payments to EU parent companies. Permanent establishments are automatically subject to withholding tax unless specific conditions are met.
- Personal income tax is an annual, family and global tax: it applies to all income received during the civil year by the taxpayer and the persons fiscally attached to his household – tax household (examples: spouse, civil solidarity pact partner, minor children). Personal income tax is applied at progressive rates, subject to mitigation by the family quotient system, which takes account of the family expenses of the taxable household. Income tax, from 2019, is in many cases, e.g. salaries, pensions, now deducted at source. There is a progressive over time exemption from tax and social charges on capital gains on disposals of French property. There is an exemption from capital gains tax on the disposal of the principal residence.

- The wealth tax is based on the current value of real estate assets of the tax household as determined on January 1 of the tax year. It is a progressive tax. French residents are subject to wealth tax on worldwide real estate assets, while the tax basis for non-residents is limited to real estate assets situated in France.
- Inheritance tax is paid by the inheritors of a French resident's estate, the French assets of a non-French resident, and also by the French resident inheritors of the estate of a non-French resident.
- Businesses subject to business taxes, e.g. VAT and corporate income tax must produce a Standard Audit file for tax.

## A. TAXES PAYABLE

### COMPANY TAX

Companies are subject to French corporate tax on profits of any business carried on in France. A company is said to be carrying on a business in France if it has a permanent establishment, a dependent agent or carries out a 'complete commercial cycle' in France. The fiscal year runs to 31 December, although each company can choose its own accounting year end. The standard corporate income tax rate is currently 26.5% or 27.5% depending on the turnover of the company (less or more than EUR 250 million – if the company is part of a consolidated tax group, the turnover to take into account is the sum of the turnovers realised in France by the group members) (2021). Small and medium sized enterprises (SMEs), i.e. enterprises with fully paid up capital owned by individuals or by other SMEs for at least 75% and with a turnover of EUR 10,000,000 or less, are subject to a 15% reduced tax rate on the first EUR 38,120 of profits.

The current standard rate was progressively reduced to 25% by 2022 as follows:

- 2021: companies with a turnover of less than EUR 250 million are subject to a 26.5% rate on their total profits. Companies with a turnover of EUR 250 million or more are subject to a 27.5% rate on their total profits;
- 2022: all companies are subject to a 25% rate on their total profits.

The following table gives an overview of the progressive reduction to 25% over the years:

| Turnover (EUR) | Fraction of taxable profits (EUR) | 2018 (%) | 2019 (%) | 2020 (%) | 2021 (%) | 2022 (%) |
|---|---|---|---|---|---|---|
| Up to 7.63 million[1] | Up to 38,120[3] | 15 | 15 | 15 | 15 | 15 |
| | 38,121 – 500,000 | 28 | 28 | 28 | 26.5 | 25 |
| | Over 500,000 | 33.33 | 31 | | | |
| 7.63 million[1] – 250 million | Up to 500,000 | 28 | 28 | 28 | 26.5 | 25 |
| | Over 500,000 | 33.33 | 31 | | | |
| 250 million and over[2] | Up to 500,000 | 28 | 28 | 28 | 27.5 | 25 |
| | Over 500,000 | 33.33 | 33.33 | 31 | | |

Note:

1. 10 million from 1 January 2021
2. Large companies
3. The 15% rate applies to small enterprises on their profits up to EUR 38,120 (see hereafter)

Companies whose turnover exceeds EUR 7,630,000 also have to pay 3.3% social security contributions, but only when the amount of the corporate tax due exceeds EUR 763,000. The 3.3% contribution applies to the amount of the corporate income tax.

Tax is payable in four instalments, the due dates being respectively 15 March, 15 June, 15 September and 15 December for accounting years ending on 31 December. The balance must be paid by the 15th of the fourth month after the accounting year-end. Instalments are determined by applying the current year's tax rates to the taxable profits of the last complete accounting period. Additional rules apply for payments on account due by very large companies.

### CAPITAL GAINS TAX

Capital gains are generally deemed to be ordinary income and subject to corporate income tax. Under the participation exemption, 88% of the gains derived from the disposal of qualifying shares are exempt from tax. The remaining 12% is taxed in the normal manner (standard corporate tax rate). Shares qualifying for the participation exemption are those in which the shareholder has held at least 5% of the subsidiary's capital for at least two years.

In addition, proceeds from the licensing of patents, patentable inventions and their improvements and associated manufacturing processes qualify, subject to certain conditions, for a reduced capital gains tax rate of 15% although they constitute royalty income in the strictest sense. The reduced rate also applies to the disposal of such patents, except between related companies. Such disposals are classified as producing 'long term' gains or losses.

A net long-term loss can generally only be carried forward to offset against any kind of long-term capital gains arising in the following ten years. Net long-term capital losses can no longer be offset against gains arising on the disposal of qualifying shares.

Capital gains on shares held in subsidiaries established in a non-cooperative state or territory will not benefit from the long-term gains regime (except if it can be demonstrated that the business carried out by the foreign company is real and is not constitutive of tax fraud) or the participation exemption and will be taxed at the standard corporate income tax rate. Moreover, it will only be possible to offset capital losses sustained on the disposal of such securities against capital gains of the same type and not against profits taxed at the standard corporate income tax rate.

### BRANCH PROFITS TAX

The normal system is territorial and applies to each company individually. Foreign branch profits are exempt from corporate income tax. French branches of foreign companies will generally only be taxed in France on French-sourced income, subject to the same corporate income tax rules as a resident company. The rate of the tax and the surcharges thereon are also the same as for resident companies.

As a principle, branch profits are deemed to be distributed to the foreign head office. Withholding tax is levied at the rate of 25% (or a reduced tax treaty rate) on the net profits of the branch. A refund of tax may be claimed to the extent that the branch's net taxable profits exceed the amounts actually distributed by the head office during the 12 months following the end of the fiscal year concerned, or to the extent the amounts are distributed to residents of France. However, the branch remittance tax is not due on profits of foreign companies whose head offices are located in the European Economic Area and which are subject to local corporate income tax with no possibility of opting for taxation or of being exempt.

## VALUE ADDED TAX (VAT)

In general, all economic activities conducted in France are subject to VAT (sales (and importations) of goods, supplies of services, certain self-supplies and intra-community acquisitions). The 20% standard VAT rate applies to transactions in metropolitan France (different rates apply in Corsica and the overseas departments and territories) other than those that are expressly exempt from VAT or subject to one of the reduced rates (10% on for example passenger transport, hotel accommodation, restaurants (except alcohol)), 5.5% reduced VAT rate (e.g. most foods, books) or to the special rate of 2.1% - applicable to reimbursed drugs and to most press items.

The taxpayer is liable for VAT on supplies of goods and services but may offset against this amount any VAT on the purchase (or importation) of goods, equipment and services. VAT returns and payments of VAT must generally be remitted monthly (special rules apply to small businesses). Certain types of domestic supplies may be subject to the reverse charge mechanism e.g. sub-contract building construction works, certain transactions in non-investment gold, supplies of gas, electricity, telecommunications services and transfers of $CO_2$ emission quotas.

Subject to certain conditions VAT registered businesses can also 'reverse charge' the VAT due on imported goods.

Companies must produce and retain a 'VAT audit trail documentation file' to fully justify VAT that is deductible and chargeable.

## FRINGE BENEFITS TAX (FBT)

Goods and services provided to employees are considered as salaries paid in kind, liable to social contributions and income tax.

## LOCAL TAXES

Various taxes are levied by the Government for the benefit of local government. The most important are as follows.

## LAND TAXES

a) **Real Estate tax**

This is based on 50% of the deemed rental value of real estate owned by the taxpayer (80% for bare land).

b) **Territorial Economic Contribution (hereafter CET)**

The CET consists of two separate contributions which apply in combination:

- Corporate Real Estate Contribution (CFE): The CFE is based on the deemed rental value of real estate assets available to the taxpayer for the purposes of its business activity;
- Contribution calculated on the corporate added value (CVAE): The CVAE is based on turnover, increased by certain income and reduced by certain deductible charges.

## RESIDENTIAL TAX

This is a tax on the occupation of property based on the deemed rental value of the property reduced by an allowance for the number of dependants of the occupant. This tax is being substantially reduced over the next few years. This tax is planned to be abolished in 2023 for residential property (primary residence) with progressive partial reductions in 2021 and 2022.

## OTHER TAXES

These include the following minor and indirect taxes:

## SALARIES TAX

This tax (distinct from payroll taxes) is due by companies which are not subject to VAT on at least 90% of their turnover (or turnover giving rise to the right to deduct VAT).Tax rates vary from 4.25% to 13.6% based on the level of remuneration (including benefits in kind) paid to employees.

## UNIQUE CONTRIBUTION FOR APPRENTICESHIP AND WORK-STUDY ('CUFPA')

This tax consists of two separate contributions:

- Apprenticeship tax: Payable at the rate of 0.68% (0.44% in the 3 departments in Alsace-Moselle) on total annual gross wages and salaries. This tax and the employers' training tax (see below) are being substantially revised, starting from 2020, and merged into one tax.
- Employers' training tax: All employers with at least 11 employees pay a contribution of 1 % (1.3% for temporary employment agencies) of total annual wages and salaries as an investment into vocational training programmes. The rate is reduced to 0.55% where there are fewer than 11 employees.

## CONSTRUCTION PARTICIPATION TAX

All employers with 50 employees or more in 2021 must pay a minimum of 0.45% of total gross wages and salaries for the construction of social dwellings.

## COMPANY CAR TAX

Companies pay a tax based on the number of cars registered in France which they own or rent for more than one month or are used by their employees for their professional needs. The tax has two elements – (i) the level of $CO_2$ emissions and (ii) the age of the car and type of fuel used. Non-polluting vehicles are exempt from this tax. This tax is not deductible from the corporate tax base.

## SOCIAL SOLIDARITY CONTRIBUTION (C3S)

This tax (which is effectively a social charge) applies to companies at a rate of 0.16% on annual turnover (as determined from certain lines on the VAT return) exceeding EUR 19 million. This tax is deductible from the tax base for corporate tax.

## RATES OF STAMP OR TRANSFER DUTIES

The sale of goodwill/business/clientele is subject to transfer duties at a rate of 3% (between EUR 23,000 and EUR 200,000) and 5% over EUR 200,000. The rate of transfer duties on the disposal/transfer of shares, such as shares in an SAS, SA is at 0.1%, but at 3% on shares of an SARL and Sociétés civiles. Exemptions may apply for sales between entities part of the same group. For certain companies having substantial real estate assets the rate is 5%. There are also registration duties on sales/transfers of real estate at varying rates.

## FINANCIAL TRANSACTION TAX (TAXE SUR LES TRANSACTIONS FINANCIÈRES)

A 0.3% tax applies to the acquisition of shares in listed companies which have their head office in France and whose market capitalization exceeds EUR 1 billion on 1st December prior to the fiscal year in which the transaction takes place.



## B. DETERMINATION OF TAXABLE INCOME

Taxable income is determined on the basis of the accounting results. When a tax rule diverges from an accounting principle, adjustments are made to the accounting results to determine the taxable result. Business profits are defined as gross trading profits less manufacturing, administrative and selling expenses. All expenses incurred in the conduct of business are deductible if they are directly related to the corporate purpose of the taxable entity. Special rules apply in respect of the categories listed below.

Interest, royalties and payments for services provided by private individuals and legal entities established or domiciled in a non-cooperative state or territory are only deductible if:

- The debtor provides proof of the transactions;
- The transactions are not abnormal or exaggerated; and,
- Has a *bona fide* commercial purpose.

The paying company will be required to submit a detailed breakdown of the expenditure along with its tax return.

## DEPRECIATION

Fixed assets are generally written off over their normal useful life. The straight-line method is the most commonly used. Companies can choose the declining-balance method to compute depreciation although certain assets are excluded from this. Assets acquired for a cost of less than EUR 500 excluding VAT can be completely written off in the first year.

The cost of cars exceeding certain limits cannot be depreciated: For 2021, the maximum depreciation is set at:

- EUR 30,000 for electric cars (less than 20g/km of CO2);
- EUR 20,300 for hybrid cars (more than 20g/km and less than 50g/km of CO2);
- EUR 18,300 for cars with more than 50g/km and less than 160g/km of CO2; and
- EUR 9,900 for cars with more than 160g/km of CO2.

Other items can be written off at specific rates, depending on their effective life and their date of purchase. A company can elect not to take all the depreciation to which it is entitled if it so wishes but the depreciation claimed on its assets in total must be at least equal to the depreciation that would have been claimed on the same assets on a straight-line basis.

## STOCK / INVENTORY

Stock may be valued at each year-end at cost price, market selling value or replacement cost. On the balance sheet, inventories must be shown at cost price. If the market value is lower, a reserve for depreciation of inventories must be disclosed separately as a deduction from cost.

Cost is defined as the actual purchase price or actual production cost (excluding financial charges) or, if lower, the price at which the goods may be sold. FIFO or the average cost method must be applied. LIFO is prohibited.

## CAPITAL GAINS AND LOSSES

See 'Capital Gains Tax' above.

## DIVIDENDS

Dividends distributed by French or foreign companies that meet the parent subsidiary regime conditions (holding of at least 5% of the capital for at least 2 years; subsidiary subject to corporate income tax and which has an economic substance) are 95% exempt at the level of the parent company.

Dividends that do not meet the conditions of the parent-subsidiary regime are taxed at the common corporate income tax rate by the recipient company.

However, in the following cases, only 1% of the value of dividends received by a French company are taxed:

- Dividends distributed between French companies, part of a tax consolidated group;
- Dividends distributed by an EU company (or established in Iceland or Norway) to a French company which is a member of a tax consolidated group, if this EU company is subject to local corporate income tax and would have met the conditions to be part of the French tax consolidation group if it had been located in France;
- Dividends distributed by an EU company (or established in Iceland or Norway) to a French company which is not a member of a tax consolidated group (because not fulfilling the conditions), if this EU company is subject to local corporate income tax and would have met the conditions to form a French tax consolidation group if it had been located in France.

Dividends from companies established in non-cooperative countries or territories, are excluded from this regime, except if it can be demonstrated that the foreign subsidiary has genuine activities whose purpose or effect is not to locate profits in those non-cooperative countries or territories, with a fraudulent intent.

## INTEREST DEDUCTIONS

In principle, interest payments are fully deductible. However, there were major changes made to the interest deduction rules – effective from 1 January 2020 – to comply with the EU's ATAD.

**New general limitation:** net interest expenses will be deductible from a company's taxable income only to the extent that they do not exceed the higher of two thresholds: (i) EUR 3 million or (ii) 30% of the adjusted taxable income of the company (i.e., corresponding to the taxable income before the offset of tax losses and without taking into consideration net financial expenses and – to some extent – depreciation, provisions and capital gains/losses). This is referred to as the "regular threshold." An additional deduction limited to 75% of the non-deductible amount is available when the ratio equity-to-assets is equal to or greater than the same ratio determined at the level of the consolidated group to which the company belongs. Interest expense that cannot be deducted during a year, can be carried forward without any limits as regards time or amount.

A special rule for "autonomous" companies, i.e. companies that are not part of a consolidated group (as defined in 2° of VI of article 212 bis of the FTC) and that do not have a PE outside of France or an associated company (as defined in paragraph (4) of article 2 of the Directive ATAD 1) entered into force. Those companies will be able to deduct 75% of excess borrowing costs deemed non-deductible under the general limitation rule (30% of the EBITDA / EUR 3 million thresholds).

The new interest expense deduction limitation rules apply to fiscal years ending on 31 December 2020 or later.

F

**Debt-to-equity ratio:** should the company be thinly capitalised and exceed a specific 1.5:1 debt-to-equity ratio,

- a portion of the net interest expense, determined by application of the following ratio to the net interest expense, is subject to the regular threshold:
  - o Average amount of indebtedness to unrelated parties + [1.5 x equity] (numerator);
  - o Average amount of indebtedness (denominator).
- a portion of the net interest expense, determined by application of the following ratio to the net interest expense, is deductible up to the higher of the two following thresholds: (i) EUR 1 million or (ii) 10% of the below mentioned adjusted taxable income:
  - o Average amount of indebtedness to related parties exceeding 1.5 x equity (numerator);
  - o Average amount of indebtedness (denominator).

There are new 'safe harbour' rules and rules for dealing with excess interest expense, deduction capacity, impact of reorganisations and tax groups.

## LOSSES

Losses may be carried forward indefinitely. However, losses carried forward are subject to a restriction whereby the maximum amount that can be utilised in any one year is capped at EUR 1,000,000 plus 50% of the profit exceeding this threshold. The portion of the losses that cannot be offset can be carried forward indefinitely by applying the same limitation each year.

Losses can be carried back against undistributed taxable income for the previous financial year up to the lower of EUR 1,000,000 and the profits of that earlier tax year. The portion of losses that cannot be carried back may still be carried forward indefinitely.

Corporate income tax paid in the preceding years is not immediately repaid to the company when this option is exercised but the company becomes entitled to a tax credit. It can be used to pay its corporate income tax liabilities arising in the following five years. If the credit is not used during these five years, the tax is reimbursed by the Administration.

## PATENT INCOME

The tax rate on patent income is10%. This tax rate applies, on an election basis only, to the net income derived from the licensing of qualifying patents, after deduction of R&D expenses, and after the application of a ratio which takes account of the taxpayer's share of the expenses incurred in the creation of the patent to the total costs incurred.

## FOREIGN SOURCE INCOME

Profits earned by subsidiaries not established in an EU country and paying a low rate of tax (below 15.5%) are presumed to have been earned in France and are subject to corporate tax in France, if more than 50% of the shares are owned by the parent company. A tax credit is given for the corporate tax paid in the country where the subsidiary is established.

Withholding tax suffered on dividends, interest and royalties from such subsidiaries is only creditable if the subsidiary is resident in a territory that has signed a double tax treaty with France and that is not on the list of non-cooperative states or territories (as from 4th March 2021 : Anguilla, , British Virgin Islands, Panama, Seychelles, Vanuatu, Fiji, Guam, American Virgin Islands, American Samoa, Samoa, Trinidad and Tobago, Palau, and Dominica). To avoid the application of the aforementioned rule, if the subsidiary is established or set up in a non-cooperative state or territory, the French parent must either:

(i) Demonstrate that the profits of the subsidiary are generated from an effective industrial or commercial activity and do not exceed the ratios for passive income and intra-group services: or,

(ii) Provide to the tax authorities all the documents necessary for it to evaluate the activity performed and the ratios as well as to substantiate that the transactions of the subsidiary have a primary purpose other than to divert profits into that country.

## INCENTIVES

- Research tax credit (CIR): Businesses that spend money on research may be granted a tax credit, which can be offset against corporation tax due. The Research Tax Credit also covers certain 'innovation' investments by SMEs. The tax credit rate for R&D expenditure is 30% of the outlay up to EUR 100 million per year, and 5% over this limit. The tax credit rate for 'innovation' expenditure is 20% of the eligible outlay up to a maximum of EUR 400,000 per year i.e. a maximum credit of EUR 80,000 per year. In certain cases, the tax credit rate may be more than 100% of the research expenditure. The nature of the expenses giving rise to the credit must be disclosed if above EUR 2 million.
- Competitiveness and Employment Tax Credit (CICE): The purpose of the Competitiveness and Employment Tax Credit (CICE) was to enhance the competitiveness of businesses in France, mainly by funding capital expenditure, R&D, innovation, training, hiring, canvasing of new markets, environmental and energy transition costs and the replenishment of working capital. The CICE measure was abolished with effect from 1 January 2019 and was replaced by a reduction in the employer's health

insurance contributions on a company's gross salaries up to 2.5 times the minimum wage. Companies that have not used all their CICE credits before it was abolished retain the right to use it for the payment of other taxes up to the end of 2021.

In certain privileged 'priority zones', companies created to carry out new industrial, commercial or even, under certain conditions, non-commercial activities, are exempt from corporate income tax during the first two years of their operation. They are also exempt from tax on 75%, 50% and 25% of their profits for the next three years respectively. The exemptions also apply to local business taxes, reduced transfer taxes and accelerated depreciation. Various tax incentives are available to enterprises operating in Corsica, Overseas Departments and specified, disadvantaged urban and suburban zones.

### OTHER

Deferred remuneration paid to directors or managers (such as golden parachutes) are deductible up to a maximum of EUR 123,408.

## C. FOREIGN TAX RELIEF

Foreign tax paid on dividends, royalties and interest may be allowed as a credit against the French tax due from a French resident under a double tax treaty (or by way of deduction under domestic law when received from a non-treaty country).



## D. CORPORATE GROUPS

Where a French company holds 95% or more of the shares of one or more French companies, the group may elect to be taxed as a single entity, corporate tax is payable only by the company head of the tax consolidated group. Therefore, profits and losses of group companies may be offset. The French tax consolidation regime also applies to "horizontal" tax consolidated groups (i.e. tax consolidation between sister or cousin companies).

Transactions between group members at cost – both goods and services – are now permitted.

## E. RELATED PARTY TRANSACTIONS

Pre-tax income indirectly transferred abroad either through an increase or decrease of purchase or sales price, or by any other means, to an enterprise established outside France which controls or is controlled by the French corporate taxpayer may be added back to taxable income by the Tax Authorities. Groups of companies may obtain an advance transfer pricing (APA) agreement from the French Ministry of Finance. Transfer pricing documentation for companies of a certain size must be made available to the tax authorities on request. Certain transfer pricing information must be provided each year.

## F. WITHHOLDING TAX

Withholding tax must be deducted from dividends, interest and royalties paid to non-residents to the extent they are not franked. See section J below for more details.

## G. EXCHANGE CONTROL

In principle, inbound non-resident investments in France are free of prior review and approval by the government unless they are in a sensitive economic sector where prior authorisation must be obtained from the French Treasury.

## H. PERSONAL TAX

Income tax is payable by French residents on non-exempt income derived from all sources (worldwide income subject to tax treaties). Non-residents are only required to pay tax on French-sourced income.

French law establishes three criteria, any one of which is sufficient to indicate that an individual is resident in France for tax purposes:

- Home in France (or, in the absence of any home, the place where he/she mainly stays is in France);
- Professional activity in France whether salaried or not, unless that activity is being performed on an ancillary basis
- Centre of economic interest (i.e., the place where the individual has his/her major investments, place of business, from where he/she manages their assets).

Assessable income includes salaries, pensions and life annuities, property income, industrial or commercial profits, certain directors' remuneration, agricultural profits, wages, non-commercial profits and investment income.

For each category of taxable income, the income or gain received is reduced by any amounts incurred for the acquisition and conservation of this income. For example, business expenses properly incurred can be deducted from wages (failing which a flat-rate deduction of 10% applies); the cost of maintaining and repairing a property can be deducted from the taxable property income.

However, interest paid on any borrowings to finance the acquisition of the taxpayer's principal residence cannot be deducted from his taxable income. To obtain the amount of income tax due the taxpayer has to apply a progressive rate, then take into account the family quotient and finally apply various deductions (reductions and tax credits).

The family quotient consists in dividing the taxable income by a number of shares which varies as a function of the composition of the tax household. For example, a single person has a single share of the family quotient; a married couple has two shares. Each child gives an additional half share, and the third child provides a full share. So, the effect of the family quotient is to reduce the tax burden for families with children.

Therefore, a single person with no dependents has a coefficient (number of shares) of one and pays tax on his actual taxable income. By comparison, a married couple with two children has three shares and pays tax by dividing their income first by three, calculating an amount due as if they were single, and then multiplying the amount due by three (there are capping provisions to limit the benefit of this system).

The tax reductions and credits are deducted from personal income tax. For example, a tax credit is granted for childcare expenses, a reduction in the tax base is provided for taxpayers investing in certain properties under certain conditions, which are to be rented out.

The following table gives the rates of tax for income earned in 2021 (i.e. assessment year 2022):

| Bracket of taxable income (EUR) | Rate (%) |
|---|---|
| 0 – 10,225 | 0 |
| 10,226 – 26,070 | 11 |
| 26,071 – 74,545 | 30 |
| 74,546 – 160,336 | 41 |
| Over 160,336 | 45 |

Individuals earning the highest incomes are subject to an additional extraordinary contribution. This contribution is equal to 3% or 4% of the taxable income depending on the amount of the income and the family situation (single person, married couple with or without children).

From 1 January 2019 employers, pension providers etc. apply a 'withholding tax' ('Prélèvement à la Source") as and when salaries/ pensions are paid such that income tax is paid in year Y on the basis of the revenues of year Y (and no longer on the basis of the revenues of year Y-1).

However, the tax return remains to be filed the following year (Y +1) at the latest at the end of May or for certain taxpayers (e.g. non-residents) in June.



**Flat-tax ('Prélèvement Forfaitaire Unique – 'PFU')**

The 2018 Finance law reformed the tax treatment of investment income by creating a single, flat-rate levy ("PFU" or "flat tax").

For French residents, the flat-rate levy is 30% (i.e. 12.8% of income tax and 17.2% of social security contributions). It applies to investment income including dividends, interest and capital gains from the sale of securities and shares. The 40% allowance on dividends and similar income does not apply then. Taxpayers can opt to retain taxation according to the progressive income tax table, in which case the 40% allowance applies.

For non-residents: the withholding tax applicable to capital gains on the sale of shares derived from a "substantial interest" (i.e. greater than 25%) has been reduced to 12.8%.

**Capital Gains**

Capital gains on any immovable property are exempt if the sales price (per property) does not exceed EUR 15,000 or if the asset concerned is the taxpayer's principal residence (applicable to French tax residents).

The sale of a French situs property (or of shares in a deemed French real estate investment company) is subject to capital gains tax as follows:

- French resident: the capital gain is taxed at a rate of 19% plus social contributions (17.2%). A decreasing scale applies if the property is held for more than 5 years. Capital gains are exempted from tax if the property concerned has been held for at least 22 years and are totally exempted from tax and social charges if the property concerned has been held for at least 30 years.
- European Union and Swiss residents: the capital gain is taxed at a rate of 19% plus 7.5% of social contributions. The progressive exemption of the capital gain applies.
- All other non-French residents: The capital gain is taxed at a rate of 19% plus 17.2% of social contributions (if the sale of the property is made by a non-French corporate structure, the taxable gain increases by 2% each year). The progressive exemption for capital gains applies. The rate increases to 75% if the seller is a resident of a non-cooperative state.

In addition, and if greater than EUR 50,000, the capital gain (with certain exceptions) is subject to an additional tax ranging from 2% to 6% (depending on the amount of the capital gain).

**Wealth tax**

Wealth tax is limited in scope and applies to real estate assets (including 'paper' of the tax household). Real estate owned for business purposes is exempt from the tax. It is only possible to deduct debts from the current valuation of the real estate that are related to taxable assets (there are special rules for non-repayment, i.e. interest-only mortgages)

The wealth tax is assessed on individuals whose net wealth exceeds EUR 1,300,000 (threshold). The tax due is computed on the value of the real estate assets held by the taxpayer on 1 January exceeding EUR 800,000. The tax rates range from 0.5% to 1.5%.

The following table gives the rates of tax for wealth tax in 2020:

| Bracket of taxable wealth (EUR) | Rate (%) |
|---|---|
| 0 – 800,000 | 0 |
| 800,001 – 1,300,000 | 0.50 |
| 1,300,001 – 2,570,000 | 0.70 |
| 2,570,001 – 5,000,000 | 1 |
| 5,000,001 – 10,000,000 | 1.25 |
| Over 10,000,001 | 1.50 |

French residents are subject to wealth tax on worldwide real estate assets, while the tax basis for non-residents is limited to real estate assets situated in France. The wealth tax return is generally filed with the tax return. The tax is payable upon filing of the return.

A capping system applies only to French residents, whereby income tax and wealth tax cannot exceed 75% of the worldwide net income received by the taxpayer in the preceding year.

**Inheritance tax**

Inheritance tax is paid by the inheritors of the estate of a French resident or the French assets of a non-French resident. Inheritance tax is also due by French resident inheritors on all the estate of a non-French resident. The tax is due on all property transferred by will, by intestate succession or donation before death.

If the deceased is a French tax resident, all assets owned are subject to inheritance tax, whether the beneficiary is a French tax resident or not, and whether the assets are located in France or not.

But, if the deceased and the beneficiary were not French tax residents, only the assets located in France would be subject to French taxation (except in certain specific cases: art. 750ter of the FTC).

Transfers of assets held through a trust, or earnings capitalized as such, are subject to inheritance tax. A declaration giving a description and valuation of the assets received must be sent to the Administration within six months following the death. Certain tax-free allowances are granted, the amount of which depends on the relationship with the deceased. The tax rates range from 5% to 45% (direct descendants), 55% (up to 4th degree descendants) and 60% (beyond 4th degree).

## I. STANDARD AUDIT FILE FOR TAX (FICHIER D'ÉCRITURES COMPTABLES)

All businesses subject to business taxes, e.g. corporate income tax or VAT, must produce, at tax audit, a Standard Audit file for tax in a predetermined format (providing transaction level detail) as set down by the French tax authorities.

## J. TREATY AND NON-TREATY WITHHOLDING TAX RATES



France has signed a number of supplemental clauses modifying some international tax treaties. Notably, these relate to the exchange of information.

| | Dividends[2] (%) | | Interest[12] (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 0/15/25/75[1] | 02 | 0/75[12] | 0/25/75[13] |
| Individuals | 12.8/75 | n/a | 0/75 | 15/25/75 |
| **Treaty countries:** | | | | |
| Albania | 15 | 5[6] | | 5 |
| Algeria | 15 | 5[3] | | 5/10 |
| Andorra | –/15 | –/5[3] | | 5 |
| Argentina | 15 | 15 | | 18 |
| Armenia | 15 | 5[3] | | 5/10 |
| Australia | 15 | 0/5[3] | | 5 |
| Austria | 15 | 0[3] | | 0 |
| Azerbaijan | 10 | 10 | | 5/10 |
| Bahrain | 0 | 0 | | 0 |
| Bangladesh | 15 | 10[3] | | 10 |
| Belarus[9] | 15 | 15 | | 0 |
| Belgium | 15 | 10[3] | | 0 |
| Benin | –[8] | –[8] | | 0 |
| Bolivia | 15 | 10[6] | | 15 |
| Bosnia and Herzegovina[10] | 15 | 5[6] | | 0 |
| Botswana | 15 | 5[6] | | 10 |
| Brazil | 15 | 15 | | 10/15/25 |
| Bulgaria | 15 | 5[4] | | 5 |
| Burkina Faso | –[8] | –[8] | | 0 |
| Cameroon | 15 | 15 | | 7.5/15 |
| Canada | 15 | 5[3] | | 0/10 |
| Central African Republic | –[8] | –[8] | | 0 |
| Chile | 15 | 15 | | 5/10 |
| China | 10 | 5[6] | | 10 |
| Congo (Rep.) | 20 | 15[3] | | 15 |
| Croatia | 15 | 0[3] | | 0 |
| Cyprus | 15 | 10[3] | | 0/5 |
| Czech Republic | 10 | 0[6] | | 0/5/10 |
| Ecuador | 15 | 15 | | 15 |
| Egypt | 0 | 0 | | 10/15 |
| Estonia | 15 | 5[3] | | 0 |
| Ethiopia | 10 | 10 | | 7.5 |
| Finland | 0 | 0 | | 0 |

| | Dividends[2] (%) | | Interest[12] (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals (%) | Qualifying companies (%) | | |
| French Polynesia | –[8] | –[8] | | –[8] |
| Gabon | 15 | 15 | | 0/10 |
| Georgia | 10 | 0/5 | | 0 |
| Germany | 15 | 0[3] | | 0 |
| Ghana | 15 | 5[3] | | 10 |
| Greece | –[8] | –[8] | | 5 |
| Guinea | 15 | 15 | | 0/10 |
| Hong Kong | 10 | 10 | | 10 |
| Hungary | 15 | 5[6] | | 0 |
| Iceland | 15 | 5/15[3] | | 0 |
| India | 10 | 5[3] | | 0 |
| Indonesia | 15 | 10[6] | | 10 |
| Iran | 20 | 15[6] | | 0/10 |
| Ireland | 15 | 10[7] | | 0 |
| Israel | 15 | 5[3] | | 0/10 |
| Italy | 15 | 5[3] | | 0/5 |
| Ivory Coast | 15 | 15 | | 0/10 |
| Jamaica | 15 | 10[3] | | 10 |
| Japan | 10 | 0[4]/5[3] | | 0 |
| Jordan | 15 | 5[3] | | 5/15/25 |
| Kazakhstan | 15 | 5[3] | | 10 |
| Kenya | 10 | 10 | | 10 |
| Korea (South) | 15 | 10[3] | | 10 |
| Kosovo[10] | 15 | 5[6] | | 0 |
| Kuwait | 0 | 0 | | 0 |
| Latvia | 15 | 5[3] | | 5/10 |
| Lebanon | 0 | 0 | | 33 1/3 |
| Libya | 10 | 5[3] | | 0 |
| Lithuania | 15 | 5[3] | | 5/10 |
| Luxembourg | 15 | 5[6] | | 0/33 1/3 |
| Madagascar | 25 | 15[6] | | 10/15 |
| Malawi[11] | –[8] | 10[7] | | 0 |
| Malaysia | 15 | 5[3] | | 10/33 1/3 |
| Mali | –[8] | –[8] | | 0 |
| Malta | 15 | 0[3] | | 0/10 |
| Mauritania | –[8] | –[8] | | 0 |
| Mauritius | 15 | 5[3] | | 0 |
| Mexico | 15 | 0/5[3] | | 0/10 |
| Moldova[9] | 15 | 15 | | 0 |
| Monaco | –[8] | –[8] | | –[8] |
| Mongolia | 15 | 5[3] | | 0/5 |
| Montenegro[10] | 15 | 5[6] | | 0 |
| Morocco | 0/15 | 0/15 | | –/5/10 |
| Namibia | 15 | 5[3] | | 0/10 |
| Netherlands | 15 | 5[6] | | 0 |
| New Caledonia | 5/15 | 5 | | 0/10 |
| New Zealand | 15 | 15 | | 10 |
| Niger | –[8] | –[8] | | –/0 |
| Nigeria | 15 | 12.5[3] | | 12.5 |
| North Macedonia | 15 | 0[3] | | 0 |

| | Dividends[2] (%) | | Interest[12] (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals (%) | Qualifying companies (%) | | |
| Norway | 15 | 0[3] | | 0 |
| Oman | 0 | 0 | | 7 |
| Pakistan | 15 | 10[3] | | 10 |
| Panama | 15 | 5[3] | | 5 |
| Philippines | 15 | 10[3] | | 15 |
| Poland | 15 | 5[3] | | 0/10 |
| Portugal | 15 | 15 | | 5 |
| Qatar | 0 | 0 | | 0 |
| Quebec (Canada) | 15 | 5[3] | | 0/10 |
| Romania | 10 | 10 | | 10 |
| Russia | 10 | 5 | | 0 |
| Saudi Arabia | 0 | 0 | | 0 |
| Senegal | 15 | 15 | | –/0 |
| Serbia[10] | 15 | 5[6] | | 0 |
| Singapore | 15 | 5[3] | | 0/33[1/3] |
| Slovak Republic | 10 | 10 | | 0/5 |
| Slovenia | 15 | 0[5] | | 0/5 |
| South Africa | 15 | 5[3] | | 0 |
| Spain | 15 | 0[3] | | 0/5 |
| Sri Lanka | –[8] | –[8] | | 0/10 |
| St. Martin | 15 | 0[3] | | 0 |
| St. Pierre and Miquelon | 5/15 | 5 | | 0/10 |
| Sweden | 15 | 0[3] | | 0 |
| Switzerland | 15 | 0/15[3] | | 5 |
| Syria | 15 | 0[3] | | 15 |
| Taiwan | 10 | 10 | | 10 |
| Thailand | –[8] | 15/20[6] | | 0/5/15 |
| Togo | –[8] | –[8] | | 0 |
| Trinidad and Tobago | 15 | 10[3] | | 0/10 |
| Tunisia | –[8] | –[8] | | 0/5/15/20 |
| Turkey | 20 | 15[3] | | 10 |
| Turkmenistan9 | 15 | 15 | | 0 |
| Ukraine | 15 | 0/5[3] | | 0/10 |
| United Arab Emirates | 0 | 0 | | 0 |
| United Kingdom | 15 | 0[3] | | 0 |
| United States | 15 | 0/5[3] | | 0 |
| Uzbekistan | 8 | 5[3] | | 0 |
| Venezuela | 5 | 0[3] | | 5 |
| Vietnam | 15 | 5[3] | | 5/10 |
| Zambia[11] | –[8] | 10[7] | | 0 |
| Zimbabwe | 15 | 10[6] | | 10 |

Notes to the tables above:

1. Unless a tax treaty provides for a lower rate, gross dividends distributed to non-resident corporate shareholders are subject to a final withholding tax of 25% (articles 119bis and 187 of the FTC). The 25% rate is reduced to 15% for dividends distributed by French companies to non-profit organisations (e.g. pension funds) resident in another EEA country (articles 187 and 219bis of the FTC). Dividends distributed by a resident company to a company resident in an NCST (Non-cooperative states or territories) are subject to a 75% final withholding tax, unless the distributing company proves that the distribution made to a resident of an NCST neither seeks nor allows abusive profit shifting to the NCST.
2. Under article 119ter of the FTC implementing the provisions of the (EU) Parent-Subsidiary Directive (2011/96), no withholding tax is levied on dividends paid by a French company to a qualifying parent company resident in the European Economic Area (EEA). The exemption also applies to dividends paid to a permanent establishment located in France with a qualifying EEA parent company. The exemption applies if:
   i. the parent company is the beneficial owner of the dividends;
   ii. the parent company has its place of effective management in an EEA state with which France concluded a tax treaty containing an

administrative assistance clause, and is not deemed to be domiciled outside the EEA pursuant to a tax treaty concluded with a non-EEA state;

iii. the parent company has one of the legal forms listed in the Directive, or a comparable form if its place of effective management is located in an EEA state;

iv. the parent company holds directly at least 10% of the full or bare ownership of the share capital of the French subsidiary for an uninterrupted period of at least 2 years (or commits to hold the shares for at least 2 years). The 10% participation threshold is reduced to 5% if the parent company holds shares that fulfil the conditions provided for in the French participation exemption rules, and is unable to make use of a tax credit for French withholding tax in its country of residence; and

v. the parent company is subject to corporate income tax in the EEA state where its place of effective management is located, with no possibility to opt for such tax and without being exempt from it.

3. A 10% shareholding is required.
4. A 15% shareholding is required.
5. A 20% shareholding is required.
6. A 25% shareholding is required.
7. A 50% shareholding is required.
8. No reduction under the treaty. The domestic rate applies.
9. Treaty concluded between France and the former USSR.
10. Treaty concluded between France and the former Yugoslavia.
11. Extension of the 1950 treaty with the United Kingdom.
12. Generally, no withholding tax is levied on interest paid to non-resident companies and individuals. Only interest paid to a company or an individual located in an NCST (Non-cooperative states or territories) is subject to a final 75% withholding tax, unless the taxpayer proves that the payments are not motivated by tax avoidance.
13. Gross royalties are subject to a 25% withholding tax (2019) unless a tax treaty provides for a lower rate (article 182 B of the FTC). This withholding tax is not final as it is credited against the corporate income tax assessed under the general rules. Under article 182 B bis of the FTC implementing the provisions of the EU Interest and Royalties Directive (2003/49), outbound royalty payments are exempt from withholding tax, provided that the beneficial owner is an associated company of the paying company and is resident in another Member State or such a company's permanent establishment is situated in another Member State. Royalties paid to a company resident in an NCST (Non-cooperative states or territories) are subject to a 75% final withholding tax, unless the taxpayer proves that the payments are not motivated by tax avoidance.



# GAMBIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Banjul | Donald C Kaye | +220 441 4419<br>donald.kaye@pkf.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of The Gambia |
| Capital: | Banjul |
| Main languages: | English |
| Population: | 2.55 million (2022 estimate) |
| Monetary unit: | Gambian Dalasi (GMD) |
| Internet domain: | .gm |
| Int. dialling code: | +220 |

## KEY TAX POINTS

- Corporation tax is payable based on the higher of 27% of chargeable profits or 1% and 2% of turnover for audited and unaudited accounts respectively.
- Value Added Tax (VAT) at a standard rate of 15% is payable on taxable supplies made in the Gambia, taxable imports of goods and on taxable supplies of imported services.
- Withholding tax applies in relation to retention of the services of a contractor or subcontractor, a company or partnership paying dividend to a resident individual, and interest paid to resident companies. Tax withheld from Contractors is at the rate of 10% and for dividends and at the rate of 15% for interest.

## A. TAXES PAYABLE

### COMPANY TAX

Corporation tax is payable based on the higher of 27% of chargeable profit or 1 % of total revenue for the tax year. This implies that even if a company has an adjusted tax loss figure for any particular year, it will still be liable to tax. Note that if for any reason a company is not audited, tax on its total revenue will be 2% and not 1%.

Income tax is payable in quarterly instalments, i.e. the three-month period ending on the last day of the third, sixth, ninth and twelfth month of the tax year. This instalment is based on 1% of total revenue for a company with audited accounts or 2% for a company without audited accounts and is due by the 15th of the following month, failing which a penalty equal to 5% of the unpaid tax per month can be applied. Advance payments during the tax year are credited against income tax assessed.

Corporate Income Tax Return form is mandatory for all taxable entities and is expected to be submitted by 31 March of the year following that to which it relates. The form is used to determine annual tax liability.

## CAPITAL GAINS TAX (CGT)

CGT is payable on the disposal of a capital asset. In the case of a partnership, company or trustee, tax is paid on the greater of:

- 25% of the capital gain arising on disposal or;
- 10% of the consideration received for the disposal.

In the case of an individual, body of persons or trustee of a deceased estate:

- 15% of the capital gain arising on percentage of the disposal or;
- 5% of the consideration received on disposal.

Capital gains tax is exempt on the disposal of agricultural land, private residence and if the gain does not exceed GMD 7,500.

## BRANCH PROFITS TAX

A branch's profit is taxed at the higher of 27% on chargeable profit or 1% of total revenue as the branch is considered a permanent establishment meaning a resident company. There is no branch remittance tax in the Gambia.



## VALUE ADDED TAX (VAT)

Value Added Tax (VAT) is payable on:

(a) a taxable supply made in The Gambia;

(b) a taxable import of goods;

(c) a taxable supply of imported services.

**Registration requirements**

- A person is required to register for VAT at the end of any 12-month or shorter period if, during the period, the total value of supplies of goods or services made by the person equals or exceeds GMD 1 million.
- A person is required to register for VAT at the beginning of any 12-month period if there are reasonable grounds to expect that the total value of supplies of goods or services to be made by the person during that period will equal or exceed GMD 1 million.
- A person who is not required to register for VAT is permitted to register within six months of the end of a 12–month or shorter period in which the total value of supplies made by the person exceeded GMD 500,000.

VAT is payable on a taxable supply of goods made in the Gambia. In the case of certain taxable supplies of goods the rate is 0% and in any other case, the rate is 15%. A registered person shall provide a VAT return for each tax period within 15 days after the end of the period, whether or not tax is payable for the tax period.

## FRINGE BENEFITS TAX

Fringe benefits are specific and direct payments of expenditure for and on behalf of an employee, in addition to his /her salary. The tax levied is at a rate of 27% on the grossed-up taxable value of each benefit provided and is payable by the organisation that provides the benefit to the employee. The total amount of fringe benefits plus tax thereon is an allowable deduction for corporate income tax calculation purposes.

## LOCAL TAXES

## NATIONAL EDUCATIONAL LEVY

The threshold for eligibility for payment of the National Education Levy is GMD 1 million. The applicable levy rate is 0.75% of annual business revenue subject to a maximum amount of GMD 100,000. Businesses with annual business revenue of less than GMD 1 million are not liable to pay National Education and Technical Training Levy and business with annual business revenue in excess of D1,000,000 pay between GMD 7,500 and GMD 100,000. The information used to determine how much is payable is the previous year's audited financial statements.

## EXPATRIATE TAX

An annual payment of GMD 40,000 is payable for each employee with citizenship from any country outside the West African region but for employees from West Africa the rate is set at GMD 10,000.

## BUSINESS REGISTRATION

An annual payment of GMD 1,000 should be made by all businesses at the start of the year.

## STAMP DUTY

The duty is levied on juristic acts resulting in a flow of wealth between the parties involved. Thus, stamp tax is applicable *inter alia* to acts whereby transactions on Real Estate or financial obligations are documented. The applicable rates are as follows:

| Document | Current Rate |
|---|---|
| Memorandum of Deposit | GMD 100 |
| Lease Agreement | 20% |
| Tenancy Agreement | 20% |
| Assignment/Conveyance | 5% |
| Bill of Sale | 5% |
| Transfer of Shares | 5% |

| Document | Current Rate |
|---|---|
| Debenture | 5% |
| Mortgage | 1.5% |
| Further Charges | 1.5% |
| Surrender and Release | 1.5% |
| Under Lease | 2.1% |
| Guarantee | 0 |

## CUSTOMS AND EXCISE DUTIES

Are applied on the importation or exportation of certain goods.

## OTHER TAXES – RESIDENTIAL RENT TAX

Tax is imposed for each tax year on a person who has a taxable residential rental amount at a rate of 8% per annum. Tax due on commercial rent is 10%.



## B. DETERMINATION OF TAXABLE INCOME

The calculation of taxable income is arrived at by adjusting the accounting profits/losses for non-taxed income and disallowed expenses.

## CAPITAL ALLOWANCES

The following annual rates are applied against the written down value of assets:

| Annual allowance: | Rate |
|---|---|
| Building | 5% |
| Motor Vehicle | 40% |
| Plant and machinery | 20% |
| Plant and machinery used in manufacturing, mining | 30% |
| Office furniture and equipment | 20% |
| Computers | 40% |

### Initial Allowance

Initial allowance is applied at 20% of the cost of the asset or 10% for buildings, structures or works of a permanent nature. Initial and annual allowance cannot be granted on the same asset in the same year. Therefore, annual allowance is not granted in the year a fixed asset is first put to use, only initial allowance is granted.

### Intangible assets

An amortisation deduction is allowed. The deduction is computed by using the cost of the asset divided by the useful life of the intangible asset in whole years.

## DEPRECIATION

No deduction is allowed in the tax computation but rather capital allowances are allowed.

## STOCK / INVENTORY

A deduction is allowed for the cost of stock in trade disposed of in a tax year in deriving the chargeable income.

## CAPITAL GAINS AND LOSSES

If the consideration received exceeds the written down value of the asset, the excess is business income which has to be included in the person's income for that year and, if less, the difference is allowed as a deduction when computing the chargeable income for the year.

## DIVIDENDS

Dividend withholding tax is at a rate of 15%.

## INTEREST DEDUCTIONS

A deduction is allowed for any interest incurred in a tax year if the company used the proceeds or benefit of the debt on which the interest is payable. The interest not deducted can be carried forward for a period of six years.

## LOSSES

If a company has a business loss for the year, that amount is carried forward to the following year and allowed as a deduction in computing the chargeable income for that year. Losses can only be carried forward for six years after the tax year in which the loss is incurred.

## FOREIGN SOURCED INCOME

A foreign sourced income received by a resident company is exempt from income tax. If foreign income tax has been paid, a tax credit is allowed.

## INCENTIVES

Expenditure on certain pre-commencement expenditure qualifies for accelerated deductions. A deduction is allowed in the tax year in which the expenditure is incurred and in the following three years ( i.e. 25% each year). Granting of investment incentives and tax exemptions can only be obtained from the Gambia Investment and Export Promotion Agency (GIEPA).

## BAD DEBTS

A deduction is allowed for a debt written off if certain conditions are met.

## LOSS RESERVE OF BANKS

A bank is allowed a deduction for the addition to its provision for doubtful debts in a tax year provided the addition has been determined in accordance with the prudential requirements specified by the Central Bank of The Gambia. The amount allowed as a deduction for a tax year shall not exceed 0.5% of the total outstanding debt claims of the bank as at the end of the tax year.

## C. FOREIGN TAX RELIEF

The Government of The Gambia has a double tax treaty with Norway, Sweden, Switzerland, Taiwan and the United Kingdom. If a resident person has a foreign tax loss for a tax year, the amount of the loss can be carried forward to the following tax year and allowed as a deduction against the person's foreign-sourced business income. The loss can be carried forward for a period of six years.

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## D. CORPORATE GROUPS

Tax on certain payments to non-resident persons does not apply if the conditions below are met:

(i) If the holding giving rise to the dividend is connected with a permanent establishment in The Gambia of a non-resident company;

(ii) Any interest if the debt claim giving rise to the interest is connected with a permanent establishment in The Gambia of a non-resident company;

(iii) Any royalty if the property or right giving rise to the royalty is effectively connected with a permanent establishment in The Gambia of a non-resident company;

(iv) Any technical service fee if the services giving rise to the fee are rendered through a permanent establishment in The Gambia of a non-resident company.

## E. WITHHOLDING TAX

A person who retains the services of a contractor or subcontractor to carry out work or supply labour or materials for the carrying out of work shall withhold tax at the rate of 10% of the gross fees.

A company or partnership paying dividend to a resident individual shall withhold tax at the rate of 15%.

A 15% withholding tax shall be withheld on interest paid to resident companies but it does not apply to interest paid to financial institutions.

## F. EXCHANGE CONTROL

There are no exchange controls in place.

## G. PERSONAL TAX

On 11 April 2018, in accordance with the Budget for 2018 the Gambia Revenue Authority published the revised personal income tax rates and bands which are applicable with effect from tax year 2018:

| Income range per annum | Tax rate |
|---|---|
| GMD 0 – GMD 24,000 | 0% |
| GMD 24,001 – GMD 34,000 | 5% |
| GMD 34,001 – GMD 44,000 | 10% |
| GMD 44,001 – GMD 54,000 | 15% |
| GMD 54,001 – GMD 64,000 | 20% |
| Above GMD 64,000 | 25% |

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies | Qualifying companies | | |
| **Non-treaty countries** | | | | |
| Companies | 15 | 15 | 15 | 15 |
| Individuals | 15 | -- | 15 | 15 |
| **Treaty countries:** | | | | |
| Norway | 15 | 5[1] | 15 | 12.5 |
| Sweden | 15 | 5[2] | 5/10/15[3] | 5/10/12.5[4] |
| Switzerland[6] | --[7] | --[7] | --[7] | --[7] |
| Taiwan | 10 | 10 | 10 | 10 |

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies | Qualifying companies | | |
| Turkey | 15 | 5[5] | 10 | 10 |
| United Kingdom | 15 | 15 | 15 | 12.5 |

NOTES:
1. The 5% rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company.
2. The 5% rate applies if the beneficial owner is a company (other than a partnership) which owns at least 15% of the voting stock of the dividend-paying company.
3. The 5% rate applies to interest paid with respect to indebtedness arising on the sale on credit, by an enterprise of a Contracting State, of any merchandise or industrial, commercial or scientific equipment to an enterprise of the other Contracting State, except where the sale or indebtedness is between related persons. The 15% rate applies in all other cases. However, as from 1 January 2019, by virtue of a most favoured nation clause the standard rate is reduced to 10% as under the Gambia-Turkey treaty (see footnote 8: effective date: 1 January 2019) the standard rate is 10%.
4. The 5% rate applies to royalties paid with respect to any patent, secret formula or process, or for information concerning industrial, commercial or scientific experience. The 12.5% rate applies in all other cases. However, as from 1 January 2019, by virtue of a most favoured nation clause the standard rate is reduced to 10% as under the Gambia-Turkey treaty (see footnote 8: effective date: 1 January 2019) the standard rate is 10%.
5. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
6. Extension of the 1954 treaty with the United Kingdom.
7. Exempt from tax if such income is subject to Swiss tax and the dividend, interest or royalties are not attributable to a permanent establishment situated in Gambia.

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# GEORGIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Tbilisi | David Gvetadze | +995 32 2 24 30 30 (office)<br>+995 599 50 19 75 (mobile)<br>david.gvetadze@pkfgeorgia.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Georgia |
| Capital: | Tbilisi |
| Main languages: | Georgian |
| Population | 3.97 million (2022 estimate) |
| Monetary unit: | Georgian Lari (GEL), 1 Lari = 100 Tetri |
| Internet domain: | .ge |
| Int. dialling code: | +995 |

## KEY TAX POINTS

- There are six main taxes in Georgia: Personal Income Tax (PIT), Corporate Income Tax (CIT), Value Added Tax (VAT), Import Duty, Excise Tax, and Property Tax.
- Companies incorporated and tax residents in Georgia (tax residents) are subject to tax on their worldwide income, whereas companies incorporated overseas are normally treated as non-resident taxpayers and are taxable only on Georgian-sourced income or income arising from business activities carried on through a permanent establishment (PE) in Georgia.
- Georgian and foreign enterprises are subject to CIT on their taxable profits at a flat tax rate of 15%. Companies must file individual tax returns and report their taxes separately. Consolidated tax returns are not permitted. In most cases generated profit is not subject to tax, unless distributed through dividends.
- VAT applies to supply of goods or services in Georgia and imports (in accordance with customs value of goods). The standard VAT rate is 18%.
- Property Tax is a local tax administered by local self-government bodies (up to a maximum limit specified within the Georgian Tax Code (hereinafter the TCG)) and comprises land tax and property tax of individuals and enterprises.
- Individual residents and non-residents of Georgia are subject to PIT only on Georgian sourced income. Standard PIT flat rate is 20%, although lower rates might apply to specific economic activities based on applicable statuses.

## A. TAXES PAYABLE

The principal source of tax law in Georgia is the TCG (adopted by the Parliament of Georgia and effective from 1 January 2011). There are six main taxes in Georgia:

- Personal Income Tax (PIT) – a nationwide tax;
- Corporate Income Tax (CIT) – a nationwide tax;

- Value Added Tax (VAT) – a nationwide tax;
- Import Duty – a nationwide tax;
- Excise Tax – a nationwide tax;
- Property Tax – a local tax.

Levies and duties on the gambling industry and some types of fees for the use of natural resources are also administered by the Revenue Service of Georgia, although such payables are not deemed a tax.

## CORPORATE INCOME TAX

A new system of Corporate Income Taxation (CIT), the so-called 'Estonian model', was introduced in Georgia in 2016, which has become effective as of 1 January 2017. This new system has radically reformed the existing classical corporate income tax system. The core idea behind this reform is to exempt undistributed profits (reinvested or retained profits) from Corporate Income Tax for most businesses (exceptions listed below) and to only tax profit distributions (including 'deemed' profit distributions). CIT applies only if profit is distributed through dividends.

CIT is calculated by dividing the object of taxation by 0.85 and then multiplying it by 15%. This model is intended to stimulate reinvestments as businesses will have an incentive to retain their earnings and reinvest in growth upgrading their facilities and increasing their competitiveness.



CIT applies to:

1. Distribution of profit. Profit, which is distributed by the enterprise as a dividend to its partner(s), in cash or non-cash form;
2. Taxation of distortions (difference between the cost and market price of the transaction with a related party (who is not subject to CIT according to the new regime) or the person exempted from personal income tax/corporate income tax (except for a budget organisation, the Legal Entity under Public Law – the Deposit Insurance Agency and the National Bank of Georgia) and the carrying out of a controlled operation if the conditions set out in this operation do not meet the market principle);
3. Costs incurred or other payments that are not related to economic activity, e.g.:
   - Expense, which is not documented, if this obligation is established in accordance with the TCG.
   - Costs of reimbursement that are not intended for profit, income, or compensation.
   - Costs for goods/services purchased from a natural person with a micro business/fixed taxpayer status.
4. Temporary taxation of some kind, e.g., a loan to a natural person or a non-resident, a person registered in a country with a preferential tax regime, as well as an advance payment to a person exempted from CIT in accordance with the TCG, etc.
5. Delivery of goods/services and/or transfer of cash to gratuitous goods supplied free of charge or rendering of services, which is not intended for profit, income or compensation.
6. Costs above limit:
   - Interest paid with respect to a credit (loan) above the annual interest rate set by the Minister of Finance.
   - A donation to a charitable organisation that does not exceed 10% of the net profit earned during the previous calendar year.
   - Representative expenses incurred during the calendar year above the limit. The marginal amount is 1% of the revenue received during the previous calendar year and 1% of the cost incurred if the expenditure exceeds the received income.

A foreign enterprise carrying out economic activities through a PE in Georgia is also subject to CIT at a flat tax rate of 15% on its profit (distributed profit shall be deemed a disbursement made to the non-resident enterprise in cash or in kind out of the profit gained as a result of the activity of the PE). Also, in cases which are discussed above in para. 2-6.

The CIT rate is calculated based on the outcome of the financial statements, therefore temporary differences are no longer the basis for accounting for deferred taxes.

CIT returns should be submitted to the tax authorities by the 15th day of the following month.

If a resident enterprise distributes a dividend from a net profit gained during the reporting periods from 1 January 2008 to 1 January 2017, it may offset the amount of profit tax assessed and paid based on the reporting periods.

## BRANCH PROFITS TAX

Corporate tax is levied at a rate of 15% on profits derived through and distributed from a PE. There is no branch remittance tax in Georgia.

## CIT - EXCEPTIONS

Until 1 January 2023, commercial banks, credit unions, insurance and microfinance organisations and loan provider entities will be subject to CIT, based on the difference between gross income gained during a calendar year and deductible amounts under the TCG.

Said companies are subject to a flat 15% tax rate. The tax period for CIT is a calendar year. Annual CIT returns must be submitted to the tax authority by 1 April of the year following the reporting year.

Also, foreign companies which do not conduct economic activities through a PE in Georgia are subject to withholding tax on Georgian-sourced gross income. The tax is withheld by the payer at source and no deductions from the gross income are permitted.

The following types of income are treated as received from Georgian sources:

- Income or benefit earned from the supply of goods within the territory of Georgia;
- Income earned from the delivery of services in Georgia;
- Dividend income from a resident entity;
- Royalty income received from a resident entity;
- Interest income on debt obligations issued by a PE of a foreign company or resident entity;
- Income from immovable property, i.e. arising from the sale of immovable property located in Georgia;
- Some other types of income.

## CAPITAL GAINS TAX

There is no separate capital gains tax legislation in Georgia. Capital gains are subject to regular income tax when they are realised. Unrealised capital gains are not subject to taxation.

## FRINGE BENEFITS TAX

All payments or benefits-in-kind provided by an employer to an employee are taxable unless specifically exempted.

## DEFINED CONTRIBUTION SCHEME

As of 1 January 2019, participation in the defined contribution scheme is required for all employees, except for those who have reached the age of 60 (55 for women) before the law's entry into force.

An employee who has reached the age of 40 before this law's entry into force and does not wish to be a member of the defined contribution scheme may opt out of the scheme in accordance with the procedure determined by this law.

Upon making a salary payment, each employer is obliged to deposit in its own name 2% of the gross salary of each employee who is a member of the pension scheme and another 2% on behalf and at the expense of each employee to their individual pension account via an electronic system (i.e., 4% of the gross salary in total).

The state additionally deposits 1 or 2% of the gross salary, depending on the total annual salary of a scheme member, on the individual pension account of an employee.



## SPECIAL TYPES OF ENTERPRISES

The TCG grants a beneficial tax treatment to:

- Free Industrial Zone (FIZ);
- Special Trading Company (STC); and
- International Company.

## FREE INDUSTRIAL ZONE (FIZ)

FIZ Company status for tax purposes may be granted to a company operating in a Free Industrial Zone.

FIZ is a part of Georgian territory (not less than 10 hectares) with defined boundaries, a special legal status granted under the law, and established for a specific period of time. It may be established at the initiative of the Georgian Government or upon the request of an organiser, resident, or non-resident physical or legal person for land that they own or lease.

Companies registered in FIZ are given the following extended tax benefits:

- Transactions in a FIZ may be conducted in any currency;
- Payment between a FIZ enterprise and a regular Georgian enterprise may also be conducted in any currency;
- Income received by a FIZ enterprise from its permitted activities conducted in a FIZ is exempt from CIT;
- The importation of foreign goods into a FIZ is exempt from customs duties and VAT;
- Operations carried out in a FIZ are exempt from VAT;
- Property located in a FIZ is exempt from property tax;
- Bringing (importing) goods produced within a FIZ from the FIZ into other territories of Georgia (outside the FIZ) is exempt from import tax;
- Entities operating in a FIZ are not required to withhold tax from payments to employees.

Under the FIZ Regulations, all activities are permitted in the FIZ, except:

- Manufacturing or selling weapons and military equipment;
- Manufacturing or selling nuclear and radioactive substances;
- Importing, storage, manufacturing, and/or selling drugs and psychotropic substances, etc.;
- Carrying in, keeping, manufacturing, or sale of raw materials or products of tobacco (except for on-site consumption).

In case of a supply of goods to a Georgian registered entity (except to another FIZ enterprise) a FIZ enterprise is required to pay a 4% tax on revenue received/receivable as a result of the supply of the goods (in case of gratuitous supply – fair value). The tax should be paid before the 15th day of the month following the reporting calendar month. A FIZ enterprise should also pay the 4% tax within the same deadline if a Georgia-registered entity (except FIZ enterprise) supplies a FIZ enterprise with goods (except for electricity, water, and gas for local consumption and production).

A FIZ enterprise cannot purchase services from a Georgia-registered entity (except for a FIZ enterprise) except for:

- Purchasing security services and/or leasing property from the FIZ organiser and/or administrator;
- Purchasing transportation, communication, auditing, consulting, financial, fixed assets installation, and construction services.

## SPECIAL TRADING COMPANY (STC)

A STC is an enterprise that has been granted STC status for the purpose of exemption from CIT envisaged under the TCG.

A foreign entity that renders its economic activities in Georgia through its PE has the right to be granted STC status and register a separate PE only in case the PE renders the activities of a STC envisaged by the TCG.

An enterprise having STC status may:

- Re-export foreign goods from a customs warehouse;
- Supply foreign goods from a customs warehouse both to STCs and other enterprises that do not have the status of a STC;
- Purchase foreign goods from enterprises that do not have a STC status at no less than their customs value for subsequent re-export and/or supply in a customs warehouse;
- A STC may also derive income (including Georgian-sourced income) from other allowable activities if such income does not

exceed the sum of GEL 1 million and 5% of the customs value of foreign goods brought into Georgia;
- A STC may derive income exempt from CIT and from the sale of fixed assets used in economic activities for more than two years.

A STC cannot:
- Import goods into Georgia, other than goods intended to be fixed assets of the company;
- Buy Georgian goods within the territory of Georgia for subsequent supply;
- Deliver services to a Georgian enterprise/individual entrepreneur and/or PE of a foreign enterprise in Georgia;
- Have a customs warehouse.

## INTERNATIONAL COMPANY

An International Company shall be a Georgia enterprise performing activities defined by a government ordinance and earning income solely from these activities. The status of International Company shall be granted to an entity by the Georgia government. Government Ordinance No. 619 provides for a list of permitted activities, which include:
- Software development;
- Information technologies and other computer servicing activities;
- Web-hosting;
- Supply of images, texts and information;
- Certain commercial and technical services rendered by a ship owner or in relation to this ownership.

All aforementioned services must be rendered to non-residents whose place of registration or place of management is outside of Georgia, except for the latter service with respect to ships. In addition:

An International Company may not be set up within a FIZ;
- A dividend paid by an International Company shall not be taxed at source and shall not be included in the gross income of a person receiving the dividend;
- The CIT rate for an International Company shall be 5%;
- Salary income received as a result of employment in an International Company is subject to 5% tax;
- An International Company shall be exempt from property (except for land) tax if that property is intended or used for the performance of activities allowed by the government ordinance.

Furthermore, an International Company has the right to reduce the taxable amount of CIT, provided that the below-mentioned expenses are incurred in Georgia:
- Salaries paid to a Georgian citizen resident employee;
- Expenses of scientific research, design, and construction services, which are permitted for an International Company.

## VALUE ADDED TAX

New VAT regulations came into force as from 1 January 2021. The amendments are designed to fulfil Georgia's obligations under the Association Agreement between Georgia and the EU, which foresees the convergence of Georgian tax legislation with the EU's and other international legal instruments.

Pursuant to the Association Agreement, Georgia's tax legislation must reflect the requirements stipulated in Directive 2006/112/EC of 28 November 2006 of the Council of the EU, relating to the establishment of a common VAT system. The amendments aim to elaborate on certain statutes of the TCG and eliminate legislative gaps.

The amendments affect all clauses in the TCG that regulate VAT and define new terms such as "taxable entity/person", "fixed establishment", "assisting", "directly related", "continuous", "regular and electronically provided services", "voucher", "low-cost gifts", "taxable dealer", "real property", etc.

Said amendments also define different rules for determining "the place of delivering the service", so-called "B2B" (Business to Business) and "B2C" (Business to Consumer):
- Place of supplying services in B2B transactions is the place of incorporation of the person receiving services;
- In a B2C transaction the place of supplying services is the place of incorporation of the supplier.

Transactions subject to VAT are:
- Supply of goods on the territory of Georgia, by a taxable person, in exchange for remuneration within the scope of economic activity;
- Service rendering on the territory of Georgia, by a taxable person, in exchange for remuneration within the scope of economic activity.
- Import of goods.

The standard VAT rate is 18%, which is applied to most goods/services. Certain transactions, however, are exempt from taxation. A taxable transaction occurs at the time of supply of goods/services and in the case of a supply of goods involving loading it takes place at the time of loading.

A business with revenue of at least GEL 100,000 within a preceding consecutive 12-month period must register for VAT purposes. The following VAT-exempt transactions are considered in calculating the GEL 100,000 threshold:
- VAT-exempt transactions related to financial and immovable property transactions, unless connected to taxpayers' primary activities;
- Exports; and
- Certain VAT-exempt supplies with the right to recover input VAT and services rendered to an intermediary acting on behalf of another person participating in certain operations or in operations carried out outside of Georgia.

The GEL 100,000 threshold does not apply to transactions subject to reverse charged VAT.

For VAT registration purposes, for a fixed establishment the law no longer establishes a GEL 100,000 threshold. A taxable person with a fixed establishment in Georgia is obliged to pay VAT from the moment of the provision of services/delivery of goods (including such transactions) and to apply to the tax authority for registration as a VAT payer no later than the last day of the reporting period for the transaction.

Advances received by a supplier of goods/services will also be subject to VAT. As from 1 January 2021, the scope of VAT application on advance payments is expanded. In particular, advances received within the framework of regular or continuous operations will also be subject to VAT payment. Exceptions to the general principles of applying VAT to advance payments are as follows:

- Providing telecommunication/communication services on a regular or continuous basis;
- Supplying goods (electricity, gas, water, heat, cooling system, or other similar goods) on a regular or continuous basis.

The advance received within the framework of rental, consulting, legal, and other similar services will be subject to VAT if these services are provided on a regular or continuous basis. Advances will be taxable only when it is possible to identify:

- The delivered goods/services;
- The quantity and volume of delivered goods/services;
- The cost of delivered goods/services;
- Whether the delivered goods/services are exempt from VAT or are subject to taxation.

VAT returns should be submitted to the tax authorities by the 15th day of the following month.



## FOREIGN TAXABLE PERSONS LIABLE FOR VAT PAYMENT ON DIGITAL SERVICES

The obligation to calculate and pay VAT (without registration as a VAT payer in Georgia) arises as from 1 October 2021 for those foreign taxable persons who are not established or have no habitual residence in Georgia, nor have a fixed establishment in Georgia, and who provide digital services to be used in the territory of Georgia by natural persons who are not taxpayers of VAT.

Digital services include telecommunication services, electronically supplied services, and radio or television broadcasting services.

The reporting period is quarterly. A VAT return on digital services should be submitted with the tax authorities no later than the 20th day of the month following the reporting period.

Tax can be paid in foreign and national currency, in Georgian Lari (GEL), U.S. Dollar (USD) or in Euro (EUR).

In order to report and pay VAT foreign taxable persons must register on the website portal of the Revenue Service of Georgia -”VAT Portal on Digital Services”- https://nr.rs.ge/home

## LOCAL TAXES

Property tax is a local tax administered by local self-government bodies (up to a maximum limit specified within the Tax Code) and comprises land tax and property tax of individuals and enterprises.

## PROPERTY TAX (NATURAL PERSON)

The property tax rate applying to an individual depends on the amount of his annual income, regardless of their tax residency status, from sources in and outside Georgia. The tax is levied on:

- Real estate (including an unfinished construction, building or structure, or a part thereof), yachts (cutters), helicopters, airplanes, and motor cars specified under Code 8703 (National Commodity Nomenclature of Foreign Economic Activities) that are owned by such individual.
- Fixed assets used for economic activities, immovable property (building or a part thereof) and construction in progress (it does not apply to land).
- Property received from a non-resident under a lease agreement.

If gross annual worldwide income of a family exceeds GEL 40,000 but is less than GEL 100,000, the property tax rate ranges from 0.05% to 0.2% of the fair market value of the property in Georgia. However, if gross annual worldwide income of a family exceeds GEL 100,000, the tax rate is between 0.8% and 1% of the fair market value of the property in Georgia. A tax return must be submitted by the natural person (individual or joint of the family) before 1st November following the reporting calendar (tax) year and tax must be paid to the tax authority by 15th November.

Income of a non-resident natural person being a citizen of Georgia shall be determined as per the income received from Georgia-based sources.

## PROPERTY TAX (GEORGIAN ENTERPRISES)

Georgian enterprises and foreign enterprises engaged in economic activity in Georgia through a PE and organisations whose property or part of property is used for economic activity may be subject to property tax. For Georgian enterprises and foreign enterprises alike, property tax is imposed only on property located in Georgia.

Unless specifically exempted, property tax applies at a flat rate of 1% on the average annual net book value of fixed assets, uninstalled equipment, construction in progress, investment property and leased property listed on the enterprise’s balance sheet.

## LAND TAX

Natural and legal persons are subject to land tax if they own land plots or use state owned areas, including land used for agricultural and non-agricultural purposes as of 1 April of the calendar year. The amount of land tax depends on where the land is located and its quality. It is not based on the taxpayer’s economic position.

The base maximum annual rate for non-agricultural land is GEL 0.24 per one square meter of the land and the tax is calculated by multiplying the annual base tax rate by the territorial coefficient, however, a territorial coefficient cannot exceed 1.5.

The annual basic property tax rates on agricultural land and forest land are differentiated according to administrative-territorial units and land categories for 1 ha, in GEL and the tax is calculated by multiplying the annual basic tax rate by the territorial coefficient, which is determined by a decision of the representative body of local self-government. However, such rate shall not exceed 150% of the annual basic rate.

A (natural) person is required to submit an annual tax return by 1 November each year. A legal entity is required to submit an annual tax return by 1 April each year. A (natural) person and legal entity is required to pay property tax for land by the 15 November.

## OTHER TAXES

## CUSTOMS DUTIES

The taxation of the import and export of goods is regulated by the TCG. Customs duties include VAT, Import Duty and Excise Tax.

According to the TCG, the export of goods from the territory of Georgia is exempt from VAT and Excise tax, with VAT and Excise input deduction rights.

## IMPORT DUTY

Rate of customs tax varies depending on the goods imported and equals to 0%, 5% or 12% of the price of goods imported.

## EXCISE TAX

Excise Duty applies to certain goods such as alcoholic beverages, tobacco products, oil and gas, motor vehicles and for international calls received from a resident or a non-resident person in a mobile or fixed network. Excise tax rates are fixed per physical unit of excisable good (1 cigarette, pcs., litre, cm³, m³, kg., ml. etc.) and varies from product to product.



## B. DETERMINATION OF TAXABLE INCOME

## FOR ENTERPRISES THAT HAVE NOT YET MOVED TO THE NEW CORPORATE INCOME TAX MODEL

Generally, expenses connected with earning gross income can be deducted to arrive at the net taxable income. Therefore, expenses not connected with the economic activities of an entity such as personal expenses and entertainment expenses are not deductible (unless entertainment is the taxpayer's economic activity).

Any limitations or restrictions relating to certain expenses or deductions which otherwise would be deductible in full, are provided within the TCG. Restrictions, conditions and limitations can apply e.g., to the deduction of interest, doubtful debts, repairs, insurance payments and reserve funds, scientific research expenses, depreciation of fixed and intangible assets.

## LOSSES

Georgian legal entities can carry forward tax losses and offset them against future taxable profits arising in the following five years. Where the statute of limitation is increased from 3 to 11 years a taxpayer can elect a 10-year loss carry forward period. Losses cannot be carried back.

The statute of limitation for assessing taxes on a taxpayer and for submitting a notice of assessment to the taxpayer shall be three years (effective from 2017), unless otherwise provided for by the TCG.

If the CIT is paid only on distributed profit under the new CIT regulations, losses cannot be used to reduce taxable profit.

## CAPITAL ALLOWANCES

The general rules for the operation and deduction of tax depreciation are provided within the TCG and they provide a taxpayer with the option to either deduct tax depreciation on fixed assets over a period of time or deduct 100% of the purchase (production) cost of the asset immediately. Whatever option is selected by a taxpayer, it should be consistently followed for the following five years and applied to all purchased, produced or leased fixed assets.

Tax depreciation allowances can generally be claimed for all capital assets, including fixed and intangible property, except for land, art (such as paintings, jewellery, and antiques), historical objects (except for buildings), biological assets, museum items, and any other assets that are not subject to wear and tear. Fixed assets costing below GEL 1,000 are not subject to tax depreciation but can be deducted in full against the gross income of the accounting year of purchase or production.

Fixed assets are categorised into five groups and the rate of tax depreciation applying to each group is shown below. Please note that tax depreciation is charged individually on buildings and structures as each building or structure is effectively considered as a separate group.

| Group | Types of Fixed Assets | Rate (%) |
|---|---|---|
| 1 | Motor cars; motor-and-tractor equipment for the use on roads; office furniture, movable parts of motor transport; trucks, buses, special motor vehicles and trailers; machinery and equipment for all sectors of industry and the foundry industry; black smith and pressing equipment; construction equipment; agricultural vehicles and equipment. | 20 |
| 2 | Special tools, stock and equipment; computers, peripheral devices and equipment for data processing; electronic devices. | 20 |
| 3 | Railway, maritime and river transport vehicles; power vehicles and equipment; thermos-technical equipment turbine-powered equipment; electric engines and diesel generators; electricity transmission and communication facilities; pipelines. | 8 |
| 4 | Building and structures. | 5 |
| 5 | Assets subject to depreciation not included in other groups. | 15 |

The expenses of an intangible asset can be written off for depreciation (amortisation) over their limited useful life and recorded as a separate group for this purpose. If it is not possible to determine the useful life of an intangible asset it should be depreciated at the rate of 15%.

## INTEREST DEDUCTIONS

Where a taxpayer incurs interest in the course of its business activities it is generally deductible subject to certain limitations. Where the interest paid and/or payable (using the accruals method) does not exceed 24% of the credit (loan) per annum, it is deductible.

## C. DIVIDENDS

Dividends paid to resident companies are not subject to withholding tax and are not included within the taxable income of the recipient resident company.

Dividends paid to resident and non-resident individuals, organizations and non-resident companies are subject to withholding tax. Where a resident natural person/non-entrepreneurial (non-commercial) legal entity receives dividends that have been taxed at source, they will not be subject to further taxation and will therefore be excluded from the taxable income of the recipient.

Dividends distributed by a FIZ Enterprise or an agricultural cooperative (until 1 January 2023) are not subject to withholding tax and are not included in the taxable income of the recipient. Also, dividends paid to the State by a resident enterprise shall not be taxed at source.

## D. FOREIGN TAX RELIEF

Where income from a foreign source has been subject to overseas tax a credit for the overseas tax paid is available. Therefore, the maximum relief available is only up to the amount of the tax that would be payable on the foreign income in Georgia. In order to support the foreign tax relief claim, supporting evidence of the overseas tax paid should be made available to the Georgian Tax Authority.



## E. CORPORATE GROUPS

Companies must file individual tax returns and report their taxes separately. Consolidated tax returns are not permitted. Branches and other units of Georgian companies do not file separate returns or pay CIT independently. They consolidate their taxable profit (or loss) within the main company, which pays corporate income tax on the total taxable profit.

## F. RELATED PARTY TRANSACTIONS

Georgian tax legislation contains transfer pricing (TP) regulations, which generally follow OECD TP principles. Georgia is not a member of the OECD, but local TP regulations follow OECD Guidelines and the matters that are not covered by Georgian tax legislation shall be regulated by the OECD Guidelines.

TP rules became effective on 1 January 2011 and are applicable to companies, which have carried out transactions with non-resident related entities (also PEs) and/or entities registered in preferential tax jurisdictions. For purposes of Georgian TP regulations, the following entities are related:

- One party directly or indirectly participates in the management, control or capital of the other party;
- The same parties directly or indirectly participate in the management, control or capital of two parties.

Georgian TP legislation determines five TP methods: (i) Comparable Uncontrolled Price Method (ii) Cost-Plus Method (iii) Resale Price Method (iv) Transactional Net Margin Method, and (v) Profit Split Method.

Income and expenses between related parties must adhere to the principle of fair market value. Where possible, the tax authority will compare the cost of related-party transactions with the cost of similar transactions between unrelated parties.

If the taxpayer receives an official request from the tax authority to prepare TP documentation, the taxpayer is obligated to provide full TP documentation within 30 days from the official request.

Market price principles are used for internal transactions carried out between related parties, except where the existence of related parties does not affect the result of such a transaction.

## G. WITHHOLDING TAX

Foreign companies that do not conduct economic activities through a PE in Georgia are subject to withholding tax on Georgia-sourced gross income without deductions. However, with respect to non-resident taxpayers receiving certain types of income, the TCG allows them to file a tax return and claim any allowable deductions.

The following withholding tax rates apply to Georgia-sourced income of non-residents where such income is not attributable to any PE of the non-resident in Georgia:

| Income from Georgian Sources | Tax Rate |
|---|---|
| Dividends | 5% |
| Interest | 5% |
| Oil and gas subcontractors | 4% |
| International telecommunication and transportation services | 10% |
| Royalties | 5% |
| Management fees | 10% |
| Income received in the form of wages | 20% |
| Payments to non-residents in respect of other Georgian-source income not connected to their PE in Georgia | 10% |

- Where a non-resident is registered in a preferential or zero/low tax jurisdiction, royalty, interest, management, and other service fee payments will be subject to withholding tax at the rate of 15%;
- Royalties paid by a non-resident's PE or by a resident to a resident natural person (other than a natural person registered as a VAT payer) are subject to withholding tax at the rate of 20%;

- In accordance with the TCG, interest earned from a licensed financial institution is not taxed at source. Such interest is not included in gross income unless the recipient of the interest is a licensed financial institution;
- Interest paid by a resident enterprise to the State is not taxed at source;
- Interest earned from debt securities issued by a Georgian enterprise and listed on a recognised stock exchange of a foreign country is not taxed at source and is not included in gross income;
- Interest earned from a FIZ Enterprise in a FIZ is not taxable at source and is not included in gross income.

## H. PERSONAL INCOME TAX

Individual residents in Georgia are subject to personal income tax (PIT) on their worldwide income (but are exempted for income received which is not Georgian-sourced), whereas non-residents are subject to PIT on Georgia-sourced income only, subject to double tax treaty relief. An individual is a resident of Georgia for PIT purposes if they are present in Georgia for more than 183 days in any consecutive 12-month period ending in a tax (calendar) year.

PIT is levied on salaries and any other compensation paid to employees including benefits-in-kind, subject to certain exceptions. PIT is deducted at source from an employee's salary by an employer. PIT returns should be submitted to the tax authorities by the 15th day of the following month.

Tax is levied on the annual income of an individual entrepreneur, which consists of gross income less the relevant expenses from earning that gross income (except for non-deductible or partially non-deductible expenses).

Unless other rates apply (e.g., for interest and dividends), the income of an individual is taxed at the flat rate of 20%.

Annual PIT returns must be submitted to the tax authority by 31 March of each year. There is no liability to social security payments on income paid or received by employers, employees or individual entrepreneurs. Similarly, there is no inheritance tax or wealth tax in Georgia.

Individuals may obtain the special status of micro-business or small business and fixed taxpayer. Upon obtaining these statuses they become eligible for certain simplified accounting rules and tax benefits.



### MICRO BUSINESS

The status of a micro-business may be granted to a natural person who does not use hired labour and conducts economic activities independently, the gross receivable income from which during a calendar year does not exceed GEL 30,000.

Currency operations, medical, architectural, legal, audit, and similar activities, as well as gambling businesses are prohibited.

A natural person having the status of a micro business shall not pay income tax. A natural person having the status of micro-business shall file a tax return before 1 April of the year following a tax year.

### SMALL BUSINESS

The status of a small business may be granted to an entrepreneur natural person. Gross income of an entrepreneur natural person having the status of a small business received during a calendar year may not exceed a GEL 500,000 threshold.

Currency operations, medical, architectural, legal, audit, and similar activities, as well as gambling businesses and production of excisable goods are prohibited.

Income earned from activities like renting/leasing property, lending, income received from loans, gifts, income received in the form of dividends, royalties, and also income received in the form of interest shall be taxed as per the common tax rules.

Taxable income of a person having the status of a small business shall be taxed at 1% of his/her gross income (without deductions), except if his/her gross income received from the economic activities has exceeded GEL 500,000, in which case the tax rate will be 3%.

A tax return of a person having the status of a small business shall be filed with and tax due shall be paid to the tax authority no later than the 15th day of a month following the accounting month.

### FIXED TAXPAYER

The status of a fixed taxpayer may be granted to a natural person who simultaneously meets the following conditions:

- Is registered as an individual entrepreneur;
- Is not a VAT payer; and
- Carries out one or more activities subject to taxation at a fixed tax, e.g. the supply of goods produced/to be produced in a bakery, hairdresser, hair correction, make-up, solarium, and car workshop.

A flat tax rate according to the types of activity determined by the government may be:

- From GEL 1 to GEL 2,000 where the exact fixed rate is set by the government for each type of activity;
- 3% of total income generated from taxable activities.

Income earned from carrying out additional activities not subject to fixed tax but allowable by the government is subject to tax as per the common rules.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| Country | PE (months) | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| Armenia | 6 months | 5/10[12] | 10 | 5 |
| Austria | 6 months | 0/10[1] | 0 | 0 |
| Azerbaijan | 6 months | 10 | 10 | 10 |
| Bahrain | 6 months | 0 | 0 | 0 |
| Belarus | 12 months | 5/10[11] | 5 | 5 |

| Country | PE (months) | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| Belgium | 9 months | 5/15[12] | 10 | 5/10[14] |
| Bulgaria | 9 months | 10 | 10 | 10 |
| China | 6 months | 0/5/10[7] | 10 | 5 |
| Croatia | 9 months | 5 | 5 | 5 |
| Cyprus | 9 months | 0 | 0 | 0 |
| Czech Republic | 6 months | 5/10[11] | 8 | 0/5/10 |
| Denmark | 6 months | 0/5/10[7] | 0 | 0 |
| Egypt | 6 months | 10 | 10 | 10 |
| Estonia | 9 months | 0 | 0 | 0 |
| Finland | 6 months | 0/5/10[6] | 0 | 0 |
| France | 6 months | 0/5/10[8] | 0 | 0 |
| Germany | 6 months | 0/5/10[8] | 0 | 0 |
| Greece | 9 months | 8 | 8 | 5 |
| Hong Kong[18] | 6 months | 0/5[17] | 0/5[17] | 5 |
| Hungary | 12 months | 0/5[3] | 0 | 0 |
| Iceland | 6 months | 5/10[11] | 5 | 5 |
| India | 90 days | 10 | 10 | 10 |
| Iran | 12 months | 5/10[11] | 10 | 5 |
| Ireland | 6 months | 0/5/10[7] | 0 | 0 |
| Israel | 9 months | 5 | 15 | 0 |
| Italy | 6 months | 5/10[12] | 0 | 0 |
| Japan[18] | 6 months | 5/10 | 0/5[16] | 0 |
| Kazakhstan | 6 months | 15 | 10 | 10 |
| Korea | 9 months | 5/10[13] | 10 | 10 |
| Kuwait | 6 months | 0/5[4] | 0 | 10 |
| Latvia | 6 months | 5 | 5 | 10 |
| Liechtenstein | 9 months | 0 | 0 | 0 |
| Lithuania | 9 months | 5/15[10] | 10 | 10 |
| Luxemburg | 6 months | 0/5/10[7] | 0 | 0 |
| Malta | 6 months | 0 | 0 | 0 |
| Moldova | 12 months | 5 | 5 | 5 |
| Netherlands | 6 months | 0/5/15[9] | 0 | 0 |
| Norway | 6 months | 5/10[13] | 0 | 0 |
| Poland | 9 months | 5 | 5 | 5 |
| Portugal | 9 months | 5/10[11] | 10 | 5 |
| Qatar | 6 months | 0 | 0 | 0 |
| Romania | 9 months | 8 | 10 | 5 |
| San Marino | 6 months | 0 | 0 | 0 |
| Saudi Arabia | 6 months | 0/5 | 0/5 | 5/8[15] |
| Serbia | 9 months | 5/10[11] | 10 | 10 |
| Singapore | 6 months | 0 | 0 | 0 |
| Slovak Republic | 6 months | 0 | 5 | 5 |
| Slovenia | 6 months | 5 | 5 | 5 |
| Spain | 6 months | 0/10[1] | 0 | 0 |
| Sweden | 12 months | 0/10[5] | 0 | 0 |
| Switzerland | 6 months | 10 | 0 | 0 |
| Turkey | 12 months | 10 | 10 | 10 |
| Turkmenistan | 6 months | 10 | 10 | 10 |
| Ukraine | 12 months | 5/10[12] | 10 | 10 |

| Country | PE (months) | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| United Arab Emirates | 6 months | 0 | 0 | 0 |
| United Kingdom | 12 months | 0/15[2] | 0 | 0 |
| Uzbekistan | 6 months | 5/15[12] | 10 | 10 |

NOTES:

1. The 0% rate applies where the beneficial owner of the dividends is a company (other than a partnership) which holds at least 10% of the capital of the distributing company.
2. The 0% rate applies where the beneficial owner of the dividends is a resident of UK except beneficial owner of the dividends is a pension scheme, where dividends are paid out of income derived directly or indirectly from immovable property (within the meaning of Article 6 of the Treaty) by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax.
3. The 0% rate applies where the beneficial owner of the dividends is a company (other than a partnership that is not liable to tax), which has held directly at least 25% of the capital of the distributing company for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends.
4. The 0% rate applies where the beneficial owner of the dividends is a company which has invested more than USD 3 million (or its equivalent in local currency) in the capital of the distributing company.
5. The 0% rate applies where the beneficial owner of the dividends is a company (other than a partnership) which holds at least 10% of the capital or the voting power of the distributing company.
6. The 0% rate applies where the beneficial owner of the dividends is a company (other than a partnership) which holds at least 50% and has invested more than EUR 2 million (or the equivalent in Georgian currency) in the capital of the distributing company. The 5% rate applies where the beneficial owner of the dividends is a company (other than a partnership) which holds at least 10% and has invested more than EUR 100,000 (or its equivalent in the Georgian currency) in the capital of the distributing company.
7. The 0% rate applies where the beneficial owner of the dividends is a company which holds at least 50% and has invested more than EUR 2 million (or its equivalent in the Georgian currency) in the capital of the distributing company. The 5% rate applies where the beneficial owner of the dividends is a company which holds at least 10% and has invested more than EUR 100,000 (or its equivalent in the Georgian currency) in the capital of the distributing company.
8. The 0% rate applies where beneficial owner of the dividends is a company which holds at least 50% and has invested more than EUR 3 million (or its equivalent in local currency) in the capital of the distributing company. The 5% rate applies where the beneficial owner of the dividends is a company which holds at least 10% and has invested more than EUR 100,000 (or its equivalent in local currency) in the capital of the distributing company.
9. The 0% rate applies where the beneficial owner of the dividends is a company which holds at least 50% and has invested more than USD 2 million (or the equivalent in Euro or Georgian currency) in the capital of the distributing company. The 5% rate applies where beneficial owner of the dividends is a company which holds at least 10% in the capital of the distributing company.
10. The 5% rate applies where the beneficial owner of the dividends is a company (other than a partnership) which holds at least 25% and has invested more than USD 75,000 in the capital of the distributing company.
11. The 5% rate applies where the beneficial owner of the dividends is a company (other than a partnership) which holds at least 25% of the capital of the distributing company.
12. The 5% rate applies where the beneficial owner of the dividends is a company which holds at least 25% of the capital of the distributing company.
13. The 5% rate applies where the beneficial owner of the dividends is a company (other than a partnership) which holds at least 10% of the capital of the distributing company.
14. The 5% rate applies where the beneficial owner of the royalties is an enterprise which is resident of the other Contracting State (not in which royalties arise).
15. The 5% rate applies if royalties are paid for the use of, or the right to use industrial, commercial, or scientific equipment.
16. The 0% rate applies where:
    - The beneficial owner of the interest is the State of Japan, a political subdivision or local authority thereof, the central bank of Japan or any institution wholly owned by Japan or a political subdivision or local authority thereof; or
    - The beneficial owner of the interest is a resident Japan with respect to debt-claims guaranteed, insured, or indirectly financed by Japan, a political subdivision or local authority thereof, the central bank of Japan or any institution wholly owned by Japan or a political subdivision or local authority thereof.
17. The 0% rate applies if the dividends/interest are paid to (i) the Government of the Hong Kong Special Administrative Region (ii) the Hong Kong Monetary Authority (iii) the Exchange Fund (iv) any entity wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties.
18. Effective date: 1 January 2022.

### Multilateral Tax Convention (MLI)

On 7 June 2017, Georgia signed the “Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting” (MLI). The Multilateral Instrument was ratified by the Parliament of Georgia on 27 December 2018 and the instrument of ratification has been deposited with the OECD secretariat.

The primary purpose of the Multilateral Convention is to implement BEPS treaty-related measures, in particular minimum standards under BEPS Action 5, 6, 13 and 14, in treaties for the avoidance of double taxation. Georgia introduced the minimum standard of the 5th and 6th BEPS action.

The MLI will cover and amend respectively 34 out of 57 agreements on the avoidance of double taxation concluded by Georgia.

# GERMANY

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| | |
|---|---|
| Full name: | Federal Republic of Germany |
| Capital: | Berlin |
| Main languages: | German |
| Population: | 83.76 million (2022 estimate) |
| Monetary unit: | 1 Euro (EUR) = 100 cents |
| Internet domain: | .de |
| Int. dialling code: | +49 |

## KEY TAX POINTS

- Companies resident in Germany are subject to tax on all of their income. Non-resident companies are subject to tax on German-source income.
- Business enterprises operating in Germany are also subject to a trade tax on business income, as assessed by each municipality.
- There is no separate capital gains tax for enterprises - broadly, capital gains from business assets are taxed at the ordinary tax rate. Capital gains realised by a corporate shareholder on the sale of shares held in an enterprise are almost tax free.
- VAT is applied on the supply of goods and services in Germany by a taxable person, subject to exemptions.
- Profits of foreign companies may be attributed to German shareholders under a controlled foreign companies (CFC) regime.
- A transfer pricing regime imposes record-keeping requirements and provides for income to be adjusted on an arm's length basis.
- Capital gains realised by individuals or partnerships are added to annual income, subject to a 40% participation exemption on the sale of shares held as business assets. Roll-over relief may be available where gains are reinvested in shares.
- Dividends paid to residents and non-residents are subject to a 25% withholding tax, although this is reduced to nil in certain circumstances under the EC Parent/Subsidiary Directive or a Double Tax Treaty.
- Both personal and corporate income taxes carry a surcharge at the rate of 5.5% of the tax. The surcharges on personal income tax will only be levied on income above a certain threshold (taxable income exceeding EUR 62,127 per annum) and on capital gains.
- Income tax is payable by German resident individuals on their worldwide income. Non-resident individuals are only required to pay tax on German-sourced income.
- Assets transferred by gift or inheritance are subject to tax. Other taxes include an annual real estate tax, an insurance tax and a church tax.
- There is a reporting obligation for intermediaries and taxpayers for reportable cross-border arrangements (Germany's national transposition of the EU-Directive (DAC 6)).

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## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

### COMPANY TAX

German-resident companies are subject to tax on their worldwide income. Non-resident companies are required to pay tax in various forms on income derived from German sources. Resident companies are those that are incorporated in Germany or have their place of management and control in Germany.

The corporation tax rate is 15%. In addition, a solidarity surcharge is levied at the rate of 5.5% of the corporation tax. The tax year in Germany is the calendar year. Companies are required to make quarterly prepayments of tax based on the previous year's income.

The corporate income tax returns shall be submitted by 31 July of the subsequent year and returns shall be prepared by a tax consultant by 28/29 February of the year after the subsequent year. Tax balance sheets have to be handed in electronically following a special tax account mapping. The commercial balance sheet must be published in the Federal Gazette by December 31 of the following year.

From 2022 onward, it will be possible to apply for partnerships to be taxed in the same way as corporations. The taxable income will no longer be taxed at the personal tax rate at the level of the partner, instead it will be taxed at the corporate income tax rate of 15%. For this change of legal form for tax purposes, lock-up periods must be observed. Unrealised gains in the special business assets (operating assets of the company owned by the partners) may be taxed if they are not transferred to the partnership.

### TRADE TAX

Trade tax is applied only to business income. All business enterprises operating in Germany are subject to this tax. The trade tax rate is assessed independently by each municipality. The effective tax rates in relevant municipalities range from 8.75% to 20.30%. Individuals may deduct trade tax as a block credit to a certain extent (up to 14.00 %) against individual income tax. No tax relief by deduction or credit is available to companies. The tax base may differ from the corporate tax base.

### CAPITAL GAINS TAX

There is no special or separate capital gains tax. For privately held shares a flat withholding tax of 25% plus solidarity surcharge of 5.5% of the tax due applies (for details see below under 'Capital gains and losses').

### BRANCH PROFITS TAX

There is no separate branch profits tax in Germany. Trading profits and capital gains of a German branch of a foreign company are calculated and taxed on the same basis as those of a German resident company.

### SALES TAX / VALUE ADDED TAX (VAT)

This is a tax on the supply of goods and services, other than exempt supplies and services, rendered in Germany by a taxable person. The tax rates are as follows:

- Standard rate: 19%;
- Reduced rate: 7%.

### FRINGE BENEFITS TAX

For some services provided to its employees (e.g. canteen food, office outings, transportation of employees, accident insurances and payments to retirement funds), the company has the option to pay the income tax on account for the employee. The tax is paid at a flat tax rate which varies depending on the service provided, from 15% to 30% of the given value.

## OTHER TAXES

In Germany a net wealth tax is not levied. Other taxes include real estate transfer tax (RETT) at a rate of 3.5% to 6.5% and insurance tax (excluding life insurance and private medical insurance) at 19%. RETT is not only due on the transfer of real estate but may also apply in cases of a transfer of shares in companies owning real estate. Certain exemptions for RETT on intra-group restructurings may apply.

Property owners have to pay property tax on their land on an annual basis. The Real Property Tax Law was recently changed so that, among other things, a tax declaration must be submitted for real property in the period between 1 July 2022 and 31 October 2022 to assess new real property values. The real estate tax under the new law and based on the new real property values will arise from 2025.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company is determined by ascertaining assessable income and then subtracting all allowable deductions. Business expenses are generally deductible for tax purposes, although there are some exceptions such as entertainment expenses which are only 70% deductible. Special rules apply in respect of the categories listed below.

## DEPRECIATION

Tangible fixed assets, other than land, are written off over their estimated useful lives at rates prescribed by the tax law or an administrative regulation. Generally the straight-line method of depreciation is used. In case of a long-term devaluation of assets, an extraordinary depreciation is allowed. Movable fixed assets acquired or manufactured after 31 December 2019 and before 1 January 2022 may be depreciated at 2.5 times of the straight-line method but not more than 25% (degressive depreciation). Assets with purchase costs from EUR 250 to EUR 1,000 exclusive of VAT can be pooled every year. The pool for each year has to be written off in five years. Taxpayer may elect for an immediate write-off of goods with a value of less than EUR 800. Good with a value of less than EUR 250 are written off immediately. In addition, as of assessment year 2021 onwards, it will be possible to depreciate certain computer hardware and software over a standard useful lifetime of only one year.

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## STOCK/INVENTORY

Inventory includes raw materials, work-in-progress, finished goods and payments on account. Each item of inventory must be valued at acquisition cost or cost of production. Accepted valuation methods include ‘last in, first out’ (LIFO) and average cost.

## CAPITAL GAINS AND LOSSES

In principle, capital gains from business assets are taxed at the ordinary tax rate. Profits on the sale of land and buildings may be reinvested tax-free (roll-over relief). Where the shareholder is a corporation, capital gains relating to the sale of shares held in an enterprise (German or foreign) are tax-free. Correspondingly, a write-down of participation does not have tax consequences. Losses arising from the sale of such a stake will not be recognised. However, a lump sum of 5% of the gains is added back to taxable income representing non-deductible business expenses.

Where the shareholder is an individual or a partnership, capital gains arising from the sale of shares held as business assets are taxable, but only 60% of the capital gain is added to the individual’s/partner’s annual gross income. The remainder is tax-free (40% participation exemption). Correspondingly, only 60% of the losses are deductible. Capital gains realised by partnerships may be tax-free if reinvested in shares within two years (roll-over relief).

Where the shareholder is a private individual, capital gains arising from the sale of privately held shares bought after 31 December 2008 are subject to a 25% flat withholding tax plus a solidarity surcharge of 5.5% of the tax due if the participation is below 1%. Capital gains arising from the sale of privately held shares bought before 31 December 2008 are generally not taxed. If the participation is 1% or more, the rules for shares held as business assets apply. Losses from the sale of privately held shares may be deducted only from gains arising on privately held shares. Non-deductible losses may be carried forward. From 1 January 2020, there is a loss deduction limitation of EUR 20,000 per calendar year for futures and options and in the event of unrecoverable capital claims.

Capital gains arising from the sale of other privately held movable assets are not taxed unless the assets are sold within one year. Capital gains arising from the sale of privately held land and buildings are not taxed unless the assets are sold within ten years.

## DIVIDENDS

Dividend income is subject to 25% withholding tax plus a solidarity surcharge of 5.5% of the tax due. The withholding tax rate may be reduced in accordance with tax treaties or EU regulations (Parent-Subsidiary Directive).

Where the shareholder is a corporation, the dividend income is tax-free (100% participation exemption). However, a lump sum of 5% of the gross dividends is added back to taxable income representing non-deductible business expenses, irrespective of the actual expenses incurred by the company. This applies to dividends received from both German and foreign enterprises. To qualify for the above-mentioned tax exemption, a minimum participation of 10% for corporate tax purposes (trade tax: 15%) as per the beginning of the calendar year is required.

Where the shareholder is a partnership, only 60% of the dividend income is added to the partner’s annual gross income. The remainder is tax-free (40% participation exemption). Correspondingly, only 60% of the expenses directly connected to the dividend are deductible. A resident taxpayer may credit the withholding tax which has been deducted by the corporation against his own individual tax liability. Corporation tax cannot be credited against the individual tax.

Where the shareholder is an individual, dividends are subject to a 25% flat withholding tax plus a solidarity surcharge of 5.5% of the tax due. However, if the withholding tax rate exceeds the marginal income tax rate of the shareholder, the shareholder may opt to report the dividend in his income tax return instead. Economically connected expenses such as financing fees are not deductible.

## INTEREST DEDUCTIONS

Interest is deductible to the extent that it is payable on credits raised to generate taxable income. Where interest is paid in order to finance a participation in another company, the above mentioned special provisions concerning business expenses which are directly related to tax-free dividends apply.

In order to combat abusive transfers of profits, an “interest barrier” limiting the deductibility of interest payments as business expenses has been introduced. Interest payments are generally deductible if they do not exceed interest income for the period. The excess amount is only deductible up to 30% of EBITDA as defined for tax purposes. An ‘exemption threshold’ for interest payments of less than EUR 3,000,000 per annum applies. An EBITDA carry-forward mechanism also exists.

The interest barrier is only applicable to companies belonging to a group. Such a group is deemed to exist if a German company may be consolidated with other companies. The interest barrier does not apply to companies that are part of a group if, under IFRS, the ratio of equity to total assets of the company is equal to or higher than the ratio of equity to total assets for the group as a whole. In addition, a shortfall of up to 2% compared to the group ratio is permissible. This escape clause will not be applicable for corporations if more than 10% of the interest expenses are on related party debt, i.e. to shareholders with participations of 25% or more.

Whether the interest barrier is in line with the constitution is currently under review by the constitutional court.

## LOSSES

In the year in which losses are incurred, they may, in principle, be deducted without restrictions. Remaining losses may basically be carried back to the preceding accounting period up to an amount of EUR 1 million. For assessment periods 2020 and 2021 the amount of losses that can be carried back has been increased to EUR 10 million (EUR 20 million in case of joint assessment) to mitigate the consequences of the Corona crisis for companies.

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Excess losses may be carried forward indefinitely to future years. However, in each future year, the deduction must not exceed EUR 1 million. Profits in excess of this threshold may be set off only to an amount of 60% against a loss carry-forward. Loss carry-forwards may be forfeited as a result of share transfers or corporate restructurings if these measures affect more than 50% of the shares within a 5 year period. Special rules apply for trade tax purposes.

In the case of spouses who are jointly assessed for income tax, double amounts apply (EUR 20 million, EUR 2 million).

## FOREIGN SOURCED INCOME

Foreign sourced income is generally taxable. In addition, Germany has a controlled foreign company (CFC) regime. Its objective is to ensure that profits of German controlled companies are not transferred to, or generated in, low tax jurisdictions. A low tax jurisdiction is deemed to be any country which taxes income at a rate of less than 25%. Where German residents hold more than 50% of the shares or the voting rights of an intermediate corporation with passive income, the income is deemed to be distributed to the German shareholders and taxed at their level if the intermediate corporation is located in a low tax jurisdiction. Under certain conditions, a participation of 1% in the foreign intermediate corporation is sufficient to trigger the CFC taxation.

Profit distributions by corporations and capital gains arising from the sale of these participations are deemed to be active income. Income derived by foreign holding companies is thus effectively exempt from CFC tax.

Since June 2021, the EU Anti-Tax Avoidance Directive (ATAD) has been transposed into domestic law. This has reformed the taxation of the transfer of profits and the taxation of income and exit taxation.

In addition, regulations were created to prevent operating expenses from being taken into account more than once in connection with hybrid arrangements.

## INVESTMENT ALLOWANCE/INCENTIVES

Qualifying investment aids are tax-free and available in selected areas from local authorities for the improvement of the regional economic structure. Investment grants are provided by the tax authorities for the acquisition of new buildings or depreciable, new movable assets in the new federal states. The possibilities for special depreciation in connection with certain investments were expanded in 2020 for small and medium-sized companies. Currently, a special depreciation is granted - subject to certain conditions - for newly built or acquired rental apartments, provided, among other things, that the building application is still submitted in 2021.

## C. FOREIGN TAX RELIEF

Even in the absence of a double tax treaty, foreign tax on income derived by a German resident may be credited against his income or corporation tax liability. The tax relief must not exceed the German tax charged on the same profits. Alternatively, the foreign tax may be deducted from the income of the German resident.

## D. CORPORATE GROUPS

Profits and losses of German group companies may be pooled for corporate tax and trade tax purposes, if the requirements of the so-called ‘Organschaft’ are met. The controlling company must hold, directly or indirectly, the majority of the shares of the controlled company and there must be a profit and loss pooling agreement between the two companies.

## E. RELATED PARTY TRANSACTIONS

Inter-company pricing between affiliated companies must be carried out on an arm’s length basis. If this is not the case, the income of both companies is adjusted for tax purposes. Arbitration proceedings are available within the European Union. Legislation is in force that specifies the duty to document the way in which a taxpayer arrives at the transfer prices on transactions with foreign closely related persons/enterprises. The documentation must encompass the nature and contents of the business relationship and the economic and legal basis underlying the arm’s length prices. Specific legislation applies to a “transfer of functions” between intra-group companies.

## F. WITHHOLDING TAX

Under domestic law, all dividends, regardless of whether they are paid to a resident or a non-resident, are subject to a 25% withholding tax plus a solidarity surcharge of 5.5% of the tax due as a flat tax. This is reduced to nil in the case where the shareholder satisfies the conditions of the EU Parent Subsidiary Directive (broadly that the shareholder is an EU resident company with a 10% or more interest in the company paying the dividend).

Interest is subject to 25% withholding tax plus a solidarity surcharge of 5.5% of the tax due if it is paid to a resident. Interest paid to a non-resident is not subject to withholding tax. Royalties paid to a non-resident are subject to 15% withholding tax plus a solidarity surcharge of 5.5% of the tax due. Certain German double tax treaties provide for an exemption or a reduced rate (see below).

## G. EXCHANGE CONTROL

There are no exchange control requirements.

## H. PERSONAL TAX

Income tax is payable by German resident individuals on their worldwide income. Non-resident individuals are only required to pay tax on German-sourced income. Individuals are deemed resident if they have a residence in or their customary place of abode is in Germany. The latter is generally the case if the continuous stay lasts more than six months while short-term interruptions are not taken into account.

Income tax is payable on assessable income less allowable deductions. Assessable income includes business income, income from agriculture and forestry, income from self-employment, income from employment, certain capital gains, capital investment income, and rental and royalty income. Allowable deductions include personal allowances, deductions for business/professional expenses and contributions to specified (insurance) bodies.

Tax instalment payments are withheld from employees' salaries by their employers. Self-employed individuals and those with non-salary income have to pay instalments on a quarterly basis with reference to the income realised in the previous year. The tax rates effective for single taxpayers in the tax year 2022 are as follows:

| Annual taxable income (EUR) | Marginal rate (%)* | Tax payable (EUR) |
|---|---|---|
| Up to 9,984 | Nil | 0 |
| 9,985 to 14,926 | 14 - 24 | 0 - 938 |
| 14,927 to 58,596 | 24 - 42 | 938 – 15,342 |
| 58,597 to 277,825 | 42 | 15,342 – 107,418 |
| More than 277,826 | 45 | From 107,418 |

* = without solidarity surcharge of 5.5 % of payable income tax.

The highest tax rate is 45% for taxable income of individuals that exceeds EUR 277,825 (EUR 555,650 for married couples). Retained profits from a trade or business, agriculture or self-employment generated by individually-owned firms or partnerships are taxable upon application at a reduced tax rate of 28.25%. When profits are withdrawn, the amount withdrawn is subject to a further tax charge (tax rate 25%) in the assessment year of the withdrawal but is reduced by taxes already paid on the profits distributed.

Interest and dividend income is subject to a 25% flat withholding tax plus solidarity surcharge of 5.5% of the tax due only. Expenses connected with the receipt of investment income are not deductible but a lump sum of EUR 801 can be deducted. The shareholder may opt to report the interest in his income tax return if the withholding tax rate exceeds his marginal income tax rate. If the taxpayer is married, the income of the taxpayer can be combined with the income of the spouse. Then the tax on 50% of the combined income is doubled correspondingly. In addition to the personal income tax, a solidarity surcharge is levied at the rate of 5.5% of personal income tax, if the income exceeds a certain taxable income or is subject to flat withholding tax.

Social security contributions are withheld from employees' salaries and wages. The employer and employee each generally contribute 50% of the total social security contributions. Members of the Roman Catholic, German Protestant, Lutheran and Jewish churches have to pay church tax. The tax rate amounts to about 8% or 9% of the annual income tax liability and varies according to the district of residence. It is a deductible expense for income tax purposes. Assets transferred by gift or inheritance are subject to tax. If either the transferor or the recipient is resident in Germany, all transferred assets are taxed wherever situated. If neither party is a German resident, the tax is limited to property located in Germany. The Federal Republic of Germany keeps tax treaties with six countries for these purposes: Denmark, France, Greece, Sweden, Switzerland and USA

The tax rates and exemptions for Inheritance and Gift Tax vary according to the relationship between the transferor and the recipient and the value of the assets. Where children or the spouse are the recipients, the rates range between 7% (where the assets have a value of EUR 75,000 or less) and 30% (where the assets have a value of more than EUR 26,000,000). The rates for brothers and sisters vary between 15% and 43%. If the transferor and the recipient are unrelated, the rates vary between 30% and 50% respectively. The spouse of the transferor is granted a personal allowance of EUR 500,000 and the children of the transferor are granted an allowance of EUR 400,000.

## I. TREATY AND NON·TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Non-treaty countries | 25 | 0/25[13] | 0/15[14] |
| **Treaty countries:** | | | |
| Albania | 15/5[1] | 0 | 5 |
| Algeria | 15/5[3] | 0 | 10 |
| Argentina | 15 | 0 | 15 |
| Armenia | 10/7[1] | 0 | 6 |
| Australia | 15/5[9] | 0 | 5 |
| Austria | 15/0[6] | 0 | 0 |
| Azerbaijan | 15/5[1] | 0 | 10/5[5] |
| Bangladesh | 15 | 0 | 10 |
| Belarus | 15/5[2] | 0 | 5/3[5] |
| Belgium | 15/0[6] | 0 | 0 |
| Bolivia | 10 | 0 | 15 |

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Bosnia-Herzegovina[8] | 15 | 0 | 10 |
| Bulgaria | 15/0[6] | 0 | 5 |
| Canada | 15/5[3] | 0 | 10/0[5] |
| China | 15[10]/5[1]/10 | 0 | 10/6[5] |
| Costa Rica | 15/5[2] | 0 | 10 |
| Croatia | 15/0[6] | 0 | 0 |
| Cyprus | 15/0[6] | 0 | 0 |
| Czech Republic | 15/0[6] | 0 | 5 |
| Denmark | 15/0[6] | 0 | 0 |
| Ecuador | 15 | 0 | 15 |
| Egypt | 15 | 0 | 25/15[5] |
| Estonia | 15/0[6] | 0 | 10/5[5] |
| Finland | 15/0[6] | 0 | 0 |
| France | 15/0[6] | 0 | 0 |
| Georgia | 0/5/10[7] | 0 | 0 |
| Ghana | 15/5[3] | 0 | 8 |
| Greece | 25/0[6] | 0 | 0 |
| Hungary | 15/0[6] | 0 | 0 |
| Iceland | 15/5[1] | 0 | 0 |
| India | 10 | 0 | 10 |
| Indonesia | 15/10[1] | 0 | 15/10/7.5[5] |
| Iran | 20/15[1] | 0 | 10 |
| Ireland | 15/0[6] | 0 | 0 |
| Israel | 10/5[3] | 0 | 0 |
| Italy | 15/0[6] | 0 | 5/0[5] |
| Ivory Coast | 15 | 0 | 10 |
| Jamaica | 15/10[1] | 0 | 10 |
| Japan | 15/5[3]/0[1] | 0 | 0 |
| Kazakhstan | 15/5[1] | 0 | 10 |
| Kenya | 15 | 0 | 15 |
| Korea | 15/5[1] | 0 | 10/2[5] |
| Kosovo | 15 | 0 | 10 |
| Kuwait | 15/5[3] | 0 | 10 |
| Kyrgyzstan | 15/5[1] | 0 | 10 |
| Latvia | 15/0[6] | 0 | 10/5[5] |
| Liberia | 15/10[1] | 0 | 10/20[5] |
| Liechtenstein | 0[3]/5[3]/15 | 0 | 0 |
| Lithuania | 15/0[6] | 0 | 10/5[5] |
| Luxembourg | 15/0[6] | 0 | 5 |
| Malaysia | 15/5[3] | 0 | 0/7[5] |
| Malta | 15/0[6] | 0 | 0 |
| Mauritius | 15/5[3] | 0 | 10 |
| Mexico | 15/5[3] | 0 | 10 |
| Moldova | 15 | 0 | 0 |
| Mongolia | 10/5[3] | 0 | 10 |
| Montenegro[8] | 15 | 0 | 10 |
| Morocco | 15/5[1] | 0 | 10 |
| Namibia | 15/10[3] | 0 | 10 |
| Netherlands | 15/0[6] | 0 | 0 |
| New Zealand | 15 | 0 | 10 |
| North Macedonia | 15/5[3] | 0 | 5 |
| Norway | 15/0[1] | 0 | 0 |
| Pakistan | 15/10[2] | 0 | 10 |
| Philippines | 15/10/5[4] | 0 | 10 |

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Poland | 15/0[6] | 0 | 5 |
| Portugal | 15/0[6] | 0 | 10 |
| Romania | 15/0[6] | 0 | 3 |
| Russia | 15/5[3] | 0 | 0 |
| Serbia[8] | 15 | 0 | 10 |
| Singapore | 15[11]/10/5[3] | 0 | 8 |
| Slovak Republic | 15/0[6] | 0 | 5 |
| Slovenia | 15/0[6] | 0 | 5 |
| South Africa | 15/5[3] | 0 | 0 |
| Spain | 15/0[6] | 0 | 0 |
| Sri Lanka | 15 | 0 | 10 |
| Sweden | 15/0[6] | 0 | 0 |
| Switzerland | 30[12]/15/0[3] | 0 | 0 |
| Syria | 10/53 | 0 | 12 |
| Tajikistan | 15/5[3] | 0 | 5 |
| Taiwan | 10 | 0 | 10 |
| Thailand | 20/15[1] | 0 | 15/5[5] |
| Trinidad and Tobago | 20/10[1] | 0 | 10/0[5] |
| Tunisia | 15/5[3] | 0 | 10/15[5] |
| Turkey | 15/5[1] | 0 | 10 |
| Turkmenistan | 15/5[1] | 0 | 10 |
| Ukraine | 10/5[2] | 0 | 5/0[5] |
| United Arab Emirates | 15[12]/10/5[3] | 0 | 10 |
| United Kingdom | 15/5[3] | 0 | 0 |
| United States | 15/5[3] | 0 | 0 |
| Uruguay | 15/5[3] | 0 | 10 |
| Uzbekistan | 15/5[1] | 0 | 5/3[5] |
| Venezuela | 15/5[4] | 0 | 5 |
| Vietnam | 15/10/5[4] | 0 | 10 |
| Zambia | 15/5[1] | 0 | 10 |
| Zimbabwe | 20/10[1] | 0 | 7.5 |

NOTES:

1. Lower rate applicable where recipient holds an interest of at least 25%.
2. Lower rate applicable where recipient holds an interest of at least 20%.
3. Lower rate applicable where recipient holds an interest of at least 10%.
4. Lower rates applicable where recipient holds an interest of at least:
   a. 25% or 70% (Vietnam; Philippines); or,
   b. 15% (Venezuela).
5. The tax rates vary with the nature of the royalty/dividend.
6. The dividend is tax free within the EC where the recipient corporation holds an interest of at least 10% (Parent/Subsidiary EC Directive and domestic law).
7. The 5% rate applies where the dividend is paid to a company which holds directly at least 10% and has invested more than EUR 100,000 in the capital of the distributing company. The 0% rate applies where the dividend is paid to a company which holds directly at least 50% and has invested more than EUR 3 million in the capital of the distributing company.
8. The Treaty between Germany and ex-Yugoslavia is still applicable.
9. Lower rate applicable where the recipients holds an interest of at least 10% for at least 6 months.
10. Dividends are paid from income or proceeds derived earned directly or indirectly from immovable assets.
11. Only for real estate investment companies.
12. Income as a silent partner.
13. Interest payments to non-residents are generally not subject to withholding tax. However, withholding tax is imposed on interest from convertible bonds, profit-sharing bonds, participation loans, as well as income from the participation of silent partners in a trade or business. The rate is 25% (26.375% including the 5.5% solidarity surcharge). Under German domestic tax law implementing the provisions of the EU Interest and Royalties Directive (2003/49), interest and royalty payments are exempt from withholding tax, provided that the recipient is an associated company of the paying company and is a resident in another EU Member State or such a company's permanent establishment situated in another Member State. Two companies are associated companies if (i) one of them has a direct minimum holding of 25% in the capital of the other or (ii) a third company has a direct minimum holding of 25% in the capital of two companies.
14. Royalties paid to non-residents are subject to a 15% withholding tax rate (15.825% including the 5.5% solidarity surcharge). For a 0% rate under the application of the Interest and Royalties Directive (2003/49), see footnote 13.

# GHANA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Accra | Nana Abena Adu-Gyamfi | +233 302 246 637<br>nana-adugyamfi@pkfghana.com |
| Accra | Albert Addo Cofie | +233 302 246 637<br>albert.cofie@pkfghana.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Ghana |
| Capital: | Accra |
| Main languages: | English, African languages including Akan, Ewe, Ga |
| Population: | 32.27 million (2022 estimate) |
| Monetary unit: | Ghanaian New Cedi (GHS) |
| Internet domain: | .gh |
| Int. dialling code: | +233 |



## KEY TAX POINTS

- The assessment period in Ghana is the calendar year (i.e. January to December). Companies and bodies of persons are allowed to choose their accounting year.
- Companies that are resident in Ghana are liable to income tax on income earned domestically and from foreign sources. Tax credit from foreign sources is allowable as tax credits domestically.
- Non- resident companies are liable to tax only on income with a source in Ghana.
- Companies deemed as permanent establishments are liable to tax on all source of taxable income.
- The basis of assessment is the net profit of the companies. This is adjusted by tax laws to arrive at the chargeable income.
- Repatriated branch profit is taxable at 8%.
- There is no separate rate for capital gains and gifts for companies. Income from the realisation of assets is subsumed in corporate income for tax purpose. Individuals may however opt for a rate of 15%.
- Local production and importation of goods and services attract VAT. Businesses with annual income of GHS 200,000 or more are required to register and charge VAT. There is no obligation to register if you deal in exempt supplies.

  A special rate of 3% applies under the VAT flat rate scheme. The Scheme applies to registrable wholesalers and retailers. Under the Scheme, a supplier is not entitled to an input tax deduction. The 3% flat rate is increased by a 1% Covid-19 Levy making it 4% in aggregate.

  VAT on other supplies ( importers, manufacturers, wholesalers and retailers with annual turnover exceeding GHS 500,000) is 12.5% Standard Rate, calculated on the value of chargeable supply plus a 2.5% National Health Insurance Levy, 2.5% GetFund Levy and 1% Covid-19 Levy.
- Transfer pricing regulations apply to related party transactions.
- Subject to treaty agreements and exemptions, various withholding tax rates apply to payments made for transactions between companies resident in Ghana and non-residents.
- Subject to exemptions that may be available, resident individuals pay tax on income (cash and kind) earned in Ghana and abroad. Non-residents are taxed only on income with a source in Ghana.
- Statutory and voluntary pension deductions apply to employment benefits.
- There is no wealth or inheritance tax due in Ghana. However, municipal authorities charge property rates.

## A. TAXES PAYABLE

National taxes and levies apply in all regions of the country.

## COMPANY TAX

Unless specifically exempted in the law, resident companies are required to pay tax on all income (domestic and foreign) relating to business and investment. Non-resident companies pay tax on income with a source in Ghana. Necessary adjustments are made to the net profit based on tax laws to determine the chargeable income. The rate of tax generally is 25%. There are different rates applicable to certain companies (see ‘Incentives’ below). Mining and petroleum companies are to pay corporate tax at a rate of 35%.

The corporate entity is taxed separately from its shareholders.

The tax year in Ghana is January to December. Companies prepare financial statements on an accrual basis. They may choose their own accounting date without permission, on commencement of operation. However, companies desiring to change their chosen accounting date must obtain prior permission from the Commissioner General of Ghana Revenue Authority (GRA).

All companies have to file tax returns within four months after their accounting year. It is also required that they make quarterly tax payments on the current year’s income based on the provisional assessment made by the Domestic Tax Revenue Division (DTRD) of GRA or the companies’ own estimates (where the DTRD has granted that permission).

## CAPITAL GAINS AND GIFT TAX

What used to be known as Capital Gain and Gift Tax have been incorporated into Corporate or Income Tax and taxed at the corporate tax rate. However, for an individual, the rate of tax for capital gain can be 15% on the gain realized or the income is added to the Chargeable Income of the person and taxed at the graduated rates.

In ascertaining the income of a person from investment or business for a year of assessment one has to include all gains and deduct all losses.

## BRANCH PROFITS TAX

A branch of an external company or a deemed permanent establishment of non-resident companies pay domestic corporate tax at the specified rate applicable to the industry. When the domestically taxed profit is repatriated, branch profit tax of 8% is applied. This operates as dividend tax as may be applicable to local companies.

### Income exempted from tax

Included in exempt income are as listed below. Exemptions apply to other categories of income that may not be relevant to business.

- Income of a non-resident from the business of operating aircrafts where reciprocal exemption is extended to Ghana in the country if residence of the carrier;
- Exemption from gains derived from the realisation of securities that are traded on the Ghana Stock Exchange is now permanent.
- The income of an approved unit trust scheme or mutual fund;
- The income of an approved Real Estate Investment Trust;
- Interest paid to an individual by a resident financial institution or on bonds issued by the Government of Ghana;
- The interest or dividend paid or credited to a holder or member on an investment in an approved unit trust scheme or mutual fund and housing scheme;
- Income of privately-owned universities shall be exempt from tax when they plough back a hundred percent of their profit after tax into the business;
- The income of a state-owned or state-sponsored educational institution;
- The income of an institution or trust of a public character established by an enactment solely for the purpose of scientific research.

## SALES TAX/ VALUE ADDED TAX (VAT)

These are indirect taxes charged by businesses on the supply of some goods and services in Ghana. VAT applies to all the stages of production of goods and services. However, there are supplies that are exempt from VAT. Exports attract VAT at zero rate.

### VAT Rate

All persons registered to charge Value Added Tax (VAT) and are currently operating the standard rate scheme are required to charge and account for VAT at the rate of 12.5% The value on which VAT is to be charged is obtained by adding the following:

i. value of chargeable supply;

ii. 2.5% GetFund levy of chargeable supply;

iii. 2.5% NHIL of chargeable supply;

iv. and 1% COVID-19 levy of chargeable supply.

This in effect amounts to a total charge of 18.5% of the chargeable supply.

### VAT flat rate

The existing VAT law (The Value Added Act, 2013 (Act 870)) was amended in 2017 by Act 948 to re-introduce the Flat VAT Rate Scheme. It has now been amended by Act 1072 Under this scheme, a taxable person who is a retailer in goods with an annual turnover up to GHS 200,000 is to account for VAT at a flat rate of 3% plus a 1% Covid-19 levy calculated on the value of the taxable supply without deducting any input VAT. The Flat Rate Scheme does not include the supply of the following goods:

- Any form of power heat;
- Refrigeration or ventilation;
- Goods manufactured in Ghana;
- Goods imported through the Ports of entry.

### Threshold

As earlier indicated the current threshold for registration of VAT is GHS 200,000 for a 12-month period or GHS 50,000 for a period of 3 months.

However, the following entities are not bound by the threshold and are required to apply for registration upon operation:

- Promoters of public entertainment;
- An auctioneer;
- A national, regional, local or other authority or body.

### VAT WITHHOLDING TAX

In line with the Value Added Tax (Amendment)(No.2) Act 2017, (Act 954) the Commissioner-General of GRA appointed Withholding Tax Agents, effective 1 May 2018, to collect and perform the following:

i. Withhold 7% of taxable value of all local taxable supplies made by a Standard Rated taxable person/supplier and the difference of 10.5% of the taxable value paid to the taxable person/supplier.

ii. Issue Withholding VAT Credit Certificate to Standard Rate VAT suppliers which is used as input tax to reduce the total tax liability payable by the supplier to the GRA.
iii. Submit Withholding VAT Returns together with payment of VAT withheld to the GRA for every month not later than the 15th day of the following month.

It is not every registered VAT person who is authorised to withhold VAT. Authorised Withholding Agents as per 1 May 2018 include the following:

- 28 financial institutions;
- 36 government institutions;
- 24 petroleum subcontractors;
- 17 mining companies and 8 manufacturing companies;
- 3 telecommunication companies; and
- meridian port Services.

Out of the above, five (5) financial institutions have been defunct leaving only 112 companies.

This list has been updated as at Tuesday, October 1, 2019 with an additional 106 companies. Hence, the total companies authorised to withhold VAT being 218.

The first Schedule of the VAT Act 870 has been amended by Act 1005 (2019).



## FRINGE BENEFITS TAX

With the exception of dental, medical, and health insurance expenses, all fringe benefits derived from employment are taxable. Benefits relating to accommodation and cars have their own treatment specified in the Tax Law.

| **Car Element** | | |
|---|---|---|
| Driver and Vehicle with fuel | 12.5% of TCE | Limit GHS 600 per month |
| Vehicle with fuel | 10% of TCE | Limit GHS 500 per month |
| Vehicle Only | 5% of TCE | Limit GHS 250 per month |
| Fuel Only | 5% of TCE | Limit GHS 250 per month |

| **Rent Element** | | |
|---|---|---|
| Accommodation with furnishing | 10% of TCE | No Limit |
| Accommodation Only | 7.5% of TCE | No Limit |
| Furnishing Only | 2.5% of TCE | No Limit |
| Shared Accommodation | 2.5% of TCE | No Limit |

Note:

TCE means Total Cash Emolument.

### Loan benefit

Interest on a loan granted to an employee, Manager, or Director by an employer is taxable. However, there is a Nil Tax where a loan is granted to an employee under the following conditions:

- The loan is from an employer to an employee;
- The term of the loan does not exceed 12 months; and
- The aggregate amount of the loan and any similar loan outstanding at any time during the previous 12 months does not exceed 3 months of basic salary.

### Benefit for tax purpose

In cases other than the above, the employee is considered to have benefited and is to suffer tax at the individual tax rate. The benefit is computed as 25% of Interest at Bank of Ghana Rediscount Rate less interest at employer's rate. For all other benefits, the open market value or a reasonable value is added to taxable income and subject to tax.

## ADMINISTRATIVE SANCTIONS AND PENALTIES

| | |
|---|---|
| Failure to maintain records | Where the failure is deliberate or reckless, 75% of the tax attributable to the period. In any other case, the lesser of 75% or 250 currency points |
| Failure to pay tax on due date | Interest of 125% of the statutory rate, compounded monthly on the amount outstanding |
| Underestimating tax | Interest of 125% of statutory rate, compounded monthly, and applied to the difference between 90% of the Actual Tax and Tax paid in instalment |
| Failure to file Returns (Individual) | 2 currency points and prosecution after 4 months |
| Failure to file Returns (Entity) | 4 currency points and prosecution after 4 months |
| Failure to comply with the Act | Where the failure may result in an underpayment of tax exceeding GHS 200, the fine is, if convicted, between GHS 2,400 - GHS 4,800. For any other case GHS 120 - GHS 2,400 |

| | |
|---|---|
| Making false or misleading statements | a. Where the statement/omission is made without reasonable excuse: a fine of 200% of the tax underpaid<br>b. Where the statement/omission is made knowingly or recklessly: a fine of 300% of the tax underpaid or a fine of GHS 600 – GHS 2,400 or a term of imprisonment between 6 months and 1 year or both<br>c. Any other case: a fine between GHS 600 - GHS 2,400 or a term of imprisonment of 1 month - 3 months or both. Impeding Tax Administration a fine of between GHS 1,200 – GHS 12,000 or term of imprisonment between 6 months and 1 year or both |
| Impeding tax administration | A fine of between GHS 1,200 - GHS12,000 or term of imprisonment between 6 months and 1year or to both |

Act 1065 provided for a waiver on accumulated penalty and interest for tax payments up to 31 December 2020. Act 1073 has extended the period for application for the waiver from September 2021 to June 2022.

## LOCAL TAXES

Taxes are collected by the District, Municipal and Metropolitan Assemblies (authorities) from persons doing business within their localities. They are also responsible for the collection of property taxes.



## OTHER TAXES

### a. STAMP DUTY

Stamp duty is paid at various rates by a person who undertakes certain transactions including the following, subject to certain exemptions:

- Agreement
- Award
- Bond
- Concession
- Contract
- Conveyance or Transfer on sale of a property
- Copy or extract of or from any instrument chargeable
- Counterpart/duplicate of an instrument
- Declaration of a trust concerning a property by the writing
- Deposit of file document
- Lease (land, mining, mineral, timber, etc.)
- Letter of authority / Power of Attorney
- Memorandum of Hypothecation
- Mortgage, Bond, Debenture, Covenant, Guarantee, Lien or Instrument of Security of any kind.

### b. MINERAL ROYALTIES

The Minerals and Mining Act 2006, Act 703 imposes a ground rent on holders of mineral right. Payment of rent in connection with Stool lands are paid to the Administrator of Stool Lands whilst payment of mineral rights is made to the Minerals Commission.

Act 794 has fixed the rate of royalty at 5% on the total revenue earned from minerals obtained. Payment is made on monthly basis.

### c. COMMUNICATION SERVICE TAX

This is a tax on communication service providers based on turnover. The coverage of this tax has been extended to include the following:

- Public/corporate data operators;
- Providers of radio(FM) broadcasting services;
- Providers of free-to-air television services.

The tax rate is currently 9% (Act 998) 2019.

### d. TAX STAMP

This is a tax imposed on business operators in the informal sector. The amount paid is based on turnover and nature of product but not on profit. This is a final tax and will be suspended temporarily for the 1st and 2nd quarters of 2022.

A new excise tax stamp to provide advanced security features for manufacturers and importers of products that pay excise duty was introduced.in January 2021.

### e. VEHICLE INCOME TAX

This is a tax imposed on commercial vehicles. It is paid quarterly and is a tax paid on account. This will be temporarily suspended for taxi services, mini-bus services and other commercial service providers for the 1st and 2nd quarters of 2022.

### f. AIRPORT TAX

This is imposed on both domestic and international travels. It varies depending on the passenger class and the place of destination. The current rates are:

- Domestic travel USD 5;
- Regional travel within West Africa USD 60;
- International travel:
  a) Economy class travel outside West Africa USD 100;
  b) Business class travel outside West Africa USD 150;
  c) First class travel outside West Africa USD 200.

## LEVIES

As stated earlier, the only notable national levies in the country are:

- The National Health Insurance Levy of 2.5% imposed on certain goods and services. The National Health Insurance Levy is administered on the lines of Value Added Tax.
- National Fiscal Stabilisation Levy (NFSL). The NFSL was introduced in 2009 but was abolished in January 2012. It has been reintroduced by Act 862, effective 30 September 2013. The expiry date which was previously extended to 2019 has further been extended to year of assessment 2024 by Act 1011 (2019). The rate of levy is 5% on the profits before tax, payable on a quarterly basis and covers the following entities:
  - o Banks (excluding Rural and Community banks);
  - o Non-Bank Financial Institutions;
  - o Insurance Companies;
  - o Telecommunication companies liable to collect and pay Communication Service Tax under Act 754 of 2008;
  - o Breweries;
  - o Inspection and Valuation Companies;
  - o Shipping lines, Maritime and Airport Terminals.

  The levy is collected upfront by the Ghana Revenue Authority. The levy is not an allowable deduction for the purpose of ascertaining the chargeable income of an entity under the Income Tax Act, 2015, Act 896. For the purpose of enforcing the recovery of the levy, the provisions of the Revenue Administration Act, 2016 (Act 915) relating to collection, enforcement, refund and penalties apply.
- The 2% Special Import Levy which was extended to 2019 has further been extended to year of assessment 2024 by Act 1004 (2019). The Levy is charged on the cost, insurance and freight value of all imported goods into Ghana. This excludes importation of petroleum, fertilizer, machinery and equipment that are listed under Chapters 84 and 85 of the Harmonized System and Customs Tariff Schedules.
- GetFund Levy. Act 970 amended the Value Added Tax (ACT 870) to reduce the rate from 15% to 12.5% by treating the GetFund of 2.5% as a levy.
- Covid-19 Health Recovery Levy which, subject to certain exceptions, imposes a 1% Special Levy chargeable on the supply of goods and services made in Ghana and imported goods and services.
- Energy Sector Levy. Act 1064 provides for an Energy Sector Recovery Levy and Sanitation and Pollution Levy imposed on LPG, Petrol and Diesel.
- Financial Sector Recovery Levy of 5% for banks (other than rural and community banks).

## B. DETERMINATION OF TAXABLE INCOME

Chargeable income is defined by the Income Tax Act 2015, (Act 896):

- 'The chargeable income of a person for a year of assessment is the total of the assessable income of that person for the year from each employment, business or investment less the total amount of deduction allowed that person under this Act.
- A person who determines the chargeable income of that person or of another person shall, determine chargeable income from each source separately.'

## ASSESSABLE INCOME

Assessable Income is made of income from Business, Investment and Employment.

- Business Income includes: income from a trade, profession, vocation or isolated arrangement with a business character; gains from the realisation of capital assets; and, gifts received in respect of the business.
- Investment income includes gains on realisation of investment asset; gifts received in respect of an investment; winning from the lottery; and, consideration for accepting a restriction to conduct investment.
- Employment income includes payments or benefits received by an employee from an employer by way of remuneration, fees, overtime, bonuses, personal allowances, commissions, other payments, including gifts in respect of the employment and lump sum payments. Payments or benefits received also include retirement contributions made to a retirement fund on behalf of an employee (subject to the National Pensions Act, 2008 Act 766), retirement payments received in respect of an employment (subject to the National Pensions Act, 2008 Act 766) and gratuities.

### Assessable Persons

Assessable persons include individuals, partnership, trust, beneficiary of a trust, companies, shareholders.

- **Individuals**

  Individuals are required to pay tax on gains or profit from employment, business or investment. For a resident individual, both income derived from within Ghana and from foreign sources are assessable to tax. However, the income of a resident individual from employment exercised in a foreign country is exempt if

  a) the employer is non-resident;

b) the employer is resident but the employee is present in the foreign country for 183 days or more during the year of assessment.

For a Non-resident individual only income which has its source from Ghana is assessable to tax. Aside deductions allowed, individuals are entitled to personal relief.

- **Partnership**

  A partnership is liable to pay income tax only with respect to final withholding payments.

- **Trust**

  A Trust is liable to pay tax separately from its beneficiaries at a rate of 25%. However, in the case of a trust of an incapacitated individual, the individual tax rate shall apply.

- **Beneficiaries of a Trust**

  A distribution of a resident trust is exempt from taxation if the distribution is in the hands of a beneficiary of the trust. A distribution of a non-resident trust is included in calculating the income of the beneficiary of the trust. A gain on the disposal of the interest of a beneficiary in a trust is included in calculating the income of the beneficiary.

- **Companies**

  A Company is liable to tax separately from its shareholders. For tax purposes a company is defined to include the following:

  - A Partnership with 20 or more partners having a limited liability;
  - A Trust with 20 or more beneficiaries whose entitlement to participate in the income or capital of the trust are divided into trusts.

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**Deduction Rules**

The following deduction rules should be noted:

- No deduction is allowed in calculating income from employment;
- No deduction is allowed in respect of domestic or excluded expenses;
- An expense is deductible to the extent that it is wholly, exclusively and necessarily incurred in the production of the income from the business or investment;
- No deduction is allowed for an expense of a capital nature.

As per an Administrative guideline from the GRA, no deduction will be allowed for purchases that are not covered by a VAT Invoice. This directive takes effect from 1st October 2021.

**Excluded Expenditure**

These include the following:

- Tax payable under Act 896;
- Bribes and expenses incurred in corrupt practices;
- Interest, penalties and fines paid or payable to a government or a political division of a government of any country for breach of any legislation;
- Expenditure incurred in deriving exempt amounts or final withholding payments;
- Retirement contributions unless they are included in calculating the income of an employee;
- Dividends of a company.

**Domestic Expenditure**

These include the following expenditures:

- Individual expenditure in respect of that individual;
- Expenditure in maintaining the individual, including the provision of shelter, meals, refreshment, entertainment or other leisure activities;
- Expenditure by the individual in coming from home to the office and from the office to home;
- In acquiring clothing for the individual other than clothing that is not suitable for wearing outside of work;
- Expenditure in educating the individual, other than education that is directly relevant to a business conducted by the individual and that does not lead to a degree or diploma.

**The following deductions are not allowed for tax purposes:**

a) Domestic and/ or excluded expenses under Section 130 of Act 896;

b) Expenses which do not meet the requirements of General Principles, Residual Deduction and Specific Deduction rules under Sections 8, 9 and 17 of Act 896.

Some of said include the following:

i. Depreciation;

ii. Capital expenditure;

iii. Donations and Contributions which do not meet the requirement of Section 100 of Act 896;

iv. Income taxes and levies;

v. Bribes;

vi. Penalties and sanctions;

vii. Retirement and pension payments not approved under the Pensions Act;
viii. Transactions which are not at arm's length;
ix. Excess Repairs and improvements as per Section 12 of Act 896;
x. Excess Financial Cost as per Sections 13 and 131 of Act 896;
xi. Dividends of a company.
xii. Clothing allowance which did not suffer tax in the hands of employees

- An expense is deductible to the extent that it is wholly, exclusively and necessarily incurred in the production of the income from the business or investment;
- Amount deductible shall not exceed 5% of the WDV of the pool at the end of the year;
- Deduction is allowed in the order in which the expense is incurred;
- Any excess expense is to be added to the depreciable basis of the pool to which it belongs.

## CAPITAL ALLOWANCE

Capital allowance is granted in respect of fixed assets (depreciable assets), both tangible and intangible, acquired by persons in businesses for each year of assessment. To qualify for these allowances, the following conditions must be met:

a) The assets should be capital in nature;
b) The asset should be owned by the business;
c) The asset should be in the business up to the end of the year of assessment;
d) The asset should be used in carrying on business during the period.

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***Capital Allowance Schedule***

| Class | Comments | Rate |
|---|---|---|
| 1 | Computers and data-handling equipment. | 40% |
| 2 | Automobiles, buses, minibuses, construction and earth-moving equipment, trailers and trailer-mounted containers, plant and machinery used in manufacturing.<br>Assets resulting from expenses relating to timber concern or large scale rubber, oil palm or other long term crop plantation | 30% |
| 3 | Railroad cars, locomotives and equipment, vessels, barges, tugs and similar water transportation equipment, aircraft, specialized public utility plants, equipment, machinery office equipment and fixtures, and any other depreciable asset not included in another class | 20% |
| 4 | Buildings, structures and similar works of a permanent nature | 10% |
| 5 | Intangible assets. | Useful life |

*An importer or manufacturer of excisable goods who acquires affixing machinery and equipment imported for the implementation of the Excise Tax Stamp Policy shall be granted an accelerated depreciation of 50% of the initial value (i.e. depreciated over two years).

There are 5 classes of Depreciable Assets with the removal of the Mining and Petroleum Class:

- All classes operate under the Pooling System;
- A Class 4 or 5 asset is to be placed in a pool of its own separately from other assets of that Class or any other assets. Additions to that asset are to be added to the Pool. Disposal of the asset amounts to disposal of all the assets in the pool;
- Capital allowance cannot be deferred;
- An additional capital allowance is to be granted where a written down value(WDV) of a Pool falls below GHS 500 and the Pool emptied.

Disposal of depreciable assets in a pool will result in additional income or additional allowance:

- For Class 1,2 or 3 pool, the additional income is arrived at by this formula:
- Consideration received less the depreciation basis of each pool at the end of the year;
- For Class 4 and 5 pool, the additional income is arrived at by this formula:
- Consideration received less (WDV of pool at the end of the year and capital allowance granted);
- For Petroleum Operations, the additional income is arrived by this formula:
- Total Consideration received
- For Mining Operations, the computation is as follows:
    - o Reduce the total WDV of the pool by the total WDV of the asset disposed (X)
    - o Where the consideration received is higher than X the excess is treated as income
    - o Where the consideration received is lower than X, additional depreciation allowance is granted.

**Repairs and Improvements-Sec 12**

- An expense is deductible to the extent that it is wholly, exclusively and necessarily incurred in the production of the income from the business or investment;
- Amount deductible shall not exceed 5% of the WDV of the pool at the end of the year;
- Deduction is allowed in the order in which the expense is incurred;
- Any excess expense is to be added to the depreciable basis of the pool to which it belongs.

## CAPITAL ALLOWANCE ON LEASED ASSETS

The lessee of an asset under a finance lease arrangement is entitled to capital allowance on the principal/capital portion of loan. The interest is however deducted against income.

In the case of the lessor, capital allowance is claimed under an operating lease. The full amount of rent received is included in the lessor's income for the year. Where the arrangement is a finance lease, the lessor does not qualify for capital allowance. The amount of rent payment is included in taxable income for the year is reduced by capital amounts determined by the Commissioner.

## DEPRECIATION

Depreciation of any fixed asset is not an allowable deduction in arriving at the assessable income. The same goes for amortisation of intangible assets. These are compensated for by the granting of capital allowance.

## STOCK/INVENTORY

For the purpose of tax, a person who is ascertaining the income of that person or of another person from a business for a year of assessment shall deduct in respect of trading stock of the business an allowance calculated as follows:

- Adding the opening value of the trading stock to the purchases for the year;
- Deducting from the sum obtained above the closing value of trading stock for the year.



The closing stock is valued at the lower of

- The cost of the trading stock at the end of the year; or
- The market value of the trading stock at the end of the year. However, any method of stock valuation accepted by accounting principle that is consistently applied is accepted.

In determining the cost of trading stock:

- Cost of repair, improvement or depreciation of a depreciable asset is not to be included;
- The absorption-cost method is to be used.

Trading stock or any type of asset prescribed by regulation to be fungible and not readily identifiable, may be determined using the first-in-first-out method or the average-cost method. However, the method opted for may be changed with the written permission of the Commissioner-General.

## CAPITAL GAINS AND LOSSES

As earlier indicated, there is no different rate for capital gains. In ascertaining the income of a person from investment or business for a year of assessment one has to include all gains and deduct all losses.

### Gains

A gain made from the realisation of an asset or liability is the amount by which:

- The sum of the consideration received for the asset exceeds the cost at the time of realisation; or
- The sum of the consideration offered for the liability is less than the amount outstanding at the time of realisation.

The calculation of cost includes:

- Expenditure in the acquisition of the assets (including expenditure of construction, manufacturing or production of the assets);
- Expenditure incurred in altering, improving, maintaining or repairing the assets;
- Incidental expenditure in acquiring and realizing the assets (including legal fees, advertisement/ canvassing).

### Exemptions and adjustment of computation

The following exemptions and adjustments apply under Sections 42 to 50 of Act 896:

- Realisation with retention of asset;
- Transfer of asset to spouse or former spouse;
- Transfer of asset on death;
- Transfer of asset for no consideration;
- Realisation of asset with replacement asset;
- Realisation of asset by way of merger, amalgamation or re-organisation;
- Transfer by way of security, finance lease or instalment sale;
- Realisation by separation;
- Apportionment of costs and consideration received;
- Shares listed on the Ghana Stock Exchange.

### Realisation

A person who owns an asset realises the asset under the following conditions/instances:

- Parting with ownership of that asset, including when that asset is sold, exchanged, transferred, distributed, redeemed, destroyed, lost, expired or surrendered;
- in the case of an asset of a person who ceases to exist, including by way of death, immediately before that person ceased to exist;
- In the case of an asset that is a debt claim owned by a person other than a financial institution, if that person:
    - o Reasonably believes that the debt claim will not be satisfied;
    - o Has taken reasonable steps in pursuing the debt claim; and

  - o Has written off the debt claim as a bad debt.
- Where the underlying ownership of an entity changes by more than 50% at any time within a period of 3 years;
- An asset owned by a resident person immediately before he becomes non-resident is considered as realised by that person on the date the person becomes non-resident.

**Losses**

A loss from the realisation of an asset or liability is the amount by which:

- The cost of the asset exceeds the sum of the consideration received for the asset at the time of realisation; or
- The sum of the consideration offered for the liability is more than the amount outstanding at the time of realisation.

This treatment of gains and losses is in line with the Income Tax law that does not recognize depreciation policies set out by businesses. The pool system adopted by the Ghana Revenue Authority (GRA) for capital allowance purposes for Classes 1,2 and 3 makes it almost impossible to ascertain whether a loss or gain was made on the disposal of a particular asset.

It should be noted that assets disposed of are subject to Value Added Tax (VAT) and National Health Insurance Levy (NHIL).

## DIVIDEND

A shareholder earning dividend from a resident company is subject to a final withholding tax at the rate of 8%. Capitalisation of profit is treated as dividend paid to each of the company's shareholders in proportion to their respective interest in the company and is taxed at 8%.



Where a company (controlled by not more than five persons) records profit over a reasonable period but does not declare dividends, the Commissioner has the authority to treat part of the company income as distributed and demand tax on dividend.

**Exemption Clause**

A dividend paid to a resident company by another resident company is exempt where the company that received the dividend controls directly or indirectly at least 25% of the voting power of the company paying the dividend.

## INTEREST DEDUCTIONS

Interest incurred in respect of a borrowing employed by a business entity in the production of income is a deduction allowed for the purpose of ascertaining the assessable income of the person subject to Section 16 of Act 896. Thin capitalisation rules apply to allowable interest deductions. The debt-equity ratio of 3:1 (2:1 from 2001 to 2015) is applied. Prior to 2016, the ratio was restricted to shareholder or related party debt. However, rules from 2016 apply to all forms of debt.

## TAX LOSSES

In ascertaining the income from a business for a year of assessment, the following deductions are allowed:

- Unrelieved loss of a business in a specified priority sector for any of the previous 5 years of assessment;
- Unrelieved loss of a business in any other sector for any of the previous 3 years of assessment.

The following should be noted:

- An unrelieved loss from a business may be deducted in calculating income from an investment and not the reverse. An unrelieved loss from investment shall be deducted from investment income only.
- Where a person makes a loss and if the loss were a profit, the profit would be taxed at a reduced rate the loss shall be deducted only in calculating income taxed at the same reduced rate or exempt amounts.
- Where a person makes a loss and if the loss were a profit, the profit would be exempt, the loss shall be deducted only in calculating exempt amount.
- Specified Priority Sector include
  - o Petroleum Operations;
  - o Minerals and Mining Operations;
  - o Agro-processing;
  - o Tourism;
  - o Information & Communication Technology;
  - o Farming;
  - o Manufacturing;
  - o Venture Capital Financing;
  - o Energy & Power.
- Unrelieved loss is the amount of loss that is deducted in calculating the income of the person for tax purpose;
- Loss from operation is the excess of amount deducted in calculating the income of that person from investment or business over the amount included in calculating that income;
- Tax Losses are deducted in the order in which they occur (apply the principle of 'first come first served');
- In computing tax losses, it should be reminded that capital allowance cannot be deferred.

**Definitions**

- Manufacturing business means an entity that manufactures mainly at least 70% for export;
- Information Technology-ICT involved in software development;
- Tourism-Entity should be registered with Ghana Tourist Authority.

**Foreign currency exchange losses**

- Gains on foreign currency and financial instruments are taxable whether realized or unrealized;
- Losses on foreign currency and financial instruments are deductible whether realized or unrealized, subject to the rules under Financial Cost.

The amount of financial cost other than interest deductible shall not exceed the sum of:

- Financial gain included in the income from business or investment; and
- 50% of the income from business or investment calculated without including a financial gain derived and also not deducting the financial cost incurred.

Any financial cost denied may be carried forward in the order in which it is incurred during any of the following 5 years of assessment

## FOREIGN SOURCED INCOME

Foreign sourced income of a resident person is included in that person's income for the year and taxed. The same principle applies to Ghanaian permanent establishment (PE) of a non-resident. The person is allowed the deduction of foreign tax credits or entitled to some reliefs where there is a double taxation agreement.

The income of a resident individual from employment exercised in a foreign country is exempt if the employer is non-resident or if the employer is resident but the employee is present in the foreign country for 183 days or more during the year of assessment.



For a non-resident person only incomes which have its source from Ghana are assessable to tax.

The Minister of Finance may by legislative instrument, make Regulations to prescribe the following:

- Criteria for exempting from tax, the income of a foreign Permanent Establishment(PE);
- Criteria for exempting from tax, the foreign income of a resident person;
- Circumstances in which the income of a foreign PE is not exempt, but is taxable in the hands of the resident owner with a foreign tax credit;
- Circumstances in which the income of a foreign trust or company that is controlled by residents is attributed and taxed to the members of the trust or company.

## INCENTIVES

There are a number of incentives provided for in the Income Tax Act, 2015 (Act 896) and other laws and enactments geared towards the development of certain sectors of industry and of certain parts of the country. These incentives include reduced rate of taxes, exemption from the payment of duties and other taxes for specified periods, higher rate of capital allowance, among others. These cannot be exhaustibly dealt with but below are a few of such concessions granted.

### LOCATIONAL INCENTIVES FOR MANUFACTURING BUSINESS

| Location | Rate |
|---|---|
| Location in regional capitals of Ghana | 18.75% |
| Location in free zone enclave for the first 10 years | 0% |
| Location outside regional capitals | 12.5% |

### SECTORIAL INCENTIVES (REDUCED TAX RATES)

Tax rates vary depending upon the area (sector or industry) from which the income is coming from as shown below:

| Sector | Rate |
|---|---|
| Hotel industry | 22% |
| Export of non-traditional production | 8% |
| Loans granted to a farming enterprise | 20% |
| Loans granted to a leasing company | 20% |
| Companies in Free Zones after tax holiday | 15% |

### INDUSTRIAL CONCESSIONS (EXEMPTION PERIOD)

| | |
|---|---|
| Tree Crop Farming | 10 years of assessment from year of first harvest |
| Cocoa tree | Indefinite exemption |
| Livestock Farming | 5 years of assessment from year of commencement of business |
| Cattle Farming | 5 years of assessment from year of commencement of business |
| Agro-Processing Business | 5 years of assessment from year of commencement of commercial production |
| Cocoa By-product Business | 5 years of assessment from year of commencement of commercial production |
| Rural Banking | 10 years of assessment from year of commencement of business |
| Waste Processing | 7 years of assessment from year of commencement of business |
| The income of a certified company from a low-cost housing business | 5 years of assessment from year of commencement of operation |
| Approved Unit Trust Scheme | Indefinite |
| Mutual Fund of business | Indefinite |

| | |
|---|---|
| Real Estate Investment Trust | Indefinite |
| Venture Capital Company | 10 years of assessment from year of commencement of business |
| Venture Capital Financing | 10 years of assessment from year of commencement of business |
| Free Zone Company | 10 years of assessment from year of commencement of business |
| Ghana Automotive Manufacturing Department Provision (Act 1007) | 3 years of assessment from year of commencement of the manufacturing or assembling business for semi-knocked down vehicles |
| | 10 years of assessment from year of commencement of the manufacturing or assembling business for semi-knocked down vehicles |

Apart from companies in the Free Zone, all entities are to pay tax on their profit at the rate of 1% during their tax holiday periods.

**Exclusions**

- A person is not entitled to a concession if an associate person has benefited or is benefiting from that concession;
- The concession shall not apply as between two associated individuals who are residents;
- The concession shall not apply 'where the Government of Ghana has concluded, whether before or after the commencement of this Act, a binding agreement with a person that purports to modify the manner in which tax is imposed, including by reason of a fiscal stability clause'.

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**Additional Temporary Concessions**

The following additional temporary concessions are provided under the Income Tax Act, 2015 (Act 896):

**1) Young Entrepreneur**

The income of a young entrepreneur, who is not more than 35 years old, from the business of manufacturing, information and communications technology, agro-processing, energy production, waste processing, tourism and creative arts, horticulture and medical plants is exempt from tax for a period of five years.

The tax rate applicable for the next five years after the initial concession period is as follows:

| Location | Rate |
|---|---|
| Accra and Tema | 15% |
| Other regional capitals outside the three Northern Regions | 12.5% |
| Outside other regional capitals | 10% |
| The three Northern Regions | 5% |

Such a young entrepreneur may carry forward an unrelieved loss for a period of five basis periods.

**2) Private Universities**

A Privately-owned university is exempt from tax when it ploughs back 100% of its profit after-tax into the institution.

## C. FOREIGN TAX RELIEF

Foreign tax credits are available to relieve double taxation on overseas income. Credits are calculated separately for each source of business, employment and investment income and may not exceed the average rate of Ghanaian income tax of that person for the year of assessment applied to that person's taxable foreign income for the year.

## D. CORPORATE GROUPS

Corporate groups, irrespective of their affiliations, prepare accounts separately and are taxed separately. Unutilised capital allowance on assets transferred is not transferable. Realisation of asset by way of merger, amalgamation or re-organization is exempt from tax. A dividend paid to a resident company by another resident company where the company that received the dividend controls directly or indirectly at least 25% of the voting power of the company paying the dividend is exempt from tax.

## E. RELATED PARTY TRANSACTIONS

Although nothing in the law disallows related party transactions, the Commissioner General has the authority to disregard or reverse any transaction that is geared towards tax avoidance.

In accordance with Regulation 2(2) of Transfer Pricing Regulation, 2012 (LI 2188): "A transaction is conducted at arm's length between persons in a *controlled relationship*, if the terms of the transaction do not differ from the terms of a comparable transaction between *independent persons."*

Thus, the price of goods and services charged between related parties should be comparable to the price that would be charged between independent persons.

Where the Commissioner-General thinks a transaction is not at arm's length he can disregard or reverse such a transaction.

Transfer Pricing Regulation 2020, LI 2412 has replaced LI 2188

In February 2021, the Registrar General's Department requested companies to provide names of their Beneficial Owners by 30 June 2021. This requirement may result in the Commissioner-General of GRA reclassify transactions between companies and their legal owners.

## F. WITHHOLDING TAX

Tax is withheld at various rates for the following transactions:

| Resident persons | | |
|---|---|---|
| **Income** | **Rate** | **Remarks** |
| Interest earned by individuals from Government of Ghana of Ghana bonds or Mutual Funds | 0% | Final |
| Interest earned by persons other than individuals or financial institution | 8% | Not final |
| Dividend | 8% | Final |
| Rent from residential property deemed as investment income | 8% | Final |
| Rent from a non-residential property deemed as investment income | 15% | Final |
| Rent from residential property deemed as business income | 8% | Not final |
| Rent from a non-residential property deemed as business income | 15% | Not final |
| Remittance for royalties and other natural resource | 15% | Not final |
| Fees for examining, invigilating, supervising an examination, or part time teaching or lecturing | 10% | Final |
| Fes or allowances, to a resident director, manager, trustee or board member of a company or trust | 20% | Not final |
| Endorsement Fees | 10% | Final |
| Commission to resident lotto receiver or agent | 10% | Not final |
| Commission to resident insurance, sales or canvassing agents | 10% | Not final |
| Supply or use of goods exceeding GHS 2,000 | 3% | Not final |
| Supply of works exceeding GHS 2,000 | 5% | Not final |
| Supply of service exceeding GHS 2,000 | 7.5% | Not final |
| Any amount due a local sub-contractor in respect of works or services under a Petroleum Agreement | 7.5% | Not final |
| Payment for unprocessed precious minerals located or won in Ghana | 3% | Not final |

Exemption from Withholding Tax under Contract:

- Premium paid to a Resident Insurance Company;
- Interest paid to a resident financial institution;
- Where goods constitute trading stock of both the vendor and the purchaser;
- Where the payee has an exemption certificate from the Commissioner General.

| Non-resident persons | | |
|---|---|---|
| **Income** | **Rate** | **Remarks** |
| Dividend | 8% | Final tax |
| Royalties, natural resources payments and rents | 15% | Final tax |
| Management, consulting, technical service and endorsement fees | 20% | Final tax |
| Repatriated branch after tax profits | 8% | Final tax |
| Interest | 8% | Not final tax |
| Short-term insurance premium | 5% | Final tax |
| Income from telecommunication, shipping and air transport | 15% | Final Tax |
| Income under a contract for the supply of goods, works or service where the contract gives rise to income in Ghana | 20% | Final Tax |

## G. EXCHANGE CONTROL

Ghana has an Exchange Control Act that regulates, among other things, the following:

- Use of foreign exchange among residents;
- Trading in gold (coins and/or bullion);
- Exports and import on bank notes;
- Exports and export proceeds;
- Capital and money market instruments.

Subject to the Foreign Exchange Act, 2006(Act 723) and the Regulations and Notices issued under the Foreign Exchange Act, an entity shall, through an authorized dealer bank be guaranteed unconditional transfer in freely convertible currency of the following:

- Dividends or net profits attributable to the investment made in the entity;
- Payments in respect of loan servicing where a foreign loan has been obtained;
- Fees and charges in respect of a technology transfer agreement registered under the Ghana Investment Promotion Centre Act,2013 (Act 865);
- The remittance of proceeds, net of all taxes and other obligations, in respect of sale or liquidation of the entity or any interest attributable to the investment in the entity.

There are restrictions to the amount allowed to be repatriated determined by the Bank of Ghana under Act 723. The restrictions relate to Section 15, 16, 18, 19 and 29 of Act 723 which among others require that each payment in foreign currency to or from Ghana between a resident and a non-resident, or between non-residents, shall be made through a bank.

Where the Bank of Ghana has reason to believe that an offence in contravention of Act 723 is likely to be committed or has been committed, the Bank of Ghana may require a bank to obtain its permission prior to the execution of any payment in foreign currency.

## H. PERSONAL INCOME TAX

The assessment period for individuals is January to December. Individuals are required to pay tax on gains or profit from employment, business or investment.

**Reliefs:**

Act 1007 (2019) has introduced improved relief for individuals:

| Type of Reliefs | Previous relief (GHS) | Current relief (GHS) |
|---|---|---|
| **Marriage / Responsibility** | 200 per year | 1,200 per year |
| **Old age**<br>(Granted to persons 60 years and above) | 200 per year | 1,500 per year |
| **Child education**<br>(Granted for a maximum of 3 children enrolled in recognised registered educational institutions in the country) | 200 per year | 600 per child per year |
| **Aged dependant relative**<br>(Granted for up to two (2) dependant relatives of 60 years or more.) | 100 per year | 1,000 per year |
| **Professional training relief** | 400 per year | 2,000 per year |

**Resident Individuals**

Resident individuals are to pay tax on their worldwide income unless specifically exempted under the law. The income of a resident individual from employment exercised in a foreign country is exempt if the employer is non-resident or the employer is resident but the employee is present in the foreign country for 183 days or more during the year of assessment.

Among other definitions, an individual is considered resident if he or she is a citizen of Ghana domiciled in Ghana (or absent from Ghana for 365 days or less), or is an individual who has stayed in Ghana for an aggregate period of 183 days or more in any 12-month period. All incomes are aggregated and taxed after the various adjustments relating to the type of income earned are made.

Tax rates applicable to resident effective January 2022 are as follows:

| ANNUAL RATES | | | MONTHLY RATES | | |
|---|---|---|---|---|---|
| | INCOME (GHS) | RATE | | INCOME (GHS) | RATE |
| First | 4,380 | 0% | First | 365 | 0% |
| Next | 1,320 | 5% | Next | 110 | 5% |
| Next | 1,560 | 10% | Next | 130 | 10% |
| Next | 36,000 | 17.5% | Next | 3,000 | 17.5% |
| Next | 196,740 | 25% | Next | 16,395 | 25% |
| Exceeding | 240,000 | 30% | Exceeding | 20,000 | 30% |

**Non-Resident Person**

For a Non-resident Person only incomes which have a source from Ghana are assessable to tax. The tax rate is 25%.

Fringe benefits earned by individual employees are taxable (Refer to Fringe Benefit Tax above).

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

In the absence of any treaty with the Government of Ghana, the provisions of the income tax law apply for the treatment of all tax matters. Thus, tax rates applicable on various income apply. Where there is a treaty with the Government of Ghana, the terms of the treaty prevail over all provisions of the income tax law. However, where the rates of taxes set out in a treaty are higher than those of the laws of Ghana, the lower rates are used.

Tax rates in percentages are as follows:

| | Dividends (Where recipient holds at least 10% of shares) % | Dividends (In any other case) % | Royalties % | Technical/ management service fees % | Interest % |
|---|---|---|---|---|---|
| Belgium | 5 | 15 | 10 | 10 | 10 |
| Czech Republic[4] | 6 | 6 | 8 | 8 | 10 |
| Denmark | 5 | 15 | 8 | 8 | 8 |
| France | 7.5 | 15 | 12.5 | 10 | 12.5 |
| Germany | 5 | 15 | 8 | 8 | 10 |
| Ireland[1] | 7 | 7 | 8 | 10 | 7 |
| Italy | 5 | 15 | 10 | 10 | 10 |
| Malta[1] | 6 | 6 | 8 | 12 | 7 |
| Mauritius | 7 | 7 | 8 | 10 | 7 |
| Morocco[1] | 5 | 10 | 10 | 10 | 10 |

| | Dividends (Where recipient holds at least 10% of shares) % | Dividends (In any other case) % | Royalties % | Technical/ management service fees % | Interest % |
|---|---|---|---|---|---|
| Netherlands | 5 | 10 | 8 | 8 | 8 |
| Norway[1] | 7 | 15 | 10 | 12 | 7 |
| Singapore[2] | 7 | 7 | 7 | 10 | 7 |
| South Africa | 5 | 15 | 10 | 10 | 5/10[3] |
| Switzerland | 5 | 15 | 8 | 8 | 10 |
| United Kingdom | 7.5 | 15 | 12.5 | 10 | 12.5 |
| | | | | | |
| Local rates | 8 | 8 | 15 | 20 | 8 |

NOTES:

1. Not yet in force.
2. Effective date: 1 January 2020.
3. The reduced 5% rate applies if the beneficial owner is a South African bank.
4. Effective date: 1 January 2021.

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## GIBRALTAR

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Gibraltar | Joseph Canilla | +350 200 71876<br>jcanilla@pkf-canillas.gi |

### BASIC FACTS

| | |
|---|---|
| Full name: | Gibraltar |
| Capital: | Gibraltar |
| Main languages: | English |
| Other languages: | Spanish |
| Population: | 33,674 (2022 estimate) |
| Monetary unit: | Gibraltar Pound (GIP) |
| Internet domain: | .gi |
| Int. dialling code: | +350 |

### KEY TAX POINTS

- A company is taxed on profits which accrue, or are derived, in Gibraltar for a financial year at a rate of 12.5%, increased from 10% with effect from 1 August 2021 (although the rate can be 20% in some cases).
- Profits of foreign companies including branches in Gibraltar are taxed at the same rate as resident companies.
- There is no capital gains tax in Gibraltar.
- There is no VAT in Gibraltar.
- The tax year runs from 1 July to 30 June and tax is payable on the actual taxable profits for the year. For tax purposes, individuals can elect between the Allowance and Gross Income Based Systems. The standard rate of tax for individuals is 20%.
- As from 1 August 2021 Gibraltar minimum wage increased from GIP 7.25 to GIP 7.50 per hour.

### A. TAXES PAYABLE

### COMPANY TAX

The standard rate of Gibraltar corporation tax is 12.5%, an increase from 10% with effect from 1 August 2021. For utility companies and companies that enjoy and abuse a dominant position there is a higher rate of tax applied which is 20%. The utility companies are classified as Telecommunications, Petroleum, Water and Sewage. Companies are taxed on profits for the financial year on income accrued or derived in Gibraltar.

### CAPITAL GAINS TAX

There is no capital gains tax in Gibraltar. The Commissioner of Income Tax may refer to case law to judge whether a benefit is of a capital or trading nature.

### INHERITANCE TAX

There is no inheritance tax in Gibraltar.

## BRANCH PROFITS TAX

Profits of foreign companies are taxed at the same rate as resident companies.

## SALES TAX / VALUE ADDED TAX

There is no VAT in Gibraltar.

**Derogation from implementing VAT**

Although Gibraltar joined the EU alongside the United Kingdom at the time of the United Kingdom's accession Gibraltar was granted derogation from implementing VAT. Therefore, there is no VAT in Gibraltar.

**Customs and excise duties**

Goods imported into Gibraltar are subject to import duty at varying rates.

## FRINGE BENEFITS TAX

Perquisites or benefits in kind are taxed as gains from employment. There is specific detailed legislation on how to tax benefits and also the allowances available, particularly with respect to:

- Expense payments; vouchers and credit tokens;
- Living accommodation; removal benefits and expenses;
- Cars, vans and related expenditure;
- Loans to: employees, directors, shadow directors or connected persons.

The Commissioner for Income Tax has the ability to tax benefits not specifically covered in the legislation. Where the benefits to an employee are less than GIP 250 in total for any year of assessment no tax is payable in respect of those benefits. The employer may opt to pay the tax on the benefits on behalf of an employee. When the annual value of these benefits is between GIP 250 and GIP 15,000 the tax under this Schedule shall be paid at the rate of 20%. When the annual value of the benefit is above GIP 15,000 tax shall be paid at the rate of 29%.

## LOCAL TAXES

## GENERAL RATES

General rates are levied on all properties in Gibraltar.

## STAMP DUTY

Stamp Duty is payable on the transfer or sale of any Gibraltar real estate or shares in a company owning Gibraltar real estate (on an amount based on the market value of the said real estate) at the following guidance rates:

First or second time buyers as defined by section 19A the Act:

| Value of property | Stamp Duty |
|---|---|
| First GIP 260,000; | 0% |
| From GIP 260,001 to GIP 350,000 | 5.5% |
| Above GIP 350,000 | 3.5% |

| Non- qualifying Purchasers | Stamp Duty |
|---|---|
| Not exceeding GIP 200,000 | 0% |
| From GIP 200,001 to GIP 350,000 | 2% on first GIP250,000 and 5.5% on balance |
| Above GIP 350,000 | 3% on first GIP350,000 and 3.5% on balance |

Stamp Duty is also payable on mortgages secured on Gibraltar real estate at the following rates:

| | |
|---|---|
| Mortgages up to GIP 200,000 | 0.13% |
| Mortgages over GIP 200,000 | 0.20% |

**Special Stamp Duty**

As from 2 July 2018, a duty of 7.5% applies to the sale of property which classify as affordable Home for and on behalf of the government in the preceding four years.

From 1 July 2021, a special stamp duty rate of 5% is introduced on the purchase of berths at the Small Boats Marina.

## CAPITAL DUTY

Capital duty of GIP 10 is payable on the nominal share capital or any increase thereof with respect to limited liability companies.

## GAMING TAX

As from 1 April 2018 the licence fees are fixed at GIP 100,000 for B2C licensees and GIP 85,000 for B2B licensees per annum. Gambling tax is payable by the B2C operators on their gross receipts, both gaming receipts and betting receipts, at the rate of 0.15%.

## ROYALTIES

Royalties received or receivable by a Gibraltar company are chargeable to tax.

## OTHER TAXES

There are no capital gains, wealth, inheritance or gift taxes in Gibraltar.

## B. DETERMINATION OF TAXABLE INCOME

### INDIVIDUALS

An individual who is ordinarily resident in Gibraltar is chargeable to tax on his/her worldwide income in accordance with tables A to C of schedule 1 of the Income Tax Act 2010.

### INDIVIDUAL ORDINARY RESIDENT

An individual ordinarily resident is a person who is resident in Gibraltar for a period (or accumulated period) totalling at least 183 days in any year of assessment or is present in Gibraltar in any year of assessment which is one of three consecutive years in which the total of the days during which the individual is present in Gibraltar exceeds 300 days. Non-residents who undertake activities in Gibraltar which are ancillary to their employment or self-employment elsewhere and the duration of the activity is less than 30 days in aggregate in any year of assessment or such other number of days that the commissioner may by prior written agreement in his discretion allow, will not be liable to income tax in Gibraltar. This also covers directors' fees.

### CORPORATIONS

A company is taxed on profits which accrue or are derived in Gibraltar. The Act defines accrued or derived by reference to the activities that generate the profit. A company is considered ordinarily resident in Gibraltar if management and control as defined is exercised in Gibraltar.

A regulated company's profit deriving from its regulated activities is subject to tax irrespective of where this income is accrued or derived.

### STOCK OPTIONS

The granting of an option or share to an employee is an event which is taxable. When the option is exercised and there is a disposal of the shares and capital gains arise the capital gain is not taxable on the individual as there is no capital gains tax in Gibraltar.

### CAPITAL ALLOWANCES

**100% First year allowances:** As from 1 July 2021 to 30 June 2023 the capital allowances deduction will be based on the higher of the first GIP 60,000 (capped at GIP 30,000 up to 30 June 2021) of qualifying expenditure on fixtures and fittings, plant and machinery and the first GIP 100,000 (capped at GIP 50,000 up to 30 June 2021) of computer equipment acquired in a year of assessment or 50% of the qualifying expenditure incurred.

**Annual allowances:** There is an additional annual allowance on the surplus balance of the pooled amount at the rate of 25% per annum on a reducing balance basis. For motor vehicles not qualifying as plant and machinery there is an allowance at the rate of 15% per annum on a reducing balance basis. For unincorporated entities and companies on the higher 20% rate of income tax, there is a 20% allowance on the pooled balance. For capital allowances on entertainment centres, hotels, mills, factories or other similar premises (excluding the cost of the land) there is an allowance at the rate of 4% per annum on a straight line basis.

- As from 1 July 2021 to 30 June 2023, there is a wear and tear allowance for properties which are used for the purpose of trade, business, profession or vocation at the rate of 1% per annum on a straight line basis.
- Where the balance of qualifying expenditure is less than GIP 1,000, the full amount is allowed as a deduction in that year.
- If the accounting period is less than 12 months, the pool allowance is prorated.
- Newly established businesses are able to claim 100% of their capital allowances in the first year of trading.

### CAPITAL GAINS AND LOSSES

Capital gains are not subject to tax therefore capital losses are not allowable deductions.

### DIVIDENDS

There is no charge to tax on the receipt by a Gibraltar company of dividends from any other company, whether it is a Gibraltar resident or non-resident. There is no tax on a dividend paid by a Gibraltar company to a non-resident of Gibraltar. There is also no withholding tax on dividends paid, but when a dividend is declared to a Gibraltar resident person, individual or company, a dividend return must be filed with the tax authorities.

### INTEREST DEDUCTIONS

There is no withholding tax on interest payments.

### WITHHOLDING TAX – PAYMENTS TO SUBCONTRACTORS

Payments made to subcontractors (in the construction industry) without a valid tax exemption certificate issued by the Commissioner of Income Tax are subject to 25% withholding tax on that portion of the payment which is not for materials used in construction.

### LOSSES

A trading loss incurred can be carried forward and set off against future trading profit. Non trading losses are not allowable deductions. If within any period of three years there is both a change in ownership of a company and there is a major change in the nature or conduct of a trade carried on by the company no relief shall be given in respect of any losses brought forward from the period beginning before the change of ownership against any profits or gains. There is no provision for the carrying back of losses.

### FOREIGN SOURCED INCOME

Income tax is charged on income accruing in or derived from Gibraltar. Residents of Gibraltar are taxed on their world-wide income.

## INCENTIVES

### DEDUCTION OF APPROVED EXPENDITURE ON PREMISES

Resident taxpayers whether individuals or companies (although there is a different approach to each category) who have an interest in a building situated in Gibraltar, have a special allowance for approved expenditure on the repair or enhancement of the façade of the building. This allowance is in addition to any normal allowance given. The taxpayer will have to comply with the requirement contained within the special provisions in order to be able to reap its advantages. For individuals whose assessable income is based on the gross income based system the allowance is restricted to GIP 5,000 per annum.

### DEVELOPMENT AID

The development Aid Act is aimed at private development in Gibraltar. There are conditions to be met in order to take advantages of the incentives offered. Application for development aid must be made to the Minister responsible.

### NEW START-UP INCENTIVE SCHEME

Businesses setting up in Gibraltar between 5 July 2016 and 30 June 2017 are entitled to a tax credit equal to tax due up to a maximum of GIP 50,000 per annum over each of the first three financial years of trading. This incentive is subject to the following conditions:

- It must be a new business setting up in Gibraltar and not the transfer of an existing business already in Gibraltar.
- The business must employ at least 5 people in the first year.
- The business must be a company or limited partnership but not an individual trading in its own name.

The tax credit does not carry forward from one year to the next.

### DEDUCTION FOR IMPROVEMENT IN ENERGY PERFORMANCE CERTIFICATE RATING

A deduction is available for the investment made by an individual, company or business that makes a significant improvement to the Energy Performance Certificate (EPC) rating. The percentage is subject to the discretion of the Commissioner of Income Tax.

### TRAINING COSTS

Training costs for employees working towards a qualifying qualification are allowable as an expense at a rate of 150%. From 1 July 2021 to 30 June 2023 this is increased to 160%. A self-employed individual undertaking qualifying training may also claim the 50% deduction. 'Qualifying training' means any qualification and training as approved by the Commissioner.

Up until 30 June 2023 a further deduction is available based on 50% of the fixed salary cost of new employees employed after 1 July 2021.

### MARKETING INCENTIVE

Up until 30 June 2023, a 50% deduction is available for business marketing and promotion expenditure.

### PROPERTY INVESTMENT INCENTIVE

Proprietors of property constructed in Gibraltar in the subsequent 30 months from 1 July 2016 and rented for residential purposes will receive a tax credit equal to the tax payable on the profits earned on the first twenty-four months of rent occurring in the first five years after the completion of construction of that property.

### DISABLED ACCESS TO PROPERTY

A company or business shall be entitled to claim a deduction in computing its income chargeable to tax where it has a legal title to a property in Gibraltar from which a trade, business, profession or vocation is carried out and has incurred expenditure for works carried out no later than 30 June 2022 for the modification and improvement of access and inclusion for disabled individuals to that property. The deduction will be limited to a maximum of GIP 15,000 or the cost of the modifications.

### GIFT AID

The amount eligible for registered charities to claim from the Commissioner of Income Tax in respect of donations under Gift Aid rules is GIP 10,000.

### ELECTRIC VEHICLES

Cashback on full electric vehicles of GIP 2,500 (GIP 250 for hybrids) per vehicle and no import duty.

For full electric motorbikes the cashback, is GIP 150 per vehicle and GIP 200 per vehicle for electrically assisted bicycles without a throttle where the electric engine cuts off at a speed of 25 kph.

## C. FOREIGN TAX RELIEF

Any person ordinarily resident in Gibraltar can claim unilateral tax relief on tax paid abroad subject to providing the necessary evidence of the payment to the Commissioner of Income Tax, the taxpayer is entitled to a tax credit equivalent to the lesser of the tax payable on that income in Gibraltar; or the tax payable abroad in respect of that income. If relief from the double taxation has to be made abroad then the relief allowed is reduced accordingly.

## D. CORPORATE GROUPS

There is no group relief available in Gibraltar.

## E. RELATED PARTY TRANSACTIONS

**Anti-avoidance provision**

The Income Tax Act 2010 introduced a number of anti-avoidance clauses which can be invoked to set aside arrangements that can be seen to be fictitious or artificial. Also the promoters of a tax planning schemes have to notify the Commissioner of Income Tax within 30 days of any schemes which result in the payment of less tax. There are a number of clauses that specifically consider and address anti avoidance arrangements that can lead to the reduction or elimination of tax payable as follows:

**Thin capitalisation rules**

This is aimed at shareholder or connected persons and refers to interest paid on a loan by a company to related parties (which is not itself a company) or loans where security is provided by related parties and where at any time in an accounting period the loan capital to equity ratio is greater than 5 to 1. The interest paid will be deemed to be a dividend by the company and received by the connected part and not deductible on the company in computing the profits for the period.

**Transactions with connected persons**

When it appears that transactions with connected persons in the course of the business are arranged with a view to make no profit or reduce profits or increase losses any excess will be deemed to be a dividend paid and not deductible on the company in computing the profits for the period. When expenses incurred in favour of a connected person the expense allowed shall be the least of the expense incurred; 5% of the gross turnover of the person for the accounting period or 75% of the pre-expense net of profit of the person for the accounting period.

**Non-deductibility of interest paid on certain secured loans**

This refers to interest payable and back to back loans. Where a loan is made by a lender at an arm's length and all or part of the loan is secured by a cash deposit or an investment as defined by the Act of any connected person over which the lender has taken security the loan interest will not be deductible when computing the profit or gain.

**Chargeability of dual employment contracts**

Where an employee of an employer ordinarily resident in Gibraltar has one or more other contracts with that or another employer whether resident in Gibraltar or elsewhere who is a connected person to the employer ordinary resident in Gibraltar the income derived shall be subject to tax. If it can be proved to the Commissioner that the purpose of the transactions is not to avoid tax this is a mitigation circumstance that will be considered.

**Transfer of assets abroad**

This is to prevent the transfer of assets abroad by an ordinarily resident individual with the purpose of avoiding taxation in Gibraltar and the income becomes payable by persons resident outside Gibraltar.

When the person affected can demonstrate to the Commissioner that the intention is not to avoid tax the provisions do not apply.

## F. EXCHANGE CONTROL

There are no exchange controls in Gibraltar.

## G. PERSONAL INCOME TAX

**Individuals and partnerships**

The tax year runs from 1 July to 30 June and tax is payable on the actual taxable profits for the year. Individuals can elect between the allowance and Gross Income Based Systems

**Allowance based system**

Under the allowance based system the individual will be taxed on their income less allowances (see below). The main allowances (which are reduced by one twelfth for each complete calendar month that the individual is not resident in Gibraltar during the year of assessment) for the tax year 2020/2021 are as follows:

| Type of allowances | GIP |
|---|---|
| Personal allowance | 3,455 |
| Spouse allowance | 3,455 |
| Child allowance – first child only | 1,190 |
| Child studying abroad allowance (each child) | 1,375 |
| Maternity grant | 700 |
| Apprentice allowance | 380 |
| Nursery allowance | 5,480 |
| Single parent allowance | 5,800 |
| Blind person allowance | 5,475 |
| Dependent relative (non-resident) allowance | 250 |
| Dependent relative (resident) allowance | 400 |
| Disabled individual allowance | 10,000 |
| House Purchase allowance | 13,000 |
| House Purchase (special deduction) allowance | 4,000 (GIP 1,000 max p.a.) |
| Medical allowance | 5,395 |
| Social Insurance (employee) allowance | 335 |
| Social Insurance (self-employed) | 432 |

### "Topping-up" allowances

Individuals with allowances amounting to less than GIP 4,343 will have their allowances topped up to that amount. For elderly individuals (men over 65 and women over 60) the allowances are topped up to GIP 12,645.

### Low incomes earners allowance

Taxpayers with assessable income of GIP 11,450 or less will be brought out of the taxation system altogether and will pay no income tax. This applies to taxpayers in both the Allowance Based System and the Gross Income Based System.

Under the allowance based system the minimum allowance of GIP 4,343 will be tapered for taxpayers whose earned income for the tax year is between GIP 11,451 and GIP 19,712.

### Tax credit

A tax credit equal to the higher of GIP 300 or 2% of the tax payable is available for the year.

For employed individuals aged 60 and over who are in receipt of an occupational pension or annuity income below GIP 6,000 are entitled to a tax credit amounting to GIP 4,000.

### Students

The earnings of a full time student are exempt from tax.



### Life assurance Relief

Premiums allowed up to 1/7th of assessable income or 7% of capital sum assured. Relief is granted at the rate of 17%.

### Personal pension schemes or retirement annuity contracts

The lesser of 20% of the earned assessable income or GIP 35,000.

### Occupational pension schemes

Relief is restricted to one-sixth of the assessable income.

### Health Insurance

Premiums paid for the purpose of an approved health insurance for an individual, spouse or his dependent children. The deduction is limited to GIP 5,395 in aggregate.

### Installation of Solar energy for boilers and renewable energy

Up to a maximum of GIP 6,000 (GIP 3,000 for 2020/21) over two years in respect of expenditure incurred towards the installation of renewable energy systems and of solar energy for boilers, including photovoltaic panels or wind turbines for the supply of electricity to a property.

### Approved expenditure on premises

A deduction from their assessable income in respect of approved expenditure incurred on the enhancement of the frontage of their property.

### Mortgage Interest Relief

Interest payable on a loan taken by an individual to acquire or improve a Gibraltar property to be used as a tax payer's principle residence is allowable on loans up to a value of GIP 350,000.

### Electric vehicle charging installation

A deduction against tax liabilities for the first GIP 2,000 of the cost of installing a mechanism for the purpose of charging electric vehicle in the taxpayer's home, garage or parking space, subject to approval.

### Disabled individuals tax exemption

An additional earned income allowance exempts individuals in employment from tax, if they are recipients of disability allowance paid by the Department of Social Security.

### Property Frontage Enhancement

An unlimited deduction from assessable income is available in respect of expenditure incurred on painting, decorating, repairing, and enhancing the appearance of the frontage of premises (must be expenditure certified by the Town Planner).

### Gibraltar Savings Bank Retirement Savings Bond

A deduction from assessable income of up to GIP 1,000 is available for individual contributions to the Gibraltar Savings Bank Retirement Savings Bond.

### Tax bands under the allowance bases system for ordinary resident taxpayers

| Taxable Income | Tax Rate |
|---|---|
| First GIP 4,000 | 14% |
| Next GIP 12,000 | 17% |
| The remainder of taxable income | 39% |

### Tax bands under the allowance bases system for non-resident taxpayers

| Taxable Income | Tax Rate |
|---|---|
| First GIP 16,000 | 17% |
| The remainder of taxable income | 39% |

**Standard rate of tax**

The standard rate of tax for individuals is 20%.

**Tax bands under the gross income based system**

Ordinary residents with taxable income of up to GIP 25,000 opting for GIB system:

| Taxable Income | Tax Rate |
|---|---|
| The first GIP 10,000 | 6% |
| The next GIP 7,000 | 20% |
| The remainder of taxable income | 28% |

Ordinary residents with taxable income of more than GIP 25,000 opting for GIB system:

| Taxable Income | Tax Rate |
|---|---|
| The first GIP 17,000 | 16% |
| The next GIP 8,000 | 19% |
| The next GIP 15,000 | 25% |
| The next GIP 65,000 | 28% |
| The next GIP 395,000 | 25% |
| The next GIP 200,000 | 18% |
| The remainder of taxable income | 5% |



Persons under the gross income based system may also benefit from:

- A deduction from their assessable income up to a maximum of GIP 1,500 in respect of mortgage interest payments;
- A deduction from their assessable income of GIP 1,500 per annum in respect of pension contributions;
- A deduction from their assessable income of up to GIP 3,000 per annum in respect of medical insurance premiums;
- A deduction from their assessable income up to a maximum of GIP 5,000 in respect of approved expenditure incurred on the enhancement of the frontage of their property;
- First time buyers: a deduction from their assessable income up to a maximum of GIP 7,500 in respect of approved expenditure incurred towards the purchase of their home during the year available for purchases after 1 July 2015;
- Up to a maximum of GIP 6,000 (GIP 3,000 for 2020/21) over two years in respect of expenditure incurred towards the installation of renewable energy systems and solar energy for boilers including photovoltaic panels or wind turbines for the supply of electricity to a property;
- For the next three years commencing 1 July 2018 a deduction is available against tax liabilities for the first GIP 2,000 of the cost of installing a mechanism for the electric charging of a vehicle in their home, or in a parking space or garage owned by them, subject to approval;
- A deduction from assessable income of up to GIP 1,000 is available for individual contributions to the Gibraltar Savings Bank Retirement Savings Bond.

## TAX INCENTIVES FOR HIGH NET WORTH INDIVIDUALS

**Qualifying (Category 2) Individual Rules 2004**

Individuals may apply to the Finance Centre Director to acquire Category 2 status and on successful application will be issued a certificate to this effect. The conditions to become a Category 2 individual are as follows

- Must have not been resident of Gibraltar within a period of 5 years immediately preceding the year of assessment in which the application is made or have been resident for 183 days in any one of those years or an average of 90 in any 3 of those years.
- Not have been engaged in any trade or employment in Gibraltar other than on incidental duties.

The application form to become a Category 2 individual must be supported by 2 character references from recognised and established professionals; copy of passport; a curriculum vitae and proof is worth a minimum of GIP 2 million; must also prove that they have approved accommodation in Gibraltar for their and their family use. The application fee is GIP 1,000.

The advantages associated with becoming a Category 2 is that the individual can engage in certain commercial activities and as from the 1 August 2021 their tax payable will be limited to the first GIP 105,000 (GIP 80,000 for 2020/21) of taxable income. The minimum tax payable will be GIP 32,000 (GIP 22,000 for 2020/21) and the maximum GIP 37,310 (GIP 27,560 for 2020/21).

**High Executive Possessing Specialist Skills Rules 2008**

This scheme for executives possessing specialised skills (HEPSS) as from 1 August 2021 only taxes the first GIP 160,000 (GIP 120,000 for 2020/21) and the maximum tax payable under the current Gross Income Based system is GIP 39,940 (GIP 29,940 for 2020/21).

They must also comply with the following criteria:

- must have approved residential accommodation in Gibraltar for their exclusive use and families;
- not have been occupied or resident in Gibraltar for the past 3 years.

The application fee is GIP 1,000.

## SOCIAL SECURITY CONTRIBUTIONS

Social insurance is payable on earning by all individuals working in Gibraltar either as employees or self-employed. Employees' contributions to social insurance are made up of a proportion payable by the employer and another paid by the employee. Self-employed only pay their share. The rates applicable from 1 July 2021 are as follows:

| Contributions payable by: | Rate Payable on Gross earnings | Minimum payable per week / month | Maximum payable per week / month |
|---|---|---|---|
| Employees | 10% | GIP 12.10 / GIP 52.44 | GIP 36.30 / GIP 157.30 |
| Employers | 20% | GIP 28.00 / GIP 121.34 | GIP 50.00 / GIP 216.66 |
| Self-employed | 20% | GIP 25.00 / GIP 108.34 | GIP 50.00 / GIP 216.66 |

Detached workers will not make a contribution of employees and employers social insurance as per above rates.

Individuals with a second job, working pensioners and individual employed in essential services will be exempt from employee social insurance and the employer will also be exempt from employer social insurance.

Employees still in employment aged 60 and over are exempt from paying social insurance contributions.

Social insurance contributions are payable by every employee or self-employed person in any week in which they work.

A social insurance credit of GIP 100 per employee applies to companies with 10 or less employees, and to new companies with up to 20 employees in their first year of operation.



## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Countries that do not have a double taxation treaty with Gibraltar can enjoy unilateral relief for foreign taxes paid that are also subject to tax in Gibraltar.

The Government of Gibraltar has negotiated tax treaties with both the United Kingdom and Spain and these have already been ratified.

## I. TAX INFORMATION EXCHANGE AGREEMENTS

Gibraltar is a fully self-governing and fully self-financing British Overseas Territory. Gibraltar was part of the European Union and on the 31 December 2020 Gibraltar ceased to be a member as a result of Brexit. Gibraltar is currently negotiating its relationship with the European Union going forward.

**Automatic Exchange of Information on Taxation matters:**

Gibraltar has signed a FATCA Intergovernmental Agreement with the United Kingdom, and with the United States and has signed a formal commitment to the Common Reporting Standard on automatic exchange of information with close to 100 countries committed to exchanging information; the first wave in 2017 (including Gibraltar) and the second wave in 2018.

In addition, Gibraltar applied the EU Savings Directive which first came into force in 2005. This Directive was repealed by the European Union with effect from 1 January 2016.

Gibraltar has transposed the EU Directive 2014/107/EU on automatic exchange of information with all member states of the EU (the 'EU Common Reporting Standard').

## J. TAX PAYMENTS

| | |
|---|---|
| **Employment income** | It's the responsibility of the employer to deduct from the employees' emoluments a specified amount of tax and make payment by the 15th day of the following month. |
| **Companies** | Advanced payment on account by 30 September and 28 February. Each payment should be equal to 50% of the tax liability of the previous year. Any remaining balance payable after deducting the actual liability from the payment on accounts should be paid within nine month of the financial year-end of the company. |
| **Self-employed and trust** | Advanced payment on account by 31 January and 30 June. Each payment should be equal to 50% of the tax liability of the previous year. Any remaining balance payable after deducting the actual liability from the payment on accounts should be paid by 30 November following the end of the tax year. |

## K. SUBMISSION OF ACCOUNTS AND TAX RETURNS

| | |
|---|---|
| **Individuals** | Tax return (Form IT1P) up to 30 June should be submitted by every individual in employment by 30 November. |
| **Companies** | Corporate tax return (Form CT1), dividend return (Form CT2) and financial statements are due within nine months after the financial year-end. All Gibraltar resident companies have a duty to file returns and accounts with the Income Tax Office. The accounts to be filed depend on the size of the company. |
| **Self-employed** | Tax return (Form IT1S) and financial statement up to 30 June should be submitted by every self-employed individual by 30 November. |
| **Trusts** | Tax return (Form ITT) and financial statement up to 30 June should be submitted by every representative of the trust by 30 November |

After 1 January 2016 all companies registered in Gibraltar have a duty to file a tax return even if they don't have income assessable to tax in Gibraltar.

## L. PENALTIES AND SURCHARGES

| Penalties for late filing of returns | |
|---|---|
| Failure to file a return by the due date | GIP 50 |
| Failure to file within three months from the due date | GIP 300 |
| Failure to file within six months from the due date | GIP 500 |

**Surcharges for late payment of tax liability**

There is a surcharge imposed of 10% of the amount of tax due on the day after such payment was due. If unpaid for a further 90 days a further surcharge of 20% of the tax is due is charged.

# GREECE



## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Athens/Heraklion/Ioannina | Christos Vlachos | +30 210 7480 600 |
| Thessaloniki/Trikala | | cvlachos@pkf.gr |

## BASIC FACTS

| | |
|---|---|
| Full name: | Hellenic Republic |
| Capital: | Athens |
| Main languages: | Greek |
| Population: | 10.33 million (2022 estimate) |
| Monetary unit: | 1 Euro (EUR) = 100 cents |
| Internet domain: | .gr |
| Int. dialling code: | +30 |

## KEY TAX POINTS

- Companies resident in Greece are subject to corporate income tax on their worldwide income. Non-resident companies are liable for tax on income derived through a permanent establishment in Greece.
- There are no special rules for groups and each company is taxed separately. However, for transactions between group companies, transfer pricing rules should be adhered to.
- Capital gains are treated differently in company taxation in relation to individual taxation rules. In company taxation, capital gains are generally added to and taxed together with normal business income. Specific tax rates apply on capital gains obtained from individuals.
- VAT is imposed on the sale of goods and supply of services at a standard rate of 24%. There is also a reduced rate of 13% and an extra reduced rate of 6%.
- Company's profits are taxed at 22%. In addition, dividends are subject to a dividend tax of 5%.
- Many types of payments are subject to withholding tax (including payments for salaries, interest and royalties).
- Greek residents are subject to income tax on their worldwide income. Non-residents are taxed on net income sourced in Greece.
- An annual real estate tax is imposed on the value of real estate property.

## A. TAXES PAYABLE

## COMPANY TAX

Companies resident in Greece are subject to corporate income tax on their worldwide income from all sources. Non-resident companies that have a permanent establishment in Greece are subject to corporate income tax on income derived through the permanent establishment. Companies are deemed to be resident if they are incorporated in Greece (the registered office is in Greece) or have their place of effective management in Greece.

The fiscal year usually runs from 1 January to 31 December. However, all companies maintaining a double-entry accounting system can choose to have the fiscal year ending on 30 June. Also, if a Greek company is a subsidiary of a foreign parent company with the parent company holding a minimum of 50% of the share capital, the Greek company can choose to align the fiscal year with that of the foreign parent company.

The tax rate applicable to undistributed profits is 22% for all forms of companies including Public Limited Companies (SA), Limited Liability companies (EPE) and branches of foreign companies.

Distributed or capitalised profits are subject to an additional income tax of 5%. Dividends paid to parent companies based in European countries are exempted from such dividend tax if certain conditions are met.

## CAPITAL GAINS TAX

Taxation of capital gains obtained by companies is different from the taxation of capital gains obtained by individuals. In company taxation capital gains are treated as ordinary business income. This applies to different kinds of capital gains including:

- Capital gains derived from the sale of shares, stocks, bonds and other securities (whether listed or not listed on the Stock Exchange);
- Capital gains derived from the sale of real estate property;
- Capital gains derived from the sale of fixed assets in general.

As of 1 July 2020, the Participation Exemption Regime (PER) came into force, which provides for a tax exemption of capital gains derived by Greek tax resident companies from the sale of shares held in Greek and EU subsidiaries, provided they hold a minimum participation of 10% for a period of at least two years, and subject to the fulfilment of the conditions set forth under the Parent-Subsidiary Directive (EU PSD).

Capital gains obtained by individuals are treated as follows:

- Capital gains from the sale of shares listed on the Stock Exchange are taxed at a rate of 15%, on the condition that the shares sold represent more than 0.5% of the company's capital;
- Capital gains from the sale of shares not listed on the Stock Exchange are taxed at a rate of 15%;
- Capital gains derived from the sale of real estate property are taxed at a rate of 15%. However, the application of this tax has been postponed and will become effective as of 1 January 2023.

Capital gains are exempted from taxation in the following cases:

- Sale of shares of listed companies that were acquired before 1 January 2009;
- Sale of less than 0.5% of shares of listed companies.



## BRANCH PROFITS TAX

The calculation of tax on the taxable profits of branch offices of international companies is the same as the tax applicable to Greek companies in general. The tax is calculated at 22% of net taxable income. There is no branch remittance tax in Greece.

## VALUE ADDED TAX (VAT)

VAT is imposed on the sale of goods and supply of services at a standard rate of 24% which applies to the majority of goods and services. For specific categories of goods and services a reduced rate of 13% and an extra reduced rate of 6% applies. The above rates are reduced by 30% for sales to a few specific remote Aegean islands.

## PROPERTY TAXES

For each transfer of real estate, the following taxes are paid:

- For land and old buildings: Transfer tax 3%.
- For new buildings: VAT 24%.

Owners of real estate property (individuals or companies) are subject to a yearly real estate property tax. This tax includes Main tax on land and buildings and Additional tax.

Main tax calculation depends on the size, geographical location of the property, year of construction, use, zone price and other characteristics. Main tax is ranging from EUR 2.00 to EUR 13.00 per square meter.

Additional tax on real estate property owned by legal entities is imposed on the total value of the property and is calculated at the rate of 0.55% of the total property value.

For individuals the Additional tax is imposed on real estate property value if it is exceeding EUR 200,000 calculated according to the following table:

| Property Value (EUR) | Tax rate |
|---|---|
| 0.01 – 250,000 | 0% |
| 250,000.01 – 300,000 | 0.15% |
| 300,000.01 – 400,000 | 0.30% |
| 400,000.01 – 500,000 | 0.50% |
| 500,000.01 – 600,000 | 0.60% |
| 600,000.01 – 700,000 | 0.80% |
| 700,000.01 – 800,000 | 0.90% |
| 800,000.01 – 900,000 | 1.00% |
| 900,000.01 – 1,000,000 | 1.05% |
| 1,000,000.01 – 2,000,000 | 1.10% |
| above 2,000,000 | 1.15% |

This additional tax is expected to be cancelled from 2022 onwards.

## OTHER TAXES

Transactions not subject to VAT are subject to Stamp Duty at rates ranging from 1.2% to 3.6%.

## SOCIAL SECURITY CONTRIBUTIONS

Companies pay contributions to the social security organisation (EFKA) for their employees. For year 2021, the employer's contribution is computed on the employee's gross salary at a rate of 22.54%. For limited specific employment categories and the self-employed social security contribution rates vary.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is based on the profit or loss shown in the financial statements. The accounting profit or loss is then adjusted according to the specific tax provisions of Greek tax law. Generally, expenses are deductible if they are properly documented and have been incurred to generate taxable income with the exception of particular types of expenses specified in tax law as non-deductible (such as all types of provisions except for bad debt provisions, expenses over EUR 500 repaid with cash, fines, etc.).

### DEPRECIATION

Fixed asset depreciation for tax purposes is computed annually using the following fixed rates:

- Plant and other buildings: 4%;
- Public Transportation means (including airplanes, ships, trains): 5%;
- Machinery: 10%;
- Furniture and other equipment: 10%;
- Intangible assets: 10%;
- Rights and intangible assets with a useful life other than 10 years: 1 divided by the contractual duration of the right;
- Transportation means for cargo: 12%;
- Transportation means for personnel: 16%;
- Computers, hardware and software: 20%.



### STOCK / INVENTORY

Stock is valued according to acceptable valuation methods. Cost of sales is deductible during the process of calculating taxable profit.

### INTEREST DEDUCTIONS

Interest on loans is tax deductible if it does not exceed 30% of the company's EBITDA. However, interest is fully tax deductible if the total amount does not exceed EUR 3 million per year.

In any case, the amount of interest exceeding the EBITDA rule can be carried forward without a time limitation.

### LOSSES

Losses incurred in a business year may be carried forward to be offset against profits of the following five business years. Tax losses carried forward may be forfeited if there is a change in company ownership of more than 33 % of the capital together with a change in the company's activities of more than 50% of its turnover, unless it can be proved that the change was made for valid commercial reasons.

Foreign losses may not be utilised for the calculation of a tax year's profits or be offset against future profits, with the exception of losses arising from business activities exercised through a permanent establishment situated in an EU/EEA country with which Greece has concluded a DTT, according to which profits from business activities are not treated as tax-exempt.

### TAX INCENTIVES

Subject to certain conditions, expenses for scientific and technological research are deductible at an additional amount of 100%.

The current investment law (Law 4399/2016) provides for incentives for investment projects in all economic sectors with very few exceptions. A special focus is given to investments in innovative and pioneer technology.

Different kinds of incentives are provided by the law including:

- Exemption from corporate income tax for a specified period;
- Subsidy of the investment;
- Subsidy of the employment cost;
- Fixed corporate income tax rate for a specified period.

A new Bill has been submitted to parliament for discussion and approval and is expected to apply as from 1 January 2022. Subject to certain conditions, several tax incentives are granted in connection with mergers and corporate transformations, providing a reduced tax rate by 30% for the profits of the merged/transformed entity for 3 years following the year of the merger.

## C. FOREIGN TAX RELIEF

In the absence of a double tax treaty, a Greek resident company is entitled to a credit for foreign tax paid on foreign-sourced income against Greek corporate income tax levied on that income. The credit amount is limited to the Greek tax amount attributable to the foreign-sourced income. When the double tax treaty relief is more advantageous than the unilateral relief, the former relief is applied. However, if unilateral relief is more advantageous then this will apply.

## D. CORPORATE GROUPS

There are no special tax provisions for corporate groups. Each company of the group is taxed separately.

## E. RELATED PARTY TRANSACTIONS

Transactions between related parties must be carried out following arm's length rules. Companies should prepare and maintain transfer pricing documentation based on the OECD Multinational Transfer Pricing Guidelines for Enterprises and Tax Administration.

#### CbC (Country-by-Country) Reporting

The obligation for annual filing of the CbC report arises for multinational enterprise groups with a consolidated group turnover exceeding EUR 750 million in the fiscal year preceding the year to which the CbC report applies. The CbC report must be submitted within 12 months from the last day of the reporting fiscal year. The entity required to file the CbC report is the ultimate parent entity of an MNE group that has tax residence in Greece (or any other surrogate entity in Greece).

The CbC report must include the following information, which will be provided and exchanged using standard tables:

- Aggregated data relating to revenue, profit (loss) before income tax, income tax paid, income tax due, share capital, accumulated profits, number of employees, and tangible assets other than cash or cash equivalents for each jurisdiction the group operates in;
- Identification documents for the jurisdiction where each constituent entity has its tax residence, and in case the latter differs from the jurisdiction of tax residence, the jurisdiction under which this constituent entity is organised and the nature of its primary business or businesses.

On 4 December 2017, the Public Revenue Authority published its Decision (POL 1184/2017) containing clarifications for filling CbC reports and other disclosure requirements.

With the Decision POL 1111/2018, the exchange of CbC reporting has been extended to include a list of countries with which Greece will exchange CbC reports on a mandatory basis and a list of countries with which exchange of CbC reporting will take place on a voluntary basis.

**Summary information table**

For risk assessment purposes, the Greek Tax Authority requires that in each calendar year taxpayers prepare and submit a summary table of all their related party transactions, disclosing key elements such as amounts, basic FAR analysis and transfer pricing method used.

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## F. WITHHOLDING TAX

Many types of payments are subject to income withholding tax (salaries, payments to individuals for services, contractors of technical works, etc.).

## G. EXCHANGE CONTROL

Greece's foreign exchange market conforms to EU rules on the free movement of capital. Controls only exist to facilitate the enforcement of money laundering and terrorist financing laws. As from 1 September 2019 there are no more controls or other restrictive measures.

## H. PERSONAL TAX

An individual is subject to income tax on his total net income in Greece and abroad (worldwide taxation). Net income sourced in Greece is taxed irrespective of the residence of the individual. Income arising abroad is taxed if the relevant individual is a resident of Greece. The tax year is the calendar year. Personal tax on net income is calculated as follows:

**Salary income, Income from pensions, Income from individual business practice.**

Taxable income is calculated after deducting the social security contributions. The remaining amount is taxed as follows:

| Income bracket (EUR) | Tax rate (%) | Tax per bracket (EUR) | Aggregate | |
|---|---|---|---|---|
| | | | Income (EUR) | Tax (EUR) |
| Up to 10,000 | 9% | 900 | 10,000 | 900 |
| Next 10,000 | 22% | 2,200 | 20,000 | 3,100 |
| Next 10,000 | 28% | 2,800 | 30,000 | 5,900 |
| Next 10,000 | 36% | 3,600 | 40,000 | 9,500 |
| Over 40,000 | 44% | -- | -- | -- |

The tax calculated according to the above table is reduced by the following amounts:

- EUR 777 to 1,340 in relation to the number of children for taxable income up to EUR 12,000. For taxable income, which exceeds the amount of EUR 12,000, the amount of the reduction shall be EUR 20 per EUR 1,000 of taxable income.
- 20% of the amount given for donations with a minimum of EUR 100, provided that the total amount of donations within the tax year does not exceed 5% of the taxable income.

The taxpayer is required to use bank payment instruments for at least 30% of declared income. If this threshold is not met, an additional tax of 22% is applied on the excess income.

The following types of income earned by individuals are taxed separately using different tax rates:

- Interest income is taxed at the rate of 15%;
- Income from royalties is taxed at the rate of 20%;
- Real estate property rent income is taxed at the following tax rates :
  - For income up to EUR 12,000: 15%;
  - From EUR 12,001 to EUR 35,000: 35%;
  - For income exceeding EUR 35,000: 45%.

**Special Solidarity Tax Contribution**

In addition to ordinary income tax, individuals are subject to Special Solidarity Tax Contribution calculated on taxable income according to the following table:

| Total Income (EUR) | Tax rate |
|---|---|
| 0,0 – 12,000 | 0% |
| 12,001 – 20,000 | 2.20% |
| 20,001 – 30,000 | 5% |

| Total Income (EUR) | Tax rate |
|---|---|
| 30,001 – 40,000 | 6.50% |
| 40,001 – 65,000 | 7.50% |
| 65,001 – 220,000 | 9% |
| above 220,000 | 10% |

For year 2021, the application of the Special Solidarity Tax Contribution is suspended. For year 2022, the exemption applies only for salaried personnel and only for employment in the private sector.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

On 26 January 2021 Greece has ratified the Multilateral Instrument (MLI).

Under the tax treaties which have been concluded by Greece, the residents of certain foreign countries may enjoy reduced rates of withholding taxes on dividends, interest and royalties as follows:

| | Dividends (%) | Interest (%) | Royalties[1] (%) |
|---|---|---|---|
| Non-treaty countries | 10 | 10/25 | 20 |
| **Treaty countries:** | | | |
| Albania | 5 | 5 | 5 |
| Armenia | 10 | 10 | 5 |
| Austria | 15/5 | 8 | 7 |
| Azerbaijan | 8 | 8 | 8 |
| Belgium | 15/5 | 0/10 | 5 |
| Bulgaria | 10 | 10 | 10 |
| Canada | 15/5 | 10 | 10 |
| China | 10/5 | 10 | 10 |
| Croatia | 10/5 | 10 | 10 |
| Cyprus | 25 | 10 | 0/5 |
| Czech Republic | --[7] | 10 | 10/0[3] |
| Denmark | 38 | 8 | 5 |
| Egypt | 10 | 15 | 15 |
| Estonia | 15/5 | 10 | 5/10[2] |
| Finland | 47 | 10 | 0/10 |
| France | --[7] | 10 | 5 |
| Georgia | 8 | 8 | 5 |
| Germany | 25 | 10 | 0 |
| Hungary | 45 | 10 | 10 |
| Iceland | 15/5 | 8 | 10 |
| India | --[7] | --[7] | --[7] |
| Ireland | 15/5 | 5 | 5 |
| Israel | --[7] | 10 | 10 |
| Italy | 15 | 10 | 5/0 |
| Korea (South) | 15/5 | 8 | 10 |
| Kuwait | 5 | 5 | 15 |
| Latvia | 10/5 | 10 | 5/10 |
| Lithuania | 15/5 | 10 | 5/10 |
| Luxembourg | 38 | 8 | 7/5 |
| Malta | 10/5 | 8 | 8 |
| Mexico | 10 | 10 | 10 |
| Moldova | 15/5 | 10 | 8 |
| Morocco | 10/5 | 10 | 10 |
| Netherlands | 35 | 10/8[4] | 7/5[5] |
| Norway | 40 | 10 | 10 |
| Poland | --[7] | 10 | 10 |
| Portugal | 15 | 15 | 10 |
| Qatar | 5 | 5 | 5 |
| Romania | 45 | 10 | 7/5 |

| | Dividends (%) | Interest (%) | Royalties[1] (%) |
|---|---|---|---|
| Russia | 10/5 | 7 | 7 |
| San Marino | 10/5 | 10 | 5 |
| Saudi Arabia | 5 | 5 | 10 |
| Serbia | 15/5 | 10 | 10 |
| Slovak Republic | --[7] | 10 | 0/10 |
| Slovenia | 10 | 10 | 10 |
| South Africa | 15/5 | 0/8 | 5/7 |
| Spain | 10/5 | 0/8 | 6 |
| Sweden | 0 | 10 | 5 |
| Switzerland | 15/5 | 7 | 5 |
| Tunisia | 35 | 15 | 12 |
| Turkey | 15 | 12 | 10 |
| Ukraine | 10/5 | 0/10 | 10 |
| United Arab Emirates | 5 | 5 | 10 |
| United Kingdom | --[7] | 0 | 0 |
| United States | --[7] | --[6] | 0 |
| Uzbekistan | 8 | 10 | 8 |

NOTES:

1. Where the withholding tax rate on royalties is indicated as nil, no income tax is due. The withholding tax on rental payments may also be reduced under the provisions concerning royalties in various tax treaties. The text of the relevant treaty should be consulted.
2. The 5% rate applies to royalties paid for the use of industrial, commercial or scientific equipment. The 10% rate applies to all other royalties.
3. No tax on royalties on intellectual property.
4. 8% if paid to a bank or other institution.
5. 5% for copyright and film royalties.
6. Where the US resident receiving the interest is not engaged in a trade or business through a permanent establishment in Greece, the interest is exempt from tax in Greece to the extent that it does not exceed a rate of 9% per annum. The exemption is not available (and the domestic withholding tax rate therefore applies) where the US corporation holds more than 50% of the voting power of the Greek interest-paying company.
7. The domestic rate applies. There is no reduction under the treaty.

## GRENADA

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| St. George's | Henry A. Joseph | +1473 440 2562<br>hjoseph@pkfgrenada.com |

### BASIC FACTS

| | |
|---|---|
| Full name: | Grenada |
| Capital: | St. George's |
| Main languages: | English (official), French patois |
| Population: | 113,451 (2022 estimate) |
| Monetary unit: | East Caribbean Dollar (XCD) |
| Internet domain: | .gd |
| Int. dialling code: | +1473 |

### KEY TAX POINTS

- Grenadian resident companies are taxed on their income earned in Grenada. Non-residents are taxed on the profits of branch operations in Grenada.
- There is no tax on capital gains derived by companies although a transfer property tax applies as well as a Stamp Duty charge in respect of certain transactions.
- Withholding taxes are charged on payments to non-residents of dividends, royalties and other charges at a rate of 15%.
- Individuals who are resident, ordinarily resident or domiciled in Grenada pay income tax only on income earned in Grenada. Non-residents are subject to tax on income arising from the carrying on of a business in Grenada. Withholding taxes apply to other payments to non-residents.

## A. TAXES PAYABLE

### COMPANY TAX

Grenadian resident companies are liable to income tax on all sources of non-exempt income wherever arising. A company is regarded as resident in Grenada if its central management and control is located and exercised in Grenada or if it was incorporated in Grenada. A non-resident company is taxed on income of a branch carrying on a trade or business in Grenada, i.e. the income arises in Grenada. The tax rate on companies is 28% on the annual net profit. The tax year or 'year of assessment' is a period of 12 months commencing on 1 January in each year. Any business with gross income less than $300,000 per annum and paying 0.5% in annual stamp tax is exempt from filing income returns and there is no tax on the business profits.

Companies are assessed to tax on their income that arises in the basis period. Where the company usually makes up its accounts for a period other than the calendar year, this period will be substituted for the calendar year. The company is expected to submit its tax return by the end of March or three months following the year of assessment and pay any balance of tax due. The company is required by law to make monthly advance payments of income tax based on the results of the preceding year (estimated tax). Any balance of tax is due and payable when the return is filed.

### CAPITAL GAINS TAX

There is no income tax on capital gains secured on the disposal of capital assets. However, there is a transfer property tax of 5% of the value of property sold with or without improvement. There is also an aliens' landholding tax: for a foreign company buying into a local company, the foreigner pays 15% and the local pays 10%. For a foreign company buying into another foreign company, each pays 15%.

There is a 1% Stamp Duty charge.

### BRANCH PROFITS TAX

Branches of a non-resident corporation or companies doing business in Grenada are taxed on the profits arising in Grenada. The rate of tax is 28%. There is no branch remittance tax in Grenada.

### VALUE ADDED TAX

VAT is levied on the sale of goods and services at the rate of 15% except for accommodation at hotels which is at 10% and telecommunications services at 20%. The tax applies to both input and output so that at the end of a month a credit may be claimed where the input is greater than the output. Businesses with income lower than XCD 300,000 per annum are exempted from VAT.

### LOCAL TAXES

National Insurance is payable on emoluments up to a maximum of XCD 5,000 per month at a rate of 5% from the employee (XCD 250) and 6% from the employer (XCD 300). This compulsory contribution made both by employer and employee goes towards the provision of a pension at age 60 for women and 65 for men.

Stamp tax is paid on the gross income of businesses. The rates are as follows:

| | |
|---|---|
| Gross annual income of over XCD 36,000 but less than XCD 300,000 | 0.5% |
| Gross annual income exceeding XCD 300,000 | 0.70% |

The charge shall not be less than XCD 100 and is payable by 31 March of each year.

### OTHER TAXES

Common External Tariff (CET) and Customs Service Charge (CSC) are imposed. CET is levied at a rate of between 6% and 40% on the CIF value of the landed price of goods purchased outside of CARICOM. Property tax is ad valorem, i.e. the property is assessed at market value and a taxable rate is applied based on the land use classification.

| Category | Land Rate (%) | Building Rate (%) |
|---|---|---|
| Agricultural | 0.0 | 0.00 |
| Amenity | 0.2 | 0.20 |
| Commercial | 0.5 | 0.30 |
| Hotel | 0.3 | 0.02 |
| Industrial | 0.3 | 0.20 |
| Institutional | 0.1 | 0.10 |
| Residential | 0.1 | 0.15 |
| Reserve | 0.1 | 0.00 |
| Waste | 0.1 | 0.00 |

## B. DETERMINATION OF TAXABLE INCOME

The chargeable income of a company is determined by deducting all non-capital disbursements and expenses wholly and exclusively incurred in acquiring the income from all taxable income brought into charge. Domestic and private expenses are not allowable.

### CAPITAL ALLOWANCES

Capital allowances are granted for depreciation of equipment, plant and machinery and other assets used in the business at the following rates per annum:

| | |
|---|---|
| Plant, machinery and equipment | 15% |
| Air conditioning units, computers, elevators, ships, and other vessels | 20% |
| Motor vehicles other than heavy vehicles | 25% |
| Aircraft and equipment, heavy plant and machinery, public transport | 25% |

A deduction of up to a maximum of XCD 100,000 is allowed on purchases of plant and machinery in the year of purchase as a one-off deduction.

## STOCK / INVENTORY

Stock and work-in-progress are valued at the lower of cost or net realisable value.

## CAPITAL GAINS AND LOSSES

Capital gains are not taxed in Grenada.

## DIVIDENDS

Dividends are not taxed in Grenada.



## INTEREST DEDUCTIONS

Interest paid upon any money borrowed on capital employed in acquiring the income is deductible.

## LOSSES

Losses sustained in a trade, profession or business on the island or through the ownership or occupation of land situated on the Island are allowed as expenses in arriving at the chargeable income of the person sustaining the loss. The loss should not be a capital loss. The loss is available to be set off against other income arising in the year of assessment and may be carried forward and deducted in ascertaining the assessable income of the current or until the assessed loss has been fully utilised, whichever is earlier.

## FOREIGN SOURCED INCOME

Where income arises outside Grenada and such income is derived from any act incidental to business carried on in Grenada, such income shall be included in the assessable income of the business in Grenada whether received in Grenada or not. This includes:

(a) Branch or agency profits from business outside Grenada;

(b) Interest, royalties and rents outside Grenada.

## INVESTMENT ALLOWANCE / INCENTIVES

The Government of Grenada encourages the establishment and development of new businesses and offers a wide range of incentives to potential investors. All of these incentives and concessions are designed to make investments more profitable. Concessions are available under the following various enactments:

- Fiscal Incentives Act 1974;
- Qualified Enterprise Act;
- Investment Code Incentive Law 1983;
- Hotels Aid Act 1954;
- Common External Tariff (SRO 37 /99); and,
- General Consumption Tax Act 7/95.

## TOURISM SECTOR

There is full exemption from taxes on corporate profits for up to ten years. There is also exemption from Customs duties (CET) and taxes (GCT) on articles of hotel equipment to equip and upgrade the hotel property, service vehicles, material tor construction, repair, renovation or alteration to hotel properties.

## MANUFACTURING SECTOR

There is full exemption from taxes on corporate profits for up to 15 years. There is also exemption from Customs duties (CET) and taxes (GCT) on plant, machinery, equipment (including equipment for the transportation of goods), spare parts, raw materials and components.

## SERVICE SECTOR

There is relief from duties (CET) and taxes (GCT) on equipment.

## C. FOREIGN TAX RELIEF

There is no foreign tax relief in Grenada.

## D. CORPORATE GROUPS

Tax liability in a group basis is not permissible. The liability of each company within the group is determined separately.

## E. RELATED PARTY TRANSACTIONS

Related party transactions which are carried out for considerations not at arm’s length, intended to secure a benefit or tax advantage or to reduce the tax payable, are counteracted by the Comptroller who will take appropriate actions to negate this advantage.

## F. WITHHOLDING TAX

Dividends derived by non-resident companies are taxable in Grenada at a rate of 15% on the gross amount of the dividend. Interest derived by non-resident companies is not subject to tax. Royalties derived by non-resident companies are subject to a 15% final withholding tax, which is imposed on the gross amount of the royalties. Other income derived by non-resident companies (i.e. discounts, commissions, fees, management charges, rents, lease premiums and licence charges) is subject to a 15% final withholding tax on the gross amount of the income.

## G. EXCHANGE CONTROL

There are no exchange controls in Grenada at this time. Foreign currency up to a maximum equivalent of XCD 250,000 can be purchased from any of the commercial banks. Amounts in excess of this limit are subject to permission being obtained from the Ministry of Finance. This permission is generally not withheld and can be obtained within a short time period.

## H. PERSONAL TAX

An individual who is resident, ordinarily resident and domiciled in Grenada is subject to income tax on his or her income as it arises. Non-residents are subject to tax on income accruing directly or indirectly from the carrying on of business in Grenada. Income from any source other than from the carrying on of business shall be liable to withholding tax and not form part of the assessable income.

## RESIDENCE IN GRENADA

The residency requirements are as follows:

- An individual's permanent place of abode is in Grenada and the individual is physically present therein for some period of time in that year of assessment;
- Physical presence in Grenada for a period of not less than 183 days in that year of assessment;
- Physically present in Grenada for some period of time in that year of assessment and such period is continuous with a period of physical presence in the immediately preceding or succeeding year of assessment of such duration as to qualify him for the resident status.

Broadly, an individual is domiciled in the country or state which he regards as his permanent home. He acquires a domicile of origin at birth, normally that of his father, and retains it until he acquires a new domicile of choice. To acquire a domicile of choice, a person must sever his ties with his domicile of origin and settle in another country with the clear intention of making it his permanent home.

In ascertaining the chargeable income of an individual who is resident in Grenada, the amount of XCD 36,000 per annum is allowed as a deduction. Income from XCD 36,001 to XCD 60,000 is taxed at the rate of 10% while income in excess of XCD 60,000 is taxed at the rate of 28%.

| Salaries Per Annum | Rate |
|---|---|
| Up to XCD 36,000 | exempt |
| XCD 36,001 to XCD 60,000 | 10% |
| Above XCD 60,000 | 28% |

The Pay-As-You-Earn (PAYE) system of collection is in operation. The employers, who act as agents, deduct tax from employees' gross monthly emoluments. The tax so deducted must be remitted to the Inland Revenue Department by the seventh day of the month following the period for which the deduction was made. Any tax deducted and not paid within the time specified shall bear interest at the rate of 2% per month or part thereof for the period during which it remains unpaid. Employees whose income is in excess of XCD 36,000 are required to submit an annual income tax return and attach a certification from the employer by the end of March following the year of assessment.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Grenada has not entered into any double tax treaty.

# GUATEMALA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Guatemala City | Siomara Arevalo Iralda | +502 3227 5152<br>+502 2303 5050<br>sarevalo@pkfguatemala.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Guatemala |
| Capital: | Guatemala City |
| Main languages: | Spanish, more than 20 indigenous languages |
| Population: | 18.54 million (2022 estimate) |
| Monetary unit: | Guatemalan Quetzal (GTQ) |
| Internet domain: | .gt |
| Int. dialling code: | +502 |

## KEY TAX POINTS

- Companies are subject to income taxes, known as the income on lucrative activities regime, at a rate of 25% on net taxable income.
- Solidarity tax is a way to anticipate income taxes so that the amount paid may be credited to income taxes over the following three years.
- VAT is payable on the domestic supply of goods and services and the import of goods. A standard rate of 12% applies although some supplies are exempted.
- For income from entities not residing in the country and acting with or without a permanent establishment, tax regimes do exist for the specific computation of withholding tax at rates ranging from 5% up to 15%.

## A. TAXES PAYABLE

### TAXES AND LEVIES

Tax laws in Guatemala are based on the territoriality principle. There are a few exceptions, mainly those related to withholdings in origin, and all taxes are applicable to activities conducted within the Guatemalan territory. The Political Constitution of Guatemala provides legislative power to the Congress of the Republic. This provides certainty that no other entity, either local or foreign, shall create indirect or direct taxes.



Guatemala is part of the Multilateral Investment Guarantee Agency (MIGA), which is responsible for facilitating a private capital investment flow to developing countries, while providing guarantees against risks such as expropriation, lack of currency convertibility, civil war or riots, etc. In addition, the country has benefited from the Overseas Private Investment Corporation (OPIC) with the promotion and fostering of private investments from the United States of America.

### COMPANY TAX

Companies are subject to income taxes, known as the income on lucrative activities regime, at a rate of 25% on net taxable income. There is also an optional simplified regime on income from lucrative activities with rates ranging from 5% to 7%. In addition, a 5% income tax payment exists on distribution of dividends, earnings and profits.

### SOLIDARITY TAX

This tax is a way to anticipate income taxes so that the amount paid may be credited against income taxes over the following three years. The tax rate is 1% on gross income or the net asset amount and is applicable only to taxpayers opting for taxes on income from lucrative activities (25% income tax regime). Taxpayers that pay taxes under the optional simplified tax regime on income from lucrative activities (5% tax regime) are exempt from this tax.

### CAPITAL GAINS TAX

Current laws provide for an applicable tax rate on capital from furniture and real estate gains at 10%.

A 5% income tax rate is applicable to payments made to stockholders upon the distribution of dividends, earnings or profits.

### BRANCH PROFITS TAX

There is no separate branch profits tax. Overseas companies with a permanent establishment in Guatemala pay tax on the profits of the permanent establishment under the same rules as applied to Guatemala resident companies. There is a 5% branch remittance in Guatemala.

### VALUE ADDED TAX (VAT)

VAT is collected during the exchange of goods or services at the local level as well as during the provision of services and importation of goods. Exportation of goods and services are tax exempt. The tax rate is 12%, although some exemptions do exist including:

- Services provided by entities controlled by the Superintendent of Banks, stock exchange brokers, insurance and reinsurance operations;
- Issuance and transfer of some securities;
- Grants and donations to not-for-profit entities;
- Transactions among co-operative entities and their participants;
- Importation of furniture by cooperative entities exclusively for their operations;
- Imports under the temporary importation system: VAT tax returns shall be filed on a monthly basis within a month following that month reported in the tax return. The tax amount in debt shall be payable on the due date.

### FRINGE BENEFITS TAX

All benefits in kind are taxable in the hands of individuals receiving those benefits from their employers.

### OTHER TAXES - REAL ESTATE TAX

An annual tax is payable on the owners of real estate and levied at the following rates:

| Taxable amount (GTQ'000) | Rate |
|---|---|
| Up to 2,000 | 0.0% |
| 2,000.01 to 20,000 | 0.2% |
| 20,000.01 to 70,000 | 0.6% |
| Over 70,000 | 0.9% |

Tax is also charged on rural land declared to be uncultivated (i.e. not used for agricultural purposes).

## SOCIAL SECURITY CONTRIBUTIONS

Employer's social security is payable at a rate of 10.67% on the total salary of employees.

## SOCIAL SECURITY CONTRIBUTIONS, IRTRA AND INTECAP

Contributions made by employers to the social security and other recreational or training institutions shall be payable at 12.67% on the overall employees' salaries.

A contribution made by employees to the social security scheme is 4.83% on their salaries.

## B. DETERMINATION OF TAXABLE INCOME

The information provided in the following section is applicable to taxpayers opting for the income on lucrative activities regime.

## CAPITAL ALLOWANCES (DEPRECIATION)

A tax deduction is available in respect of fixed assets used in the business. Generally speaking, only the straight-line method is allowed, although other methods may be used if agreed by the tax authorities. Maximum depreciation rates are set and include the following:

| Assets | Rate |
|---|---|
| Buildings and construction | 5% |
| Furniture and equipment | 20% |
| Vehicles | 20% |
| Computers (including software) | 33.33% |
| Tools | 25% |

G

## STOCK / INVENTORY

In general, the following four methods may be used for valuation of inventories:

(1) Production cost;

(2) First-in, first-out system (FIFO);

(3) Weighted average; and,

(4) Historic cost of goods.

Other methods are allowed upon prior authorisation from the Tax Office.

## INTEREST DEDUCTIONS

Interest payments are deductible, but the deductible amount is limited to the amount resulting from multiplying the interest rate authorized by the Guatemala Monetary Board by an amount equal to three times the average total net assets reported by the company on its annual tax return (thin capitalisation rule). This limitation is not applicable to banks and financial institutions subject to the surveillance of the Guatemalan Superintendence of Banks, or to co-operatives legally authorized.

## LOSSES

Losses other than capital losses may not be carried back or forward. Capital losses may only be offset for two years against capital gains.

## FOREIGN SOURCE INCOME

Tax is only chargeable on Guatemala-sourced income.

## TAX INCENTIVES

## EXPORT AND DRAW-BACK ACTIVITIES

Some incentives exist, such as exemption of import tax, income tax and VAT for industrial and commercial outfits established under the incentive to exportation and draw-back incentive law.

## FREE-TRADE ZONE

Incentives including exemption of import tax, income tax and VAT exist for industrial and commercial entities established within the country's free-trade zone.

## INVESTMENT IN RENEWABLE ENERGY SOURCES

Exemption of import tax, income tax and VAT exists by way of the "Incentives for development of renewable energy projects' law".

## C. FOREIGN TAX RELIEF

Only Guatemala-sourced income is subject to tax and therefore Guatemalan law does not provide relief for foreign income taxes paid.

Foreign investment is governed by the Foreign Investment Act, which among others, provides for equal conditions for either domestic or foreign investors. Likewise, this law establishes that the Government may not directly or indirectly expropriate investments made by foreign investors.

## D. CORPORATE GROUPS

There are no special tax provisions relating to groups of companies.

## E. RELATED PARTY TRANSACTIONS/TRANSFER PRICING

In January 2015, transfer pricing rules entered into force. Consequently, taxpayers with non-resident related parties that carry on transactions with such related parties must submit a transfer pricing report attached to their annual tax return (i.e. within the first 3 months of each calendar year – March 31 of the following year). The arm's-length principle should be adhered to and must be determined by means of the following methods:

- The comparable uncontrolled price method;
- The resale price method;
- The cost-plus method;
- The profit split method; or
- The transactional net margin method.

Taxpayers may seek to obtain an advance pricing agreement (APA) from the tax authorities under certain conditions.

There is no CFC (Controlled Foreign Companies) legislation in Guatemala.

## F. WITHHOLDING TAX

For income from non-resident entities and acting with or without a permanent establishment, tax regimes exist for the specific computation of withholding taxes at rates ranging from 5% up to 15%:

- Dividends and other profit distributions derived by non-residents are subject to a 5% final withholding tax on the gross amount of the payment;
- Interest derived by non-residents is generally subject to a 10% final withholding tax on the gross amount. However, interest paid by the state to non-resident entities is exempt from tax. Furthermore, interest paid to non-resident banks and financial institutions, duly organised and supervised by their corresponding banking authorities, is also exempt from tax;
- Royalties paid to non-residents are subject to a 15% final withholding;
- Income derived by non-residents from the rendering of services, including scientific, economic, technical or financial assistance, is subject to a 15% final withholding;
- Income derived by non-resident insurance companies from insurance, reinsurance, secondary bails and cancellations is subject to a 5% final withholding tax;
- Capital gains derived by non-resident enterprises are subject to a 10% final withholding tax on the amount of the gains.

## G. EXCHANGE CONTROL

There are no exchange controls in Guatemala (Decree Number 94-2000 Law of Free Negotiation of Foreign Currency).

## H. PERSONAL TAX

Individuals residing in the country and receiving income from labour under a dependency relationship are subject to a progressive tax rate as shown below:

| Taxable Base (GTQ) | Fixed Tax Amount (GTQ) | Marginal Rate On Excess |
|---|---|---|
| 0.01 to 300,000 | 0 | 5% |
| Over 300,000 | 15,000 | 7% |

Social security contributions and total personal expenses for up to GTQ 60,000 are deductible.

## I. TREATY WITHHOLDING TAX RATES

Guatemala does not have any double tax treaties in force. Guatemala entered into an agreement regarding the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, regarding tax information exchange with 42 countries, which includes among others, taxes on transfer pricing as explained in the preceding paragraphs.

# GUERNSEY

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| St. Helier<br>Jersey | Garry Bell | +44 1534 883000<br>garryb@pkfbba.com |

BASIC FACTS

| | |
|---|---|
| Full name: | Bailiwick of Guernsey |
| Capital: | Saint Peter Port |
| Main languages: | English |
| Population: | 63.4 thousand (January 2022 estimate) |
| Monetary unit: | Pound Sterling (GBP) |
| Internet domain: | .gg |
| Int. dialling code: | +44 1481 |

## KEY TAX POINTS

- There are no capital taxes i.e. capital gains tax or inheritance tax.
- Residents are subject to Guernsey income tax on their worldwide income as it arises. The standard rate of Income Tax is 20%.
- Non-residents are normally only subject to income tax on income arising in Guernsey.
- Double taxation relief is available in accordance with various double tax treaties.
- A company tax resident in Guernsey is chargeable to tax at 0%, 10% or 20% depending upon the nature of its income. Generally trading companies and investment holding companies are taxed at 0%. Financial service entities are liable to tax at the 10% corporate rate. Utility companies and companies with Guernsey rental income and Guernsey property development companies, companies involved in the importation and/or supply of hydrocarbon oil or gas in Guernsey and large retail business carried on in Guernsey where the company has a taxable profit of more than GBP 500,000 are taxed at 20%.
- Non-resident companies are not liable to Guernsey tax unless managed and controlled in Guernsey and therefore Guernsey tax resident.

## A. TAXES PAYABLE

### COMPANY TAX



All companies incorporated in Guernsey or managed and controlled in Guernsey are treated as tax resident and, therefore chargeable to Guernsey income tax. A Guernsey resident company is liable to tax at 0%, 10% or 20%.

Income from banking business, domestic insurance business, fiduciary business, insurance intermediary business and insurance manager business, fund administration business and provision of custody services is subject to a 10% rate.

Public utility companies such as those providing electricity, water, gas, telecommunications and postal services are taxed at 20%. Guernsey rental income and profits from property development in Guernsey are taxed at the rate of 20%. Income from the importation and/or supply of hydrocarbon oil or gas in Guernsey is taxed at the rate of 20%.

Large retail business carried on in Guernsey where the company has taxable profits arising or accruing from which in a year of charge exceed GBP 500,000 is taxed at 20%.

Most other companies are liable at the standard rate of 0%.

Collective investment vehicles may apply for exempt status in Guernsey.

The tax year runs from 1 January to 31 December, although companies may adopt an accounting year end of their choice. Income is assessable on a current year basis. Assessments are notified to the company in the year following the year of assessment. Income tax returns must be filed by 28 February following the end of the relevant year. Electronic filing of these returns is mandatory. The tax is due in two instalments, by 30 June and 31 December, in the tax year.

Guernsey has economic substance legislation for tax resident companies.

### CAPITAL GAINS TAX

There is no capital gains tax in Guernsey. Capital gains are not included in ordinary taxable income.

### SALES TAX / VALUE ADDED TAX (VAT)

There is no sales tax or value added tax in Guernsey.

### LOCAL TAXES

Taxes are levied at a state level only.

### OTHER TAXES

The self-employed rate of Social Security is 11% of earnings from self-employment.

Social security contributions are charged on non-employed people at a rate of 10.4% of income for people under 65 and 3.4% of income for people over 65.

Contribution rates for employees and employers are 6.6% each of earnings from employment.

### FRINGE BENEFITS TAX (KNOWN AS BENEFITS IN KIND IN GUERNSEY)

Taxable benefits include, amongst other things, the private use of a company motor vehicle, rent-free accommodation and free board and lodging. Employees are responsible for payment of tax on benefits.

### TAX ON REAL PROPERTY

In Guernsey, there is a list/register of ownership of real property known as Cadastre, and there is a tax on real property.

## B. DETERMINATION OF TAXABLE INCOME

For a company or business, taxable trading profits are calculated by ascertaining assessable income and subtracting allowable deductions. Generally, to be deductible, expenditure must be wholly and exclusively incurred for the purposes of the trade and be revenue in nature rather than capital.

### CAPITAL ALLOWANCES AND DEPRECIATION

No deduction is permitted in respect of depreciation on capital items. However, annual allowances, calculated using the reducing-balance method, are allowed as follows:

- Plant and machinery: 20%
- Motor vehicles: 20%

If, in any year, there are insufficient profits to cover balancing allowances, which are treated as a deduction from profits, any unrelieved amount is carried forward and treated as an allowance for the following year. This surplus capital allowance and balancing allowances may be carried forward indefinitely, if necessary.

## CAPITAL GAINS AND LOSSES

There is no capital gains tax in Guernsey. Capital losses are not allowable.

## INTEREST DEDUCTIONS

Interest is deductible to the extent that it relates to monies borrowed for the purpose of the business.

## C. FOREIGN TAX RELIEF

Guernsey has double tax treaties with the United Kingdom and Jersey. A new treaty between Guernsey and the UK came into force in Guernsey on 1 January 2020. Double taxation relief is available under those treaties. Associated with its negotiations in relation to Tax Information Exchange Agreements, Guernsey has entered into limited double tax treaties relating to income and mutual agreement procedures with:

| | | |
|---|---|---|
| Australia | Denmark | Faroes |
| Finland | Greenland | Iceland |
| Ireland | Japan | New Zealand |
| Norway | Poland | Sweden |

Tax Information Exchange Agreements (TIEAs) have been signed with:

| | | |
|---|---|---|
| Anguilla | Argentina | Australia |
| Austria | Bahamas | Belgium |
| Bermuda | Botswana | Brazil |
| British Virgin Islands | Bulgaria | Canada |
| Cayman Islands | Chile | China |
| Costa Rica | Czech Republic | Denmark |
| Eswatini | Faroes | Finland |
| France | Germany | Gibraltar |
| Greece | Greenland | Hungary |
| Iceland | India | Indonesia |
| Ireland | Italy | Japan |
| Korea | Latvia | Lesotho |
| Lithuania | Macao | Mauritius |
| Mexico | Montserrat | Netherlands |
| New Zealand | Norway | Poland |
| Portugal | Romania | San Marino |
| Seychelles | Slovakia | South Africa |
| Spain | St Kitts & Nevis | Sweden |
| Switzerland | Turkey | Turks & Caicos |
| United Kingdom | United States of America | Uruguay |

## D. RELATED PARTY TRANSACTIONS

There is no transfer pricing or related party legislation in Guernsey.

## E. WITHHOLDING TAX

There are no withholding taxes in Guernsey.

## F. EXCHANGE CONTROL

There are no exchange control rules in Guernsey.

## G. PERSONAL TAX

Income tax is charged on Guernsey resident individuals on their worldwide income and profits regardless of whether such profits or income are remitted to Guernsey. The tax year is the calendar year i.e. to 31 December. There are complicated residence rules in Guernsey. Generally, individuals are treated as resident in a year if they are present in Guernsey for more than six months or if they are present for three months or more, on average, over a period of four consecutive years.

An individual that is “resident only” can elect to pay a standard surcharge of GBP 30,000 and is then exempt from Guernsey tax on their worldwide income.

Guernsey resident individuals can elect for a cap on their income tax liability, so they only pay GBP 110,000 on non-Guernsey source income.

Income from offices and employment is assessable on an arising basis. Income tax is levied on the assessable income of the individual less personal allowances and deductions at a rate of 20%.

Where income is chargeable to tax, personal allowances are available as follows:

- Single person (GBP 11,875)
- Infirm Person's Allowance (GBP 3,850)
- Charge of Child Allowance (GBP 8,075)
- Dependent Relative Allowance (GBP 3,850)
- Housekeeper Allowance (GBP 3,850)
- Mortgage Interest relief

There is tax relief for pension contributions up to GBP 50,000 per person. The only other deduction is for employment expenses.

Some reliefs are restricted and have conditions attached to them which need to be satisfied.

Tax returns must be filed by 28 February of the year following the relevant tax year. Tax is due in two instalments, by 30 June and 31 December, with final balancing payments due once the final assessment has been made.

(Based on 2022 rates and allowances)

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Domestic rates** | | | |
| Companies | 0 | 0 | 0 |
| Individuals | 0 | 0 | 0 |
| **Treaty countries:** | | | |
| Cyprus | 0 | 0 | 0 |
| Estonia | 0/10 | 0/10 | 5 |
| Hong Kong | 0 | 0 | 4 |
| Isle of Man | 0 | 0 | 0 |
| Jersey | 0 | 0 | 0 |
| Liechtenstein | 0 | 0 | 0 |
| Luxembourg | 5/15[1] | 0 | 0 |
| Malta | 0 | 0 | 0 |
| Mauritius | 0 | 0 | 0 |
| Monaco | 0 | 0 | 0 |
| Qatar | 0 | 0 | 5 |
| Seychelles | 0 | 0 | 5 |
| Singapore | 0 | 12 | 8 |

Notes:

1. The lower rate applies in case the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends.

# GUYANA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Georgetown | Harry Narine | +592 225 3221<br>harry@pkfgy.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Co-operative Republic of Guyana |
| Capital: | Georgetown |
| Main languages: | English and various regional languages |
| Population: | 786,559 (2022 estimate) |
| Monetary unit: | Guyana Dollar (GYD) |
| Internet domain: | .gy |
| Int. dialling code: | +592 |

## KEY TAX POINTS

- Companies are subjected primarily to Corporation and Property Tax.
- Companies are classified into Commercial (taxable at 25%) or non-Commercial (2% on Turnover or 40% on adjusted profit). Telecommunication companies are subjected to 45% tax on adjusted profit. The 2% on turnover is creditable against Corporation tax, whenever the 40% is higher in the future.

- VAT is levied at 14%.
- Unlimited loss carry-forward provided that it does not reduce taxable income in any year by more than 50% for non-commercial companies and below 2% of turnover for commercial companies. Loss carry-back is not allowed.
- A limited unilateral double taxation relief is available.
- Branch remittance tax is 20% subject to the application of a double tax treaty.
- Dividends, interest, royalties and fees are generally subject to a 20% withholding tax unless a double tax treaty or multilateral treaty applies.
- Effective 1 January 2020, Private Corporate Educational Institutions and Private Corporate Medical HealthCare Institutions are exempt from Corporation tax.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

### COMPANY TAX

Company tax rates are:

- Non-commercial companies: 25% of chargeable profit. Losses may be carried forward indefinitely and set off is limited to 50% of the chargeable profits in future years.
- Commercial companies: 40% of chargeable profits or 2% of turnover whichever is the higher or lower could be paid at the discretion of the Commissioner General. Any payment in excess of 40% of profit is carried forward as a credit to be used to reduce the tax whenever it is higher than 2% of turnover.
- Dual Rate: For companies that are engaged in commercial and non-commercial activities, the non-commercial activity of the company shall be taxed at the rate of 25% and the commercial activity of the company shall be taxed at the rate of 40%, except for telecommunication companies which are subject to 45%.

A Commercial Company means a company which is trading in goods not manufactured by it (where trading in goods is more than 75% of overall turnover) and includes commission agency and any telecommunication company. It also includes Banks and Insurance Companies other than long-term Insurance business.

### PROPERTY TAX (WEALTH TAX)

This is payable on the net assets of the company as per 1 January of each year. Assets which attract Wear and Tear Allowances will be included at their income tax values. The rates on net property are as follows:

- The first GYD 40 million is exempt;
- The next GYD 20 million is taxed at 0.5%;
- The remainder is taxed at 0.75%.

A set off would be granted to investors who hold shares in local companies at the appropriate rate. Assets owned prior to 1 January 2011 are required to be revalued at that date. This becomes the new value for Property tax.

### CAPITAL GAINS TAX

The rate is 20% on the gain on disposal. Capital losses are carried forward indefinitely and could be offset against future capital gains until fully recouped. A short-term gain is taxed as income (disposal within 12 months).

Gain on disposal of investments in local public companies and any assets owned in excess of 25 years are exempt.

### BRANCH PROFITS TAX

The after-tax profits of a branch of a non-resident company is deemed distributable whether distributed or not and will be subject a 20% withholding tax rate or at tax treaty rates unless the company has reinvested to the satisfaction of the Commissioner General such profits or any part thereof in Guyana.

### VALUE ADDED TAX (VAT)

A standard VAT rate of 14% applies to all taxable transactions other than those that are zero rated. Some items are zero rated and very few are exempt. Registration is required if the turnover exceeds GYD 15 million per annum.

### FRINGE BENEFITS TAX

There are no specific rules for granting of tax-free allowances except for overseas travel assistance which is described in the Income Tax Act. In practice some management staff may obtain car and entertainment allowances but the amount would be limited to 10% or 15% of their remuneration in each case, which must be justifiable to the Commissioner General.

## B. DETERMINATION OF TAXABLE INCOME

### CAPITAL ALLOWANCES

The annual rates for Wear and Tear Allowances for different categories of assets are as follows:

- Aircraft: 33,33%;
- Furniture and fitting: 10%;
- Plant and machinery: 20%;
- Building (housing machinery): 5%;
- Buildings (use for Service): 2%;
- Boats: 10%;

- Motor vehicles: 20%;
- Computers: 50%;
- Office equipment (electrical): 20%; other 15%.

The claim is computed on reducing balance basis except as stated otherwise. An accelerated write off is granted to pioneer industries and certain other undertakings. The rates for the initial allowances are:

- Plant, equipment and motor vehicle: 40%;
- Industrial buildings: 10%.

There is a special regime for gold, diamond and bauxite mining companies which enjoy a 20% write off on all assets for each year.

There is no limit to the carried forward losses to be set off for each year.

## DIVIDENDS

Dividends paid to residents are tax-free. Dividends paid to non-residents are subject to withholding tax at a rate of 20% or at treaty rates.

## TAX INCENTIVES

Income Tax in Aid of Industry Act

This Act was passed in order to encourage the establishment or development of certain industries in Guyana including the working of any mine (other than a gold or diamond mine).

The salient features of this Act are:



1. **Accelerated Depreciation (wear and tear) on Capital Expenditure**

   An initial allowance of 40% of the cost of the Machinery and Plant and 10% of the cost of Industrial Buildings and Structures could be claimed in the year of acquisition or the year following. This is in addition to the standard wear and tear granted under the Income Tax Act. So that in year one the Company could claim 60% of the cost of Machinery and Plant and 15% on Industrial Buildings and Structures.

2. **Tax Holiday**

   Section 2, Part 1 of the Act pertaining to Tax Holiday was amended by the Fiscal Enactments (Amendment) Bills 2003 and 2008 whereby the Minister of Finance may grant exemption from Corporation Tax in respect of Income from Economic Activity qualifying under one of the following circumstances.

   (a) The Activity demonstrably creates new employment in one of the following regions:

   | | |
   |---|---|
   | Region 1: | Barima – Waini |
   | Region 7: | Cayuni – Mazaruni |
   | Region 8: | Potaro – Siparuni |
   | Region 9 | Upper Takatu – Upper Essequibo |
   | Regional 10 | Upper Demerara – Upper Berbice |

   Such other Regions as the minister may, by Order, subject to negative resolution of the National Assembly specify;

   (b) The activity is new economic activity in one of the following fields:

   i. Non-traditional agro processing including aquaculture and production of Bio-fuels;
   ii. Information and communication technology;
   iii. Petroleum explorations, extraction or refining;
   iv. Mineral exploration, extraction or refining;
   v. Tourist facilities;
   vi. Value-added wood processing;
   vii. Textile production;
   viii. Bio technology;
   ix. Development and manufacturing of new pharmaceuticals products, chemical compounds and the processing of raw materials to produce injectables;
   x. Infrastructural development, including the production of electricity using renewal sources of energy;
   xi. Such other fields as the Minister may, or Order, subject to negative resolution of the National Assembly, specify.

The tax holiday period could be between 5-10 years.

Section 2AExemption from Corporation Tax

(1) Notwithstanding anything in the Income Tax Act or the Corporation Tax Act, the Minister may grant an exemption from the following activities
   (a) The provision of Wind and solar energy;
   (b) The provision of water treatment and water recycling facilities;
   (c) The provision of waste disposal and recycling facilities for plastic items.

(2) An exemption granted under this section shall be for a period not exceeding two years.

## C. FOREIGN TAX RELIEF

When a double tax treaty provides that foreign-paid tax will be allowed as a credit against tax payable in Guyana, the credit may not exceed the amount which would result from applying to the income a rate calculated by dividing the income tax chargeable (before allowance of the credit) on total income by the amount of total income. The total credit granted cannot exceed the total tax payable by a taxpayer in any year of assessment.

Guyana may grant unilateral relief for foreign-paid tax where those taxes are calculated by reference to the income arising in that country.

## D. CORPORATE GROUPS

There are no group provisions. Each company needs to file its own return.

## E. RELATED PARTY TRANSACTIONS

The Commissioner-General may disallow a deduction for expenses which he deems unreasonable and unnecessary taking into account the requirements of the trade and business or the actual services rendered (for directors' fees or various payments for services).

Head office expenses in excess of 1% of sales or gross income will be disallowed for deduction purposes.

There are no thin capitalization rules nor is there CFC (controlled foreign companies) regulation in Guyana.

## F. WITHHOLDING TAX

Dividends, interest, rental income, fees and royalties paid to non-residents are subject to a 20% final withholding tax rate, or as per treaty rates.

Non-Resident (less than 183 days) Oil and Gas workers have to pay 20% withholding tax on their income earned in Guyana.



## H. PERSONAL TAX

### Definition of Resident in Guyana

When applied:

1. To an individual means an individual who:

(b) Resides permanently or being in Guyana intends to reside permanently in Guyana except for such temporary absence as to the Commissioner may seem reasonable and not inconsistent with the claim of such individual to be resident in Guyana; or

(c) Resides in Guyana for more than 183 days in the year.

2. To a body of persons means any body of persons the control and management of whose businesses are exercised in Guyana.

### Employment Non Resident

In the case of income arising outside Guyana which is earned income or which arises to a person who is not ordinarily resident in Guyana or not domiciled therein, the tax shall be payable on the amount earned in Guyana. The gains or profits from any employment exercised in Guyana shall be derived from Guyana whether the gains or profits from such employment are received in Guyana or not.

Tax shall not be payable in respect of any income arising out of Guyana to any person who is in Guyana for some temporary purpose only and not with the intent to establish his residence therein and who has not actually resided in Guyana at one or more times for a period equal in the whole six months in the year preceding the year of assessment.

### Income Tax

There are two categories for income tax computations with effect from 1 January 2022: Those earning less than GYD 2,460,000 and those that earn more:

- If you earn more than GYD 900,000 per annum and less than GYD 2,460,000 per annum there is a standard deduction of GYD 900,000 per annum plus:
  - (a) National Insurance contribution of the employee after which the balance of chargeable income is taxed at 28%;
  - (b) A deduction for contributions to Life and Medical insurance of a maximum of 10% of salary or GYD 360,000, whichever is lower;
- If you earn more than GYD 2,460,000 per annum, one third of the gross plus National Insurance contribution (5.6% income less than or equal to GYD 280,000) of the employee is the non-taxable income. The next GYD 1,560,000 is taxed at 28% and the remainder is taxed at 40%.

There are no other allowances except for Home Mortgage Interest Allowance for which the taxpayer has to apply directly to the Commissioner General for the credit.

### Property Tax

Individuals have to state their net property which is taxed as follows:

(Wealth Tax)

- The first GYD 40 million is exempt;
- The Remainder is taxed at 0.75%.

The income tax value of the assets is used when computing net property.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The following table contains the withholding tax rates applicable to dividends, interest, royalties and management fees paid by Guyanese companies to non-residents under the double and multilateral1 treaties in force. When the domestic rate (see under Section 'Withholding taxes') is lower than the treaty rate, the former applies.

| | Dividends (%) | Interest (%) | Royalties (%) | Management/technical fees (%) |
|---|---|---|---|---|
| **Domestic rates** | | | | |
| Companies | 20 | 20 | 20 | 10 |
| Individuals | 20 | 20 | 20 | 10 |
| **Treaty countries:** | | | | |
| Canada | 15 | 25 | 10 | 10 |
| CARICOM[1] | 0/15[3] | 15 | 15 | 15 |
| United Kingdom | 10/15[2] | 15 | 10 | 10 |

Notes:

1. Guyana is a signatory to the CARICOM multilateral tax treaty. Countries that have ratified the treaty include Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago. The Bahamas is an Associate member of CARICOM and does not enjoy the benefits of the tax treaty.
2. The 10% rate applies if the beneficial owner is a company which controls, directly or indirectly, at least 10% of the voting power in the dividend-paying company.
3. The 15% rate applies to dividends paid on preference shares.

H

# HONDURAS

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Tegucigalpa | Eddy A.Tovar | +504 2270 7365<br>eat@pkfhonduras.com |
| Tegucigalpa | Jorge A. Tovar | +504 2270 7366<br>jat@pkfhonduras.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Honduras |
| Capital: | Tegucigalpa |
| Main languages: | Spanish |
| Population: | 10.21 million (2022 estimate) |
| Monetary unit: | Honduran Lempira (HNL) |
| Internet domain: | .hn |
| Int. dialling code: | +504 |

## KEY TAX POINTS

- Legal companies are subject to 25% income tax, known as the income on lucrative activities regime.
- Legal companies and individuals resident in Honduras are subject to Alternative Minimum Tax (AMT). As from 2020, companies performing General activities that generate more than HNL 1 billion will be subject to AMT at a rate of 1% while companies performing Special activities that generate more than HNL 1 billion will be subject to AMT at a rate of 0.50%.
- Special activities include natural or legal persons who produce or market: cement, public services provided by state companies, pharmaceutical drugs, oil and its derivatives, bakery sector or industry, products derived from steel for construction, production, marketing and export of coffee.
- Solidarity Tax is payable at a rate of 5% calculated on net taxable income exceeding HNL 1 million and is applicable only to taxpayers opting for taxes on income from lucrative activities (25% income tax regime).
- VAT is payable on the domestic supply of goods and services and the import of goods. A standard Rate of 15% applies although some supplies are exempted.
- Transfer Pricing (TP) policies are applicable in Honduras. If the company does not conduct a TP study, the government is entitled to determine differences between related party transactions and a transaction done by independent parties. If a difference is detected, this would not be deductible for income tax purposes and a 15% or 30% tax would be paid on the difference.
- No restrictions are imposed on foreign-trade operations or foreign currency transactions.

## A. TAXES PAYABLE

### COMPANY INCOME TAX

Company profits are taxed at a rate of 25%.

**Solidarity Tax**

The tax rate is 5% calculated on net taxable income exceeding HNL 1 million and is applicable only to taxpayers opting for taxes on income from lucrative activities (25% income tax regime), with the exception of Special Regimes of Export and Tourism.

**Alternative minimum tax (AMT)**

An alternative minimum tax (*impuesto mínimo alternativo*, AMT) applies if the income tax determined for the relevant tax year is less than the AMT assessed.

Individuals and legal entities that obtained a gross income equal to or lower than HNL 1 billion in the previous tax year are not subject to the application of the AMT.

As from 2020, companies performing General activities that generated gross income higher than HNL 1 billion in the previous tax year will be subject to AMT at a rate of 1% on their gross income while companies performing Special activities that generated gross income higher than HNL 1 billion in the previous tax year will be subject to AMT at a rate of 0.50% on their gross income.

Special activities include natural or legal persons who produce or market: cement, public services provided by state companies, pharmaceutical drugs, oil and its derivatives, bakery sector or industry, products derived from steel for construction, production, marketing and export of coffee.

The AMT does not apply to:

- individuals, on their income derived from wages or salaries;
- the written press;
- companies, on their income obtained during the 2 years following their incorporation;
- individuals and legal entities that incur losses due to force majeure, up to 2 years as from the year in which these losses were incurred;
- individuals and legal entities that derive income from the production, sale and distribution of oil and its derivatives; and
- individuals and legal entities with a favourable tax ruling issued by the tax authority as a result of a tax audit.

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**Tax instalment**

A 1% instalment of gross income tax applies to taxpayers that meet the following conditions:

- During open tax periods, they have reported operating losses in two consecutive or alternate tax periods.
- In the prior tax period, they derived gross income equal to or greater than HNL 100 million (approximately USD 4,395,604). The income tax instalment is a tax credit that may be applied against income tax, asset tax or the temporary Solidarity Contribution Tax on the filing of the year-end tax return. Companies operating under the following special regimes are exempt from income tax, sales tax, customs duties and certain municipal taxes:
  a. Free Trade Zone;
  b. Industrial Processing Zone (Zona Industrial de Procesamiento, or ZIP);
  c. Temporary Import Regime (Régimen de Importación Temporal, or RIT);
  d. Agroindustrial Export Zone (Zona Agro-Industrial de Exportación, or ZADE);
  e. Free Tourist Zone (Zona Libre Turística, or ZOLT).

## ASSET TAX

The taxable base will be the resulting difference of the assets reflected in the taxpayer´s Statement of Financial Position minus a deduction of HNL 3,000,000 (USD 131,868), minus the doubtful accounts provisions, loans payables, the accumulated depreciations permitted by the Income Tax Law, revaluation of fixed assets, as long as such are not disposed of and the values from registered investment expansions, such as projects or fixed assets in progress that are not in operation. Income tax may be credited against asset tax. If the income tax equals or exceeds the asset tax for the tax year, no asset tax is due. If the income tax is less than the asset tax, the difference is payable as asset tax. In such circumstances, the asset tax represents a minimum tax for the year.

## CAPITAL GAINS TAX

Capital gains tax is calculated on the net profit of the transaction at a rate of 10%. Net profit is calculated by deducting the cost of the property plus any related expenses from the sales price.

## BRANCH PROFITS TAX

Branches of foreign companies are subject to the same tax rates as Honduran companies.

## VALUE ADDED TAX (VAT)

Services and goods are subject to a 15% value added tax and 18% on alcoholic beverages, tobacco and first-class air tickets.

## TAX ON FINANCIAL TRANSFERS

1) Checks, debit or credit card payments and transfers are subject to a 0.30% tax on the operation base. This tax is non-refundable and the bank will charge it to the company bank account.
2) It also applies to mobile communications that are subject to a 1% rate while the minerals extraction industry is subject to a 5% rate on the exports FOB (Free on Board) for the protection of the environment. The contribution of the fast food sector under any franchise is subject to 0.5% on monthly sales.

## MUNICIPAL OFFICE TAXES

Taxes are paid according to a table and total assets. There are different tables for every city in Tegucigalpa, San Pedro Sula and La Ceiba. In Tegucigalpa, the table varies depending on whether the company is industrial, commercial or other.

Real estate is subject to a rate of up to HNL 3.50 per every thousand for Urban Real State and up to HNL 2.50 per thousand for Rural Real State.

## MUNICIPAL REGISTRATION TAX

All industrial and commercial businesses are required to have an annual licence to operate (which is paid monthly and deductible for income tax purposes) depending on the amount of production, sales or income and calculated at the following progressive rates:

| Production, sales or income (HNL) | Per thousand (%) |
|---|---|
| 0 – 500,000 | 0.30 |
| 500,001 – 10,000,000 | 0.40 |
| 10,000,001 – 20,000,000 | 0.30 |
| 20,000,001 – 30,000,000 | 0.20 |
| Over 30,000,000 | 0.15 |

## SOCIAL SECURITY TAX:

These are payments that are made monthly by employers and employees on the payroll of companies for the purpose of guaranteeing the functioning of the worker social security benefits system (IHSS) at national level. The table is as follows:

- Company: 5.2% of salary (USD 365);
- Employee: 2.5% of salary (USD 365).

As from 2016 the law of Social Protection also establishes a new pension plan whereby 1.5% of the current contributions go to RAP Social Fund for Housing.

## PENSION TAX

These are payments that are made monthly by employers and employees on the payroll of companies for the purpose of guaranteeing the functioning of the employee contribution from the State which will complete the regime for the disabled, old aged and deceased (IVM). The table is as follows:

- Company: 3.5% of salary;
- Employee: 2.5% of salary.

Maximum salary of USD 381 per employee. Professional Training Institute (INFOP) which is 1.0% of the total amount that the company pays (this applies to companies with more than 10 employees).

## TAXES FOR THE DISPOSAL OF PROPERTY

For property sales, which will be valued at the market price, the previous owner pays 1.5% on the value of the transaction. For the transfer of immovable property or rights and values carried out with a non-resident, the buyer must withhold 4% of the transfer value.

## RATE OF TOURIST SERVICES

Individuals pay a tax of 4% for daily accommodation in hotels, car rentals and tour operators.

## INCENTIVES

The following incentives are available to certain qualifying industries and corporations:

### Free zones

Companies operating in Free Zones or under the Law of International Services are tax-exempt on profit derived from sales to foreign countries, for the next 10 years after the companies have been approved by the Ministry of Economy and Commerce. Income tax will be exempt for 10 to 20 years, municipal income tax for 10 years.

### Export and draw-back activities

Some incentives such as exemption from importation taxes, income tax and VAT for industrial and commercial outfits established under the incentive to exportation and draw-back incentive law exist.

### Free-trade zone and tourist zone

Incentives including exemption from importation, income tax and VAT exist for industrial and commercial entities established within the country's free-trade zone. Likewise, companies established in the Bay Islands under the Free Trade Tourist Zone of the the Bay Islands.

### Investment in renewable energy sources

Ten years of exemption of importation, twelve year in income tax, Ten years income and value-added taxes exist by way of the Incentives for development of renewable energy projects, law.

## B. DETERMINATION OF TAXABLE INCOME

The net taxable income of a corporation or partnership is determined by subtracting all allowable deductions from gross taxable income. Generally, expenditures and/or losses are deductible provided they are incurred in gaining or producing taxable income, or preserving the source of income. Special rules apply in respect of certain expenditures.

## ACCOUNTING STANDARDS

In general, the Professional Accounting Standards approved by Technical Rulings aim at converging local accounting standards with International Financial Reporting Standards (IFRS) issued by the IASB (International Accounting Standards Board).

## DEPRECIATION

A tax deduction is available in respect of fixed assets used in the business. Generally, only the straight-line method is allowed, although other methods may be used if agreed by the tax authorities. Maximum depreciation rates are set and include the following:

| Assets | Rate |
|---|---|
| Buildings and construction | 2.5% to 3.33% |
| Furniture and equipment | 10% to 20% |
| Vehicles | 20% to 33.33% |
| Computers (including software) | 10% to 20% |
| Tools | 33% |

## STOCKS / INVENTORY

In general, the following four methods may be used for valuation of inventories:

1) Production cost;
2) First-in, first-out system (FIFO);
3) Weighted average; and,
4) Historic cost of goods.

Other methods are allowed upon prior authorisation from the Tax Office.

H

## DIVIDENDS

Dividends paid to domiciled or resident legal entities are subject to tax at the rate of 10%. Dividends paid from Honduran sources to persons or companies not domiciled in Honduras are also subject to tax at the rate of 10%. Dividend distributions that were already subject to the 10% withholding tax are not subject to such withholding tax when the dividends received by companies are redistributed. Dividends received by holding companies that have already been subject to the 10% withholding tax are not subject to such withholding tax when the dividends are redistributed.

## INTEREST INCOME

Banks will withhold 10% income tax on interest income. Loans given by local companies to its stockholders, related parties, headquarters, or residents/companies located in tax havens are subject to a 10% withholding tax.

## INTEREST EXPENSE

Constitutes a non-deductible expense, interest paid on shareholder loans and loans made to a company by the owners, spouses, relatives, associates, partners or parent company. This rule does not apply where the interest is paid to a financial institution. There are no thin capitalisation rules in Honduras.

## PROVISIONS

Provisions for contingent liabilities, such as severance pay, are not deductible for tax purposes. However, payments of such liabilities are deductible expenses.

## LOSSES

Losses incurred in any given year can be taken as a valid deduction only for the current year. There is no carry forward of losses. Companies engaged in agriculture, manufacturing, mining and tourism may carry forward net operating losses for three years. However, certain restrictions apply. Net operating losses may not be carried back.

## FOREIGN SOURCE INCOME

As from 1 January 2017 the Honduran corporate tax system is based on the territoriality principle. Companies, whether or not resident in Honduras are subject to tax only on Honduran-source income. Companies domiciled abroad that have agents or representatives in Honduras are taxed in the same manner as residents on their income derived from activities undertaken in Honduras.

## C. FOREIGN TAX RELIEF

Because of the territoriality principle of the Honduran tax system (see above, under ‘Foreign Source Income’), Honduras does not provide double taxation relief measures for taxes paid abroad.

## D. CORPORATE GROUPS

Honduran law does not allow the filing of consolidated income tax returns or provide any other tax relief to consolidated groups of companies.

## E. RELATED PARTY TRANSACTIONS

The Law on the Regulation of Transfer Pricing (Ley de regulación de precios de transferencia, LRPT), entered into force on 1 January 2014, provides guidelines for the valuation of transactions between related parties at arm’s length. According to the LRPT, the transfer pricing rules apply to any transaction carried out between a Honduran resident (individual or legal person) and its non-resident related parties or entities operating under a special tax regime.

According to the RLRPT, the transfer pricing rules apply to any transaction carried out between a Honduran resident (individual or legal person) and its related parties or entities operating under a special tax regime. Thus, the RLRPT do not limit the application of the transfer pricing rules to cross-border transactions between related parties.

Companies and individuals with related or associated parties within the country, are not obliged to submit a transfer pricing study. However, individuals and companies related or associated with individuals or companies, subject to a special tax regime, must submit such study. If a difference is detected, this would not be deductible for income tax purposes and a 15% or 30% tax would be paid on the difference.

## F. WITHHOLDING TAX

- Dividends, interest, commissions, air, sea and land transport, reinsurance, and other fees paid to foreign recipients are subject to a 10% withholding tax;
- Royalties, Leasing of Movable and Immovable Property, Public Entertainment Shows, Mining Royalties, Fees and Commissions, Videos and Films, Salaries, Services and fees paid to foreign corporations for work done in Honduras are subject to a 25% income tax withholding rate.

## G. EXCHANGE CONTROL

No restrictions are imposed on foreign-trade operations or foreign currency transactions.

## H. PERSONAL TAX

Individuals residing in the country and receiving income from labour under a dependency relationship are subject to a progressive tax rate as shown below (updated for 2022):

| Taxable Annual Income (HNL) | Tax rate (%) |
|---|---|
| 0.01 – 181,274.56 | 0% |
| 181,274.57 – 276,411.57 | 15% |
| 276,411.58 – 642,817.63 | 20% |
| Over 642,817.63 | 25% |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Honduras has a Central American Free Trade Agreement (CAFTA-DR) with the USA, Central America and the Dominican Republic. Honduras does not have double tax treaties in force.

# HONG KONG

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Hong Kong | Henry Fung | +852 2806 3822<br>henryfung@pkf-hk.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Hong Kong |
| Capital: | N/A. Hong Kong is a Special Administrative Region of the People's Republic of China |
| Main languages: | Chinese (Cantonese) |
| Population: | 7.41 million (2022 estimate) |
| Monetary unit: | Hong Kong Dollar (HKD) |
| Internet domain: | .hk |
| Int. dialling code: | +852 |

## KEY TAX POINTS

- Profits tax is charged on any person (including a corporation, partnership or individual) carrying on a trade, business or profession in Hong Kong. Income derived from outside Hong Kong is exempt (subject to rules deeming certain receipts to be derived from Hong Kong) regardless of residence status.
- Property tax is charged at 15% on the net assessable value of any land or buildings in Hong Kong.
- Transfer pricing regime was enacted and came into effect in 2018. Mandatory transfer pricing documentation is required based on the three-tiered structure recommended by the OECD.
- Dividends received by a Hong Kong corporate, whether from a domestic or overseas company, are not subject to tax and dividend payments made by Hong Kong resident companies are not subject to withholding tax.
- There is no VAT or sales tax in Hong Kong.
- There is no capital gains tax, and capital gains are not subject to personal or corporate income tax.
- There is no inheritance tax or estate duty in Hong Kong.

## A. TAXES PAYABLE

### PROFITS TAX

Profits tax shall be charged on every person (including corporations, partnerships and individuals) carrying on a trade, business or profession in Hong Kong. Income derived outside Hong Kong is generally exempt from tax. No distinction is made between residents and non-residents.

## TAX YEAR

The tax year covers a period of 12 months commencing on 1 April and ending on 31 March of the following year. Profits earned by a person during an accounting year ending within the tax year will be deemed to be their profits for that tax year.

## TAX RATES

The profits tax rates for 2021/22 (year ended 31 March 2022) are as follows:

- Corporations: 8.25% on assessable profits up to HKD 2 million and 16.5% on any part of assessable profits over HKD 2 million*;
- Persons other than corporations: 7.5% on assessable profits up to HKD 2 million and 15% on any part of assessable profits over HKD 2 million*.

* Each group of connected entities could only nominate one entity in the group to benefit from the two-tiered rates. Other entities within the group will be subject to the rate of 16.5% for corporations and the rate of 15% for unincorporated businesses.

## DEEMED TRADING RECEIPTS

The following income of a non-resident person is deemed to be receipts from a trade, profession or business carried on in Hong Kong:

1) Royalties receivable from the exhibition or use in Hong Kong of cinematograph or television film or tape, any sound recording or any advertising material connected with such film, tape or recording;
2) Royalties receivable for the use of, or right to use in Hong Kong a patent, design, trademark, copyright, layout-design (topography) of an integrated circuit, performer's right, plant variety right, formula, or other property of a similar nature;
3) Royalties receivable for the use of, or right to use outside Hong Kong a patent design, trademark, copyright, layout-design (topography) of an integrated circuit, performer's right, plant variety right, formula, or other property of a similar nature if the payee of such royalties has claimed a tax deduction in Hong Kong;
4) Sums received by or accrued to a performer or an organiser for an assignment of, or an agreement to assign, a performer's right in relation to a performance given by the performer in Hong Kong on or after 29 June 2018;
5) Sums receivable for the use, or the right to the use or for imparting or undertaking to impart knowledge directly or indirectly connected with the use outside Hong Kong of any intellectual property or know-how generated from any research and development activity in respect of which a deduction for such research and development expense has been claimed in Hong Kong; and
6) Sums received or accrued in respect of the hire, rental or similar charges for the use of movable property in Hong Kong.

The assessable profits for cases (1) to (3) above are equal to 30% of the sum receivable by the non-resident person if the Inland Revenue Department ("IRD") is satisfied that no person carrying on a trade, profession or business in Hong Kong has, at any time, wholly or partly-owned the relevant intellectual property or the royalty recipient is not an associate of the royalty payee. If the above condition is not satisfied, the assessable profits will be the full amount receivable by the non-resident person.

## BRANCH PROFITS TAX

There is no distinction between branch profits tax and corporation profits tax. Branch profits of foreign corporations are also taxed at the flat rate of 16.5% on assessable profits or at two-tiered tax rates for the year of assessment 2021/22.

## OTHER TAXES

Other important taxes imposed include the following:

## PROPERTY TAX

Property tax is charged at a standard rate of 15% on the net assessable value of any land or buildings in Hong Kong. The net assessable value is the rent payable to the owner of the land or building after deducting the following amounts:

a) Unpaid rent;
b) Government rates paid by the owner; and
c) 20% of the assessable value after deduction of (a) and (b) above.

Any building occupied by the owner as their residence is exempted from tax.

## STAMP DUTY

Stamp Duty applies to the following categories of transactions:

a) Contract notes on Hong Kong shares and marketable securities;
b) Assignment of immovable property;
c) Leases and assignment of leases of Hong Kong property; and
d) Insurance of bearer instruments.

Provided certain requirements are met, taxpayers may apply with the IRD for exemption from stamp duty for the transfer of shares and immovable properties within a corporate group.

**Transactions in Hong Kong Shares and Marketable Securities**

With effect from 1 August 2021, transactions in Hong Kong shares or marketable securities will attract an ad valorem duty of HKD 2.6 per HKD 1,000 (i.e. 0.26%) payable equally by the buyer and the seller (i.e. 0.13% each payable by the buyer and the seller). Stamp duty is waived for the transfer (including allotment and redemption) of shares or units of all Exchange Traded Funds.

**Transactions in Assignment of Immovable Property**

Stamp Duty on assignment of immovable property is sub-divided into three categories as follows:

1. AD VALOREM STAMP DUTY (AVD)

The AVD rate for residential property transactions executed on or after 5 November 2016 is levied at a flat rate of 15% on the sales consideration or value of the properties (whichever is higher), unless specifically exempted or provided otherwise. The major exemption is where the residential property buyer is a Hong Kong permanent resident who acts on his/her own behalf and does not own any other residential property in Hong Kong at the time of acquisition. In such case, the AVD is levied at lower rates which vary from HKD 100 to 4.25% on the sales consideration or value of the properties (whichever is higher), depending on the sales consideration of the relevant properties.

The AVD for transactions of immovable properties other than residential properties is computed at rates which vary from 1.5% to 4.25% on the sales consideration or value of the properties (whichever is higher), depending on the sales consideration of the relevant properties.

2. SPECIAL STAMP DUTY (SSD)

Residential properties acquired, either by an individual or a company (regardless of where it is incorporated), and resold within 36 months, will be subject to SSD. The applicable SSD rates vary from 10% to 20% on the sales consideration or value of the properties (whichever is higher), depending on the holding period of the relevant properties.

3. BUYER'S STAMP DUTY (BSD)

Unless specifically exempted, BSD is payable on residential property transactions, except where the purchaser or the transferee is a Hong Kong permanent resident acquiring the property on his/her own behalf. BSD is charged at 15% on the sales consideration or the value of the properties (whichever is the higher), if applicable.



## CAPITAL GAINS

There is no capital gains tax in Hong Kong and capital gains are not subject to corporate or personal income tax.

## SALES TAX / VALUE ADDED TAX

There is neither sales tax nor value added tax in Hong Kong.

## FRINGE BENEFITS TAX

There is no fringe benefits tax in Hong Kong.

## LOCAL TAXES

There are no local taxes in Hong Kong.

## B. DETERMINATION OF TAXABLE INCOME

Generally, in arriving at profits assessable to tax, deductions are allowed for revenue expenditure to the extent that they are incurred in the production of chargeable profits in the basis period. Special rules apply in respect of the following categories of expenditure.

## CAPITAL ALLOWANCES

Capital allowances are available to a taxpayer who incurs qualifying capital expenditure on specified assets used in the production of chargeable profits. Capital allowances can be classified into industrial building allowance, commercial building allowance, depreciation allowance for plant and machinery and refurbishment allowance as summarised below:

1. **INDUSTRIAL BUILDING ALLOWANCE**

   An initial allowance of 20% is granted in the year of purchase for capital expenditure incurred on the construction of an industrial building or structure occupied for the purposes of a qualifying trade. An additional allowance of 4% of the capital expenditure (on a straight-line basis) is given annually.

2. **COMMERCIAL BUILDING ALLOWANCE**

   A building or structure used for the purposes of a trade, profession or business other than an industrial building or used as stock in trade can qualify for a commercial building allowance. An annual allowance of 4% of the capital expenditure incurred on the construction of the building is provided.

3. **DEPRECIATION ALLOWANCE ON PLANT AND MACHINERY**

   Depreciation allowance on plant and machinery is in the form of an initial allowance and an annual allowance. An initial allowance of 60% is granted in the year of purchase for capital expenditure incurred in acquiring the plant and machinery. The annual allowance is based on the reducing value of each class of plant and machinery (the 'pool').

   A pool is made up of all items of plant or machinery carrying the same rate of depreciation. It is only necessary for the assets to be or to have been owned and used in the production of chargeable profits to qualify for the deduction. The annual allowance is equal to the reducing value of the pool multiplied by the appropriate depreciation rate, currently at 10%, 20% or 30% per annum.

4. **EXPENDITURE ON PRESCRIBED FIXED ASSETS**

   Capital expenditure incurred on certain prescribed fixed assets in any year of assessment is allowed to be fully written off in the year it is incurred. 'Prescribed fixed assets' include computer hardware and software and certain defined plant and machinery used specifically and directly for any manufacturing process.

5. **EXPENDITURE OF PRESCRIBED ENVIRONMENTAL PROTECTION FACILITIES**

   Capital expenditure incurred on certain prescribed environmental protection facilities is entitled to a preferential tax deduction. Expenditure incurred on environmental protection machinery is allowed to be fully written off in the year it is incurred whereas those on environmental protection installation is allowed to be deducted equally in five years of assessment.

6. **CAPITAL EXPENDITURE ON INTELLECTUAL PROPERTY**

   Capital expenditure incurred in the registration of a trademark or design or patent (collectively referred to as "intellectual property (IP)") or incurred in the acquisition of patent rights and rights to any know-how (collectively referred to as "properties") qualify as a tax deduction in the year it is incurred if the IP and properties are used in the production of assessable profits irrespective of whether they are used in or outside Hong Kong.

   Capital expenditure incurred in the acquisition of copyrights, performer's economic rights, protected layout design (topography) rights, protected plant variety rights, registered designs or registered trademarks (collectively referred to as "specified IP rights"). The capital expenditure incurred on the purchase of specified IP rights is to be deducted equally over five years (or over the remaining years of protection) if certain conditions are met.

7. **REFURBISHMENT ALLOWANCE**

   Taxpayers are eligible to claim deduction on refurbishment expenditure equally over a five-year period.

## INVENTORY

All trading stock should be valued at the lower of cost or market value. Accepted valuation methods include FIFO and average cost but not LIFO, base stock method or replacement value. The term 'market value' would normally mean realisable value.

## CAPITAL GAINS AND LOSSES

Capital gains and losses are not taxable or deductible in arriving at the assessable profits.

## DIVIDENDS

Dividend income, whether from Hong Kong or overseas, is not taxable. Dividends paid to either a resident or non-resident of Hong Kong are not subject to any withholding tax.

## INTEREST DEDUCTIONS

Only interest expenses falling within specific categories and incurred in the production of a taxpayer's chargeable profits are tax deductible. In addition, deductibility of interest expenses is subject to certain additional anti-avoidance provisions.

## LOSSES

Losses incurred can be carried forward indefinitely for set-off against any future assessable profits of the same entity. However, there are anti-avoidance provisions in the Inland Revenue Ordinance ("IRO") that restrict the use of tax losses where a change in shareholding was undertaken solely or predominantly for the purpose of utilising the losses to obtain a tax benefit. Losses cannot be carried back.

## OFFSHORE INCOME

Generally, income derived from or arising outside Hong Kong is exempt from tax under the territorial taxation system.

## TAX INCENTIVES

a) The low tax rates and territorial basis of taxation adopted by Hong Kong are in themselves major incentives to foreign investors;

b) Under two-tiered profits tax rates regime, the first HKD 2 million of profits derived by corporations or unincorporated businesses are subject to a 50% reduction in profits tax rates. For connected entities, only one entity in the group can elect to benefit from the lower tax rates;

c) Profits derived by a fund (regardless of its structure, size, location of management and control) from qualifying transactions or transactions incidental to the carrying out of qualifying transactions are exempt from profits tax provided that such transactions are carried out in Hong Kong by a specified person or the fund is a qualified investment fund. Besides, profits derived by a special purpose entity established by the aforementioned fund from the disposal of an interposed special purpose entity or shares issued by an investee private company also qualify for profits tax exemption;

d) For non-residents or special purpose vehicles wholly or partially owned by non-residents that do not satisfy the qualifying criteria as mentioned in c) above, their profits derived from the sale of certain financial instruments, including investments in excepted private companies incorporated offshore, are exempt from profits tax provided that other specific conditions are met;

e) Interest income derived from deposits placed in Hong Kong with authorised financial institutions by any person carrying on business in Hong Kong is exempt from profits tax provided that the deposits have not been pledged as collateral against any loans borrowed and certain conditions are met;

f) Scientific research expenditure, including payments to an approved research institute and payments for technical education, qualify as allowable deductions;

g) Enterprises are allowed to enjoy a 300% tax deduction for the first HKD 2 million qualifying R&D expenditure, and a 200% tax deduction for the remainder;

h) Profits derived by qualifying insurance business and insurance brokerage business in Hong Kong are entitled to a 50% reduction in profits tax rate;

i) Profits derived from qualified debt instruments are exempt from profits tax;

j) Profits derived from specified qualifying treasury activities carried on by a qualifying corporate treasury centre are entitled to a 50% reduction in profits tax rate;

k) Profits derived from qualifying activities by qualifying aircraft lessors and qualifying aircraft leasing managers are entitled to a 50% reduction in profits tax rate;

l) Profits derived from operating lease or finance lease activities carried out by a qualifying ship lessor are exempt from profits tax. In addition, profits derived from qualifying ship leasing management activities carried out by a qualifying ship leasing manager are exempt from profits tax for services provided to an associated qualifying ship lessor or entitled to a 50% reduction in the profits tax rate for services provided to a non-associated qualifying ship lessor; and

m) Any carried interest received by or accrued to a qualifying person from the provision of investment management services for a certified investment fund or specified entity in Hong Kong are exempt from profits tax.

## C. CORPORATE GROUPS

Companies of the same group are assessed to profits tax separately. There is no group tax relief in Hong Kong, with the exception of a court free amalgamation which takes place under Part 13 of the Hong Kong Companies Ordinance, in which case tax losses may be allowed to be transferred to another entity under certain circumstances.

## D. RELATED PARTY TRANSACTIONS

The IRD is empowered to adjust the profits or losses of an enterprise where the actual provision made or imposed between associated persons (associated in terms of management, control and capital) departs from the arm's length provision and has created a Hong Kong tax advantage. The transfer pricing rules shall apply to all Hong Kong enterprises including a permanent establishment ("PE") maintained by non-Hong Kong resident persons, covering both cross-border and domestic transactions which involve tangible assets, financial arrangements, intangible assets and services.

The TP legislation also provides that the income or loss of a non-Hong Kong resident person attributable to the person's permanent establishment in Hong Kong will be determined as if the PE were a distinct and separate enterprise based on the functions performed, assets used and risk assumed by the person through the PE and through the other parts of the person.

In addition, mandatory TP documentation has been implemented in Hong Kong based on the three-tiered documentation structure recommended by the OECD, which consists of the local file, the master file and the Country-by-Country ("CbC") report. All enterprises carrying on a trade or business in Hong Kong which engage in transactions with associated enterprises will be required to prepare the master file and local file for each accounting period within 9 months from the end of the accounting period, except enterprises which meet certain exemptions.



The requirement for CbC reporting applies to multinational enterprise groups whose annual consolidated group revenue for the immediately preceding accounting period reaches the specified threshold amount, i.e. HK$6.8 billion ("Reportable Group(s)"). The primary obligation to perform CbC reporting is on the ultimate parent entity ("UPE") and such reporting will normally have to be filed with the tax authority of the jurisdiction where the UPE resides. If the UPE of a Reportable Group is a Hong Kong entity, the UPE has an obligation to file a CbC Return (including a CbC Report) with the IRD. On the other hand, if the UPE of a Reportable Group is not a Hong Kong entity, then depending on the tax residency of the UPE, the Reporting Group may have a secondary obligation to file a CbC Return (including a CbC Report) with the IRD in Hong Kong.

Furthermore, every Hong Kong entity of a Reportable Group is required to make a notification for determining the obligation for filing a CbC return unless it is not the entity which is to file a CbC return and another Hong Kong entity has already made the notification. The IRD will automatically exchange this report with the jurisdictions in which the MNE is active and with which Hong Kong has concluded relevant agreements for the automatic exchange of tax information.

## E. WITHHOLDING TAXES

Royalties and licence fees paid to non-residents for the use of certain intellectual property in Hong Kong, payments to non-resident entertainers or sportsmen for their performance at commercial occasions or events in Hong Kong and payments to performers or organisers (for an assignment of or an agreement to assign a performer's right) in relation to a performance given by the performer in Hong Kong are subject to profits tax on a withholding basis based on the assessable profits. There are no withholding taxes levied on dividends and interest.

## F. FOREIGN TAX CREDIT

Hong Kong has concluded double taxation agreements with many countries/jurisdictions. Where there is an applicable double taxation agreement, foreign income tax paid may be credited against the Hong Kong tax levied on the same profits, subject to a ceiling of the amount of the Hong Kong tax payable. For the non-treaty countries, Hong Kong grants a deduction on foreign income taxes on certain interest income and gains deemed to be taxable in Hong Kong.

## G. EXCHANGE CONTROL

There are no exchange controls in Hong Kong.

## H. PERSONAL TAX

## SALARIES TAX

Salaries tax is charged on individuals in respect of all income arising in or derived from Hong Kong in relation to any office, employment, pension or payments for services rendered in Hong Kong. The tax charge is calculated at the lower of:

a. 15% of chargeable income after allowable deductions; or,

b. The applicable progressive rates on net chargeable income after the deduction of charitable donations and personal allowances. The progressive salaries tax rates for the years of assessment 2021/22 and 2022/23are as follows:

| **Net Chargeable Income (HKD)** | | **Progressive Tax Rate for 2021/22** | **Net Chargeable Income (HKD)** | | **Progressive Tax Rate for 2022/23** |
|---|---|---|---|---|---|
| First | 50,000 | 2% | First | 50,000 | 2% |
| Next | 50,000 | 6% | Next | 50,000 | 6% |
| Next | 50,000 | 10% | Next | 50,000 | 10% |
| Next | 50,000 | 14% | Next | 50,000 | 14% |
| Remainder | 17% | Remainder | 17% | | |

NOTES:

Net chargeable income= Taxable income – Allowable deductions – Personal allowances

Salaries tax payable = Net chargeable income × Progressive tax rates

| | Personal Allowances | 2021/22 (HKD) | 2022/23 (HKD) |
|---|---|---|---|
| 1. | Basic allowance | 132,000 | 132,000 |
| 2. | Married person | 264,000 | 264,000 |
| 3. | Child (each):<br>First to ninth child: | | |
| | - Year of birth | 240,000 | 240,000 |
| | - Other years | 120,000 | 120,000 |
| 4. | Dependent parent/grandparent: | | |
| | (a) Aged 55 to 59:<br>- basic | 25,000 | 25,000 |
| | - additional (for dependent living with taxpayer) | 25,000 | 25,000 |
| | (b) Aged 60 or above:<br>- basic | 50,000 | 50,000 |
| | - additional (for dependent living with taxpayer) | 50,000 | 50,000 |
| 5. | Dependent brother/sister[1] | 37,500 | 37,500 |
| 6. | Single parent | 132,000 | 132,000 |
| 7. | Disabled dependent | 75,000 | 75,000 |
| 8. | Personal disability allowance | 75,000 | 75,000 |
| **Maximum amount of additional deductions:** | | | |
| 1. | Self-education expenses[2] | 100,000 | 100,000 |
| 2. | Home loan interest[3] | 100,000 | 100,000 |
| 3. | Elderly residential care expenses | 100,000 | 100,000 |
| 4. | Contribution to recognised retirement schemes | 18,000 | 18,000 |
| 5. | Donations to charitable organisation[4] | 35% of income | 35% of income |
| 6. | Qualifying premiums paid under Voluntary Health Insurance Scheme Policy | 8,000 per insured person | 8,000 per insured person |
| 7. | Qualifying annuity premiums and tax deductible MPF voluntary contributions | 60,000 | 60,000 |
| 8. | Domestic rent deduction[5] | - | 100,000 |

NOTES:

1. For whom no child allowance is being claimed.
2. The maximum amount that can be claimed as deductible expense for training courses attended at approved institutions.
3. The entitlement period for tax deduction is 20 years.
4. The maximum allowable deduction is restricted to 35% of the taxpayer's assessable income after deduction of allowable expenses and depreciation allowances
5. The domestic rent deduction applies to taxpayers who are not owners of any domestic property, subject to the fulfilment of certain conditions and the enactment of the relevant laws.

## OTHER INCOME TAXES

Under the Hong Kong tax system, various sources of income are taxed under separate categories i.e. business income is subject to profits tax, rental income is subject to property tax and employment income is subject to salaries tax.

Sometimes, it may be advantageous for an individual to elect to pay tax under 'personal assessment' if he/she has expenses which may be non-deductible against a particular source of income (e.g. mortgage interest payments or allowable tax losses which cannot be completely absorbed by his/her business profits). Under personal assessment, all his/her assessable sources of income are aggregated in a single assessment. Applicants must be permanent or temporary residents of Hong Kong. An election for personal assessment must be made within a stipulated time limit.

## I. TREATY WITHHOLDING TAX RATES

The Hong Kong Government recognises that there are merits in concluding double taxation agreements with its trading partners, particularly in the aviation and shipping industries. Hong Kong therefore has reached different limited double taxation relief arrangements with many countries: Bangladesh, Belgium, Canada, Croatia, Denmark, Estonia, Ethiopia, Fiji, Finland, Germany, Iceland, Israel, Jordan, Kenya, the Republic of Korea, Kuwait, the Lao People's Democratic Republic, Macao Special Administrative Region, Mainland China, Maldives, Mauritius, Mexico, the Netherlands, New Zealand, Norway, the Russian Federation, Seychelles, Singapore, Sri Lanka, Sweden, Switzerland, the United Kingdom and the United States of America in order to avoid double taxation of airline and/or shipping income.

Apart from the limited double taxation agreements applicable to airline and shipping income, the Hong Kong Government also concluded comprehensive double taxation agreements with many countries/jurisdictions. The following table summarises the maximum withholding tax rates of treaty countries/jurisdictions specified in the comprehensive double taxation agreements for the payments of dividend, interest and royalty, provided certain requirements are met:

| | Date of signing | Effective year | Dividend[35] (%) | Interest[35] (%) | Royalty (%) |
|---|---|---|---|---|---|
| Non-treaty countries: | – | – | – | – | 2.475 to 4.95[1] |
| **Treaty countries:** | | | | | |
| Austria | 25.05.2010 | 2012/13 | 0/10[2] | – | 3 |
| Belarus | 16.01.2017 | 2018/19 | 0/5[3] | 0/5[4] | 3/5[5] |
| Belgium | 10.12.2003 | 2004/05 | 0/5/15[6] | 10 | 5 |
| Brunei | 20.03.2010 | 2011/12 | – | 5/10[7] | 5 |
| Cambodia | 26.06.2019 | 2020/21 | 10 | 0/10[8] | 10 |
| Canada | 11.11.2012 | 2014/15 | 5/15[9] | 10 | 10 |
| China | 21.08.2006 | 2007/08 | 5/10[10] | 7 | 5/7[11] |
| Czech Republic | 06.06.2011 | 2013/14 | 5 | – | 10 |
| Estonia | 25.09.2019 | 202021 | 0/10[12] | 0/10[13] | 5 |
| Finland | 24.05.2018 | 2019/20 | 5/10[10] | – | 3 |
| France | 21.10.2010 | 2012/13 | 10 | 10 | 10 |
| Georgia | 05.10.2020 | 2022/23 | 0/5[14] | 0/5[15] | 5 |
| Guernsey | 22.04.2013 | 2014/15 | – | – | 4 |
| Hungary | 12.05.2010 | 2012/13 | 5/10[10] | 5 | 5 |
| India | 19.03.2018 | 2019/20 | 5 | 10 | 10 |
| Indonesia | 23.03.2010 | 2013/14 | 5/10[10] | 10 | 5 |
| Ireland | 22.06.2010 | 2012/13 | – | 10 | 3 |
| Italy | 14.01.2013 | 2016/17 | 10 | 12.5 | 15 |
| Japan | 09.11.2010 | 2012/13 | 5/10[10] | 10 | 5 |
| Jersey | 22.02.2012 | 2014/15 | – | – | 4 |
| Korea | 08.07.2014 | 2017/18 | 10/15[16] | 10 | 10 |
| Kuwait | 13.05.2010 | 2014/15 | 0/5[17] | 5 | 5 |
| Latvia | 13.04.2016 | 2018/19 | 0/10[12] | 0/10[13] | 0/3[18] |
| Liechtenstein | 12.08.2010 | 2012/13 | – | – | 3 |
| Luxembourg | 02.11.2007 | 2008/09 | 0/10[2] | – | 3 |
| Macao Special Administrative Region | 25.11.2019 | 2021/22 | 0/5[19] | 0/5[20] | 3 |
| Malaysia | 25.04.2012 | 2013/14 | 5/10[10] | 10 | 8 |
| Malta | 08.11.2011 | 2013/14 | – | – | 3 |
| Mexico | 18.06.2012 | 2014/15 | – | 4.9/10[21] | 10 |
| Netherlands | 22.03.2010 | 2012/13 | 0/10[2] | – | 3 |
| New Zealand | 01.12.2010 | 2012/13 | 0/5/15[22] | 10 | 5 |
| Pakistan | 17.02.2017 | 2018/19 | 10 | 0/10[23] | 10 |
| Portugal | 22.03.2011 | 2013/14 | 5/10[10] | 10 | 5 |
| Qatar | 13.05.2013 | 2014/15 | – | – | 5 |
| Romania | 18.11.2015 | Income derived on or after 1/1/2017 | 0/3/5[24] | 0/3[25] | 3 |
| Russia | 18.01.2016 | 2017/18 | 0/5/10[26] | – | 3 |
| Saudi Arabia | 24.08.2017 | 2019/20 | 5 | – | 5/8[27] |
| Serbia | 27.08.2020 | 2021/22 | 5/10[28] | 10 | 5/10[29] |
| South Africa | 16.10.2014 | 2016/17 | 5/10[10] | 10 | 5 |
| Spain | 01.04.2011 | 2013/14 | 0/10[2] | 5 | 5 |
| Switzerland | 04.10.2011 | 2013/14 | 0/10[2] | – | 3 |
| Thailand | 07.09.2005 | 2006/07 | 10 | 10/15[30] | 5/10/15[31] |
| United Arab Emirates | 11.12.2014 | 2016/17 | 0/5[17] | 5 | 5 |
| United Kingdom | 21.06.2010 | 2011/12 | 0/15[32] | Domestic rate[33] | 3 |
| Vietnam | 16.12.2008 | 2010/11 | 10 | 10 | 7/10[34] |

NOTES:

1. If the two-tiered tax rates are applicable, 2.475% applies for the first HKD 6.67 million on royalty income and 4.95% applies for the remaining amount of royalty income. If the two-tiered rates do not apply, the withholding tax rate is 4.95 % for the whole amount of royalty income. If the royalty income is derived by a non-resident person who is an associate of the Hong Kong payer and the IRD is satisfied that no person carrying

on a trade, profession or business in Hong Kong has at any time wholly or partly owned the relevant intellectual property, the withholding tax rate is 16.5% on the whole amount of royalty, or 8.25% for the first HKD 2 million on royalty income and 16.5% for the remaining amount if the two-tiered tax rates apply.

2. 0% applies if the beneficial owner is a company which holds / controls directly or indirectly at least 10% of the payer's capital or voting power or holds directly at least 25% of the capital of the company paying the dividend (applies to Spain only); and 10% of dividend applies in all other cases.
3. 0% applies if the dividend is derived and beneficially owned by (a) the Hong Kong Government (b) the Hong Kong Monetary Authority (c) the Exchange Fund or (d) any institution wholly or mainly owned by the Hong Kong Government; and 5% applies in all other cases.
4. 0% applies if the interest is derived and beneficially owned by (a) the Hong Kong Government (b) the Hong Kong Monetary Authority (c) the Exchange Fund or (d) any institution wholly or mainly owned by the Hong Kong Government; and 5% applies in all other cases.
5. 3% applies to royalty payments for the use of or the right to use aircraft; and 5% applies in all other cases.
6. 0% applies if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividend for an uninterrupted period of at least 12 months; and 5% applies if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividend; and 15% applies in all other cases.
7. 5% applies to interest payments to any bank or financial institutions; and 10% applies in all other cases.
8. 0% applies if the interest is paid to (a) the Hong Kong Government (b) the Hong Kong Monetary Authority (c) the Exchange Fund or (d) a financial establishment appointed by the Hong Kong Government; and 10% applies in all other cases.
9. 5% applies if the beneficial owner is a company which holds / controls directly or indirectly at least 10% of the capital or voting power of the company paying the dividend; and 15% of dividend in all other cases.
10. 5% applies if the beneficial owner is a company which holds / controls directly or indirectly at least 10% of the payer's capital or voting power (applies to Finland, Hungary, Portugal, Malaysia, Japan and South Africa) or holds directly at least 25% of the payer's capital (applies to Indonesia and Mainland China); and 10% applies in all other cases.
11. 5% applies to royalty payments to an aircraft and ship leasing business; and 7% applies in all other cases.
12. 0% applies if the dividend is paid to (a) the Hong Kong Government, (b) the Hong Kong Monetary Authority, (c) the Exchange Fund, (d) any institution wholly or mainly owned by the Hong Kong Government or (e) a beneficial owner which is a company (a company other than a partnership for Latvia); and 10% of dividend applies in all other cases.
13. 0% applies if the interest is paid to (a) the Hong Kong Government, (b) the Hong Kong Monetary Authority, (c) the Exchange Fund, (d) any institution wholly or mainly owned by the Hong Kong Government or (e) a beneficial owner which is a company (a company other than a partnership for Latvia); and 10% of interest applies in all other cases.
14. 0% applies if the dividend is paid to (a) the Hong Kong Government, (b) the Hong Kong Monetary Authority, (c) the Exchange Fund, (d) any entity wholly or mainly owned by the Hong Kong Government; and 5% of dividend applies in all other cases.
15. 0% applies if the interest is paid to (a) the Hong Kong Government, (b) the Hong Kong Monetary Authority, (c) the Exchange Fund, (d) any entity wholly or mainly owned by the Hong Kong Government; and 5% applies in all other cases.
16. 10% applies if the beneficial owner is a company which holds directly at least 25% of the payer's capital; and 15% of dividend applies in all other cases.
17. 0% applies if the beneficial owner is the Hong Kong Government or any of its institutions or other entity wholly-owned directly by the Hong Kong Government; and 5% of dividend in all other cases.
18. 0% applies to royalty payments for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience if the beneficial owner is a company (other than a partnership); and 3% applies in all other cases.
19. 0% applies if the dividend is paid to (a) the Hong Kong Government, (b) the Hong Kong Monetary Authority, (c) the Exchange Fund, (d) any institution wholly or mainly owned by the Hong Kong Government or; and 5% of dividend applies in all other cases.
20. 0% applies if the interest is paid to (a) the Hong Kong Government, (b) the Hong Kong Monetary Authority, (c) the Exchange Fund, (d) any institution wholly or mainly owned by the Hong Kong Government; and 5% applies in all other cases.
21. 4.9% applies to interest payments to any bank; and 10% of interest payments applies in all other cases.
22. 0% applies if (a) the beneficial owner is a company that holds directly or indirectly at least 50% of the payer's voting power, and meets specified requirements or (b) the dividend is paid to the Hong Kong Government, the Hong Kong Monetary Authority or any institution wholly or mainly owned by the Hong Kong Government, 5% applies if the beneficial owner is a company which holds directly at least 10% of the payer's voting power; and 15% of dividend applies in all other cases.
23. 0% applies if the interest is derived and beneficially owned by (a) the Hong Kong Government (b) the Hong Kong Monetary Authority (c) the Exchange Fund or (d) any entity wholly or mainly owned by the Hong Kong Government; and 10% applies in all other cases.
24. 0% applies if the dividend is derived and beneficially owned by (a) the Hong Kong Government (b) the Hong Kong Monetary Authority (c) the Exchange Fund or (d) a financial institution wholly or mainly owned by the Hong Kong Government; 3% applies if the beneficial owner is a company (other than partnership) which holds directly at least 15% of the payer's capital; and 5% applies in all other cases.
25. 0% applies if no withholding tax is levied in Hong Kong or the interest is derived and beneficially owned by (a) the Hong Kong Government (b) the Hong Kong Monetary Authority (c) the Exchange Fund or (d) a financial institution wholly or mainly owned by the Hong Kong Government; and 3% applies in all other cases.
26. 0% applies if the dividend is paid to (a) the Hong Kong Government (b) the Hong Kong Monetary Authority (c) the Exchange Fund or (d) any entity wholly or mainly owned by the Hong Kong Government; 5% applies if the beneficial owner is a company (other than partnership) which holds directly at least 15% of the payer's capital and 10% of dividend applies in all other cases.
27. 5% applies to royalty payments for the use of, or the right to use, industrial, commercial or scientific equipment; and 8% applies in all other cases.
28. 5% applies if the beneficial owner is a company which holds directly at least 25% of the payer's capital throughout a 365-day period that includes the day of the payment of the dividends; and 10% of dividend applies in all other cases.
29. 5% applies to royalty payments for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or films or tapes used for radio or television broadcasting; and 10% applies to royalty payments for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
30. 10% applies if the interest is beneficially owned by (a) any financial institution or insurance company, or (b) a resident of Hong Kong and is paid with respect to indebtedness arising as a consequence of a sale on credit by a resident of Hong Kong of any equipment, merchandise or services, except where the sale was between persons not dealing with each other at arm's length, and 15% applies in all other cases.
31. 5% applies to royalty payments for the use of, or the rights to use, any copyright of literary, artistic or scientific work; 10% applies to royalty payments for the use of, or the rights to use, any patent, trademark, design or model, plan, secret formula or process; and 15% applies in all other cases.

32. 15% applies if, other than the beneficial owner of the dividends is a pension scheme, dividends are paid out of income (including gains) derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax; and 0% applies in all other cases.
33. 0% applies if (a) the interest is beneficially owned by specified persons which include the Hong Kong Government, an individual, a listed company, a pension scheme and a financial institution which is unrelated to and dealing wholly independently with the payer or (b) the interest is paid by the Hong Kong Government, by a bank in the ordinary course of its banking business, or on a quoted Eurobond.
34. 7% applies to royalty payments for the use of, or the rights to use, any patent, design or model, plan, secret formula or process; and 10% applies to royalty payments in all other cases.
35. Withholding taxes are generally not levied, except on royalties.

# HUNGARY

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Budapest | Krisztián Vadkerti | +36 1 391 4220<br>vadkerti.krisztian@pkf.hu |

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## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Hungary |
| Capital: | Budapest |
| Main languages: | Hungarian |
| Population: | 9.62 million (2022 estimate) |
| Monetary unit: | Hungarian Forint (HUF) |
| Internet domain: | .hu |
| Int. dialling code: | +36 |

## KEY TAX POINTS

- Companies resident in Hungary are taxed on their worldwide income. A company is resident in Hungary if it is incorporated or has its place of management there. Non-residents carrying on business through a branch or permanent establishment are taxed on income of the branch or establishment.
- Corporate income tax is levied at 9% of the tax base.
- Capital gains of companies are treated as income.
- Local taxes include a local business tax at a maximum rate of 2%. As a part of Hungary's COVID-19 economic recovery plan the tax rate has been capped at 1% for SMEs until the end of fiscal year 2022.
- There is a range of tax incentives for investment, including special incentives for small and medium-sized companies.
- Transfer pricing rules allow adjustment of taxable profits in respect of transactions between related parties.
- VAT at 27% applies to the supply of goods and services while reduced rates or exemptions apply to certain supplies.
- Individuals resident in Hungary are taxed on their worldwide income. Non-residents are taxed only on Hungarian-sourced income.

## A. TAXES PAYABLE

### COMPANY TAX

Hungarian resident companies are liable to corporate income tax on all sources of income wherever arising and whether or not remitted to Hungary. A company is resident in Hungary if it is incorporated or has its place of management in Hungary. Branch offices are liable to corporate tax based on their local activity. Generally, the fiscal and accounting years are both required to end on 31 December. However, companies are entitled to use a different fiscal year if their course of business makes it reasonable.

Generally, tax is charged on the positive CIT base. If both the profit before taxation and the CIT base are below the minimum tax base (2% of total revenue with certain modifying items) then taxpayers may decide whether to pay tax on the minimum CIT base or to present their cost structure on an additional form attached to their tax returns.

Resident companies are required to make advance payments on corporate tax. The advance payments are based on the preceding year's tax results. Legal entities generally file their tax return and pay the taxes by 31st May, except where the fiscal year differs from the calendar year.

Fortune managed by fiduciaries or foundations has become subject to CIT. As a general rule, yield is taxable as if it were a dividend. However, a tax exemption is available subject to certain conditions.

### CAPITAL GAINS TAX

Capital gains of companies are treated as ordinary income and taxed accordingly. A participation exemption scheme exempts the disposal of 'reported participations' from corporate income tax. The reported participation scheme can be applied regardless of the rate of participation in the capital of the relevant company, except for controlled foreign companies. The exemption only applies to participations announced to the tax authority within 75 days after the acquisition of shares and held for at least one year.

In case of preferential restructuring, transfer of assets or exchange of shares capital gains are not taxable, if some conditions are met.

## BRANCH PROFITS TAX

Based on the Act of Hungarian Branch Offices and Commercial Representative Offices of Foreign Registered Companies, branch offices receive the same treatment as domestic companies.

## EXIT TAX

Transfer of business or branches or assets abroad can result in an exit tax liability as of 2020. The tax base is the difference of the fair market value and the book value of the transferred business/branch/asset. Tax can be paid in instalments within 5 consecutive years.

## VALUE ADDED TAX (VAT)

As an EU Member State, Hungary follows EU VAT Directives and Regulations. However, slight differences may occur, in particular with respect to goods and services not suitable for VAT deduction and the scope of domestic reverse charges. ECJ cases cannot be referred to directly during tax procedures, however, in litigation proceedings courts are willing to accept them in case of analogy.

A VAT group system is also available, where transactions among group members are not liable for VAT. Members of the group are related companies, established in Hungary. A VAT group is created upon request of the taxpayers and approved by the Hungarian Tax Authority. In relation to third parties, a VAT group is treated as a homogenous VAT taxpayer.

The general VAT rate is 27%. A discount rate of 18% is applicable to dairy products, cereals, flour, starch, and certain services provided exclusively for the control of entry into outdoor events. Certain pharmaceuticals and medicinal products, books, newspapers, sale of specific residential buildings, district heating, internet services, certain types of meat, catering and (as of 1 January 2020) accommodation services are taxed at 5%. Financial and investment services are tax-exempt. Quick fixes from 2020 are implemented in compliance with the EU directives.



As of 1 July 2018, all taxpayers who issued an invoice with VAT exceeding HUF 100,000 to another domestic taxpayer had a real-time data provision obligation. As from 1 July 2020 this threshold was reduced to zero, therefore all transactions performed in Hungary between domestic taxable persons had to be reported. As of 4 January 2021, the reporting obligation extends to each invoice (except those invoices that are related to the (M)OSS return).

In case of invoices issued by invoicing software transmission of data must be provided instantaneously, without any human intervention. When printed invoices are used for invoicing, the last day for submitting data is the 4th calendar day after issuing the invoice, but if VAT indicated in the invoice exceeds HUF 500,000, the final deadline for reporting is the following day after the issue of the invoice. If the transmission has failed due to breakdown or maintenance, the Tax Authority informs taxpayers in a notice. If there is a malfunction or other technical problem on the taxpayer's side, it is obliged to transmit the missing data to the HTA within 24 hours after the termination of technical issues. In case of non-compliance the default penalty is up to HUF 500,000 per unreported invoice.

Furthermore, cash registers also have an online connection to the Tax Authority.

Generally, VAT is refunded within 75, 45 or 30 days after the assessment was filed to the HTA, depending on the sum of the claim and the status of the taxpayer (is he classified as reliable or risky or without any classification). Considering the hardship endured by taxpayers due to the pandemic, temporary refunds are accelerated by 30 or 20 days (the latter is applicable to reliable taxpayers).

## LOCAL TAXES

Local authorities are permitted to levy the following taxes on individuals and businesses in accordance with a framework law (only foundations with public benefit goals can be ab novo tax exempt organisations). These taxes are deductible expenses for the computation of the CIT taxable base.

## LOCAL BUSINESS TAX

Economic activity carried out on the territory of a municipality may be taxed at up to 2% of net sales revenue less the cost of goods sold, the cost of mediated services, sub-contractors' expenses, material costs and the cost of R&D subject to the completion of certain administrative requirements. If the taxpayer runs a business related to different local governments, the tax liability has to be split among the municipalities involved according to total assets and labour costs of the business. As of 1 January 2021, the tax liability for temporary business activities has been abolished and calculation of tax liability as a flat rate daily liability cannot be used anymore.

Also, due to the pandemic, the rate of local business tax is capped at 1% for 2021 and 2022 for SMEs having less than HUF 4 billion in revenue or total assets on a consolidated basis. In this regard, taxpayers concerned must pay only 50% of their local business tax instalment.

## BUILDING TAX

The owner of a building may be taxed at up to HUF 2,086 per m² (2021) of the surface area or 3.6% of the market value.

## LAND TAX

The owner of land not built upon may be taxed at up to HUF 379 per m² (2021) or 3% of the market value of the land.

## COMMUNAL TAX OF PRIVATE PERSONS

The owner of a building or land, as well as the owner of a rental right on a flat not owned by a private person, may be subject to this tax. The upper annual limit of the tax is HUF 17,000 per real estate or rental right.

## B. DETERMINATION OF TAXABLE INCOME

Profits include all income and capital gains. The taxable basis is the accounting profit adjusted by prescribed items. Generally, expenses incurred wholly and exclusively for business purposes are deductible. The accounting profit is adjusted in accordance with the rules of the corporate income tax legislation, the most important of which are listed below.

## DEPRECIATION

For tax purposes, the straight-line method is normally adopted. Assets should have depreciation time apportioned.

| Asset | Annual Rate of Depreciation (%) |
|---|---|
| Industrial structures | 2 |
| Agricultural structures | 3, 5, 10, 15 |
| Motor vehicles | 20 |
| Computer equipment | 33, 50 |

Assets costing less than HUF 200,000 may be fully written off in the year of purchase. In the case of leased assets, the lessor is allowed to claim depreciation of 5% for buildings and 30% for machinery and equipment. Any depreciation rate can be applied to intellectual property between the rate calculated based on the useful lifetime and 50%.

## INVENTORY

Inventories are generally valued at the lower of cost and market value. Cost may be determined on the basis of FIFO or average cost method.

## CAPITAL GAINS AND LOSSES

See discussion above.



## DIVIDENDS

Dividends received from non-CFC companies are not subject to corporate income tax. As of 1 January 2021, dividends received from a CFC can be exempted from CIT liability to the extent they are associated with 'genuine' transactions.

## INTEREST DEDUCTIONS

Following the implementation of the Anti-Tax Avoidance Directive 2016/1164 (ATAD) into domestic legislation, a new interest limitation rule replaced the previous debt-to-equity ratio-based thin capitalisation rule that came into effect in Hungary on 1 January 2019. As a main rule the interest expense is tax deductible if:

- the net financing cost does not exceed HUF 939,810,000 (approximately EUR 3 million); or
- the net financing cost does not exceed 30% of the company's EBITDA for tax purposes (which is higher).

Taxpayers are allowed to carry forward the non-deductible net financing costs and utilise them (i.e. make them tax deductible), provided that the taxpayer has unutilised interest deduction capacity in a certain tax year.

Former thin capitalisation rules (i.e. a debt-to-equity ratio cannot exceed 3:1) are applicable for intercompany loans granted before 17 June 2016, unless the term or sum of the loan is extended. New rules relate to the extension only.

## LOSSES

Losses can be carried forward for 5 tax years and can only be used up to 50% of the tax base for any particular year. Losses may not be carried back against profits of previous years. No distinction is made between trading and capital losses.

## FOREIGN SOURCE INCOME

Hungarian authorities levy taxes on resident companies on all profits arising from foreign sources in the same way as income from Hungarian sources.

## TAX INCENTIVES

Tax incentives for innovative investments (developments) are granted by the Hungarian Government at the request of the taxpayer. These incentives are granted to companies that meet the requirements set out in law. The value of the incentive is capped at 80 % of CIT due. The minimum value of the investment must be at least:

- HUF 3 billion;
- HUF 1 billion in certain regions determined by the Government;
- HUF 6 billion or HUF 3 billion for investment serving job creation which results in product diversification and/or new process innovation;
- HUF 200 million for investment made by small enterprises;
- HUF 300 million for investment made by medium-sized enterprises;
- HUF 100 million in the case of research and development, environment-protecting investments, zoogenic food production and film and video production;
- HUF 100 million at present value in projects started after issuing quoted shares;
- HUF 100 million in 'free entrepreneurial zones' designated by the Government;
- Job creation (there is no minimum value).

The incentives are available subject to conditions effective in the year when the investment is made and in the subsequent twelve years.

Effective 1 January 2022, the value threshold of investments made by small enterprises is HUF 50 million, while the value threshold of investments made by medium-sized enterprises is HUF 100 million.

## TAX CREDITS ON DONATIONS

A tax saving is available for companies on donations granted to film productions and certain sports clubs and associations (football, handball, basketball, volleyball, hockey and water polo). This can be achieved through a tax credit or a tax base decrease.

## TAX INCENTIVES FOR INVESTORS IN "START-UPS"

Pre-tax profit may be decreased by three times the cost of shareholdings acquired in "start-up" companies determined by the act up to HUF 20 million per tax year. The tax incentive can be applied in four equal instalments, in the tax year of acquisition of shares and in the subsequent three tax years.

## TAX INCENTIVES FOR IMMOVABLE PROPERTIES TREATED AS CULTURAL HERITAGE

The maintenance costs related to immovable properties subject to national or local heritage protection are deductible from the tax base at up to 50 % of the pre-tax profit.

In case of renovation 200% of the incurred costs are deductible from the tax base in addition to the amortisation costs. The tax relief can be split among related companies, but the sum cannot exceed EUR 50 million in case of maintenance and EUR 100 million in case of renovation. This tax incentive can be used in the tax year when finishing the investment and in the subsequent five tax years.

## OTHER TAX INCENTIVES

- Micro, small and medium-sized companies may deduct investment expenses incurred for putting business assets into use of up to the amount of pre-tax profits if: (i) the company qualifies as a micro, small or medium size company at the end of the tax year and (ii) the owners of the company are exclusively private persons throughout the whole tax year.
- A development reserve is available up to the pre-tax profit. Amounts classified as development reserve are tax-exempt but can only be used for investment purposes in the four tax years following the creation of the reserve.
- Taxpayers may decrease their corporate income tax base with regard to rental homes built by employers for their employees.
- Small and medium-sized companies may reduce their tax liability by the interest paid on loans granted by financial institutions for purchasing tangible assets.
- Taxpayers may decrease their corporate income tax liability with regard to investments related to energy savings.



## C. FOREIGN TAX RELIEF

Domestic law provides unilateral relief in the form of credits for foreign taxes paid. The credit is calculated separately for each item and for each source country. It is limited to 90% of foreign tax paid and cannot exceed Hungarian tax on the same income.

In addition, there are international treaties for the avoidance of double taxation.

## D. CORPORATE GROUPS

As from 1 January 2019, taxpayers may opt for a group taxation regime for corporate income tax purposes. Group taxation is available to affiliated entities (corporate entity, economic interest grouping, European public limited liability company, cooperative, European Cooperative Society, a foreign entity that has its place of management in Hungary, and a Hungarian branch of a non-resident taxpayer) resident in Hungary for tax purposes where:

- a taxpayer holds at least 75% of the voting rights in another taxpayer; or
- a person (domestic or foreign, legal or natural person) has at least 75% voting rights in two taxpayers.

Both direct and indirect voting rights are taken into consideration, subject to the condition that the person has at least a 75% direct interest in the intermediary person. Foreign subsidiaries of Hungarian companies cannot participate in a group. Foreign permanent establishments do not participate in their own right, but as part of a Hungarian legal person.

By opting for group taxation, group members are able to offset their operating losses and tax incentives against the income of, or tax payable by, another group member subject to conditions. In addition to the above, group taxation also substantially eases the transfer pricing obligations (e.g., preparing transfer pricing documentation and adjusting the tax bases) as the group members do not need to fulfil these obligations in respect of transactions performed between them. The taxpayer may opt for the group taxation regime by submitting a declaration to the tax authorities between the first and twentieth day of the month before the last month of the tax year.

## E. RELATED PARTY TRANSACTIONS

Transfer pricing rules allow the tax authorities to adjust taxable profits where transactions between related parties are not at arm's length. Transfer pricing documentation must be prepared if there are controlled transactions with related parties.

## F. WITHHOLDING TAX

There is no withholding tax on dividends, royalties and interest paid to non-resident companies.

## G. EXCHANGE CONTROL

There is no exchange control in Hungary.

## H. PERSONAL TAX

Resident individuals are taxed on their worldwide income, although special rules apply to foreign nationals residing in Hungary only for employment purposes. Non-residents are taxed only on their income from Hungarian sources or income taxable in Hungary on the basis of an international convention or reciprocity.

An individual is considered a Hungarian tax resident if one of the following criteria is met:

- Hungarian citizen;
- Citizen of any Member State of the European Economic Area ("EEA") whose stay in Hungary exceeds 183 days in the tax year which corresponds with the calendar year in Hungary;
- Third country citizen who has permanent residence status or is a stateless person in Hungary.

Even if the above-mentioned criteria are met, other criteria of the Hungarian legislation have to be reviewed as well. However, the provisions of double tax treaties override domestic tax legislation.

A flat rate of 15% applies to all income of private individuals, including both the consolidated tax base and separately taxed income (i.e. interest, dividends, etc.). Fringe benefits are treated as taxable income.

- Benefits specified in the Act include vouchers for hospitality only, and are subject to 15% personal income tax on fringe benefits (13% social contribution is payable as well);
- Other fringe benefits need to be multiplied by 1.18 and the amount received is taxed at a rate of 15% PIT while also a 13% social contribution is levied. These fringe benefits include only gift coupons distributed under limited circumstances and allocations into the voluntary mutual insurance funds determined by law.

Several incentives are available supporting families or newly married couples.

Depending on the number of dependents, a family allowance scheme can be put in place: HUF 66,670 per child is deductible from the monthly consolidated tax base if the employee has one child, HUF 133,330 per child if the employee has two children, and HUF 220,000 per child is deductible if the employee has at least three children, subject to certain conditions. The unused family personal income tax allowance can be deducted from social security contribution liability and can be distributed among parents as well.

In addition, families with children can get support for the tax-exempt acquisition or renovation of residencies.

Resident expatriates are taxed on 100% of their remuneration. A social security contribution exemption is available for secondments not exceeding 2 years. Social security contributions are paid by the employee at a rate of 18.5%. Employers pay 13% social contribution tax on the gross income of their employees.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

There is no withholding tax under domestic law on dividends, interest and royalties and no tax is withheld on such payments to non-resident companies, even where a treaty allows such tax.

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Domestic rates:** | | | |
| Corporations | 0 | 0 | 0 |
| Individuals | 15 | 15 | 15 |
| **Treaty countries:** | | | |
| Albania | 5/10 | 0 | 5 |
| Armenia | 5/10 | 10 | 5 |
| Australia | 15 | 10 | 10 |
| Austria | 10 | 0 | 0 |
| Azerbaijan | 8 | 8 | 8 |
| Bahrein | 0/5 | 0 | 0 |
| Belarus | 5/15 | 5 | 5 |
| Belgium | 10 | 15 | 0 |
| Bosnia and Herzegovina | 10 | 0 | 10 |
| Brazil | 15 | 10/15 | 15/25 |
| Bulgaria | 10 | 10 | 10 |
| Canada | 5/10/15 | 10 | 0/10 |
| China | 10 | 10 | 10 |
| Croatia | 5/10 | 0 | 0 |
| Cyprus | 5/15 | 10 | 0 |
| Czech Republic | 5/15 | 0 | 10 |
| Denmark | 0/15 | 0 | 0 |
| Egypt | 15/20 | 15 | 15 |
| Estonia | 5/15 | 10 | 5/10 |
| Finland | 5/15 | 0 | 5 |
| France | 5/15 | 0 | 0 |
| Georgia | 0/5 | 0 | 0 |
| Germany | 5/15 | 0 | 0 |
| Greece | 10/45 | 10 | 10 |
| Hong Kong | 5/10 | 5 | 5 |
| Iceland | 5/10 | 0 | 10 |
| India | 10 | 10 | 10 |
| Indonesia | 15 | 15 | 15 |
| Iran | 0 | 0/5 | 5 |
| Ireland | 5/15 | 0 | 0 |
| Israel | 5/15 | 0 | 0 |
| Italy | 10 | 0 | 0 |

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Japan | 10 | 10 | 0/10 |
| Kazakhstan | 5/15 | 10 | 10 |
| Kyrgyzstan | 5/10 | 0/5 | 5 |
| Kosovo | 0/5 | 0 | 0 |
| Kuwait | 0 | 0 | 10 |
| Latvia | 5/10 | 10 | 5/10 |
| Liechtenstein | 0/10 | 0 | 0 |
| Lithuania | 5/15 | 10 | 5/10 |
| Luxembourg | 0/10 | 0 | 0 |
| Malaysia | 10 | 15 | 15 |
| Malta | 5/15 | 10 | 10 |
| Mexico | 5/15 | 10 | 10 |
| Moldova | 5/15 | 10 | 0 |
| Mongolia | 5/15 | 10 | 5 |
| Montenegro | 5/15 | 10 | 10 |
| Morocco | 12 | 10 | 10 |
| Netherlands | 5/15 | 0 | 0 |
| North Macedonia | 5/15 | 0 | 0 |
| Norway | 10 | 0 | 0 |
| Oman | 10/0 | 0 | 8 |
| Pakistan | 15/20 | 15 | 15 |
| Philippines | 15/20 | 15 | 15 |
| Poland | 10 | 10 | 10 |
| Portugal | 15/10 | 10 | 10 |
| Qatar | 0/5 | 0 | 5 |
| Romania | 5/15 | 5 | 10 |
| Russia | 10 | 0 | 0 |
| San Marino | 0/5/15 | 0 | 0 |
| Saudi Arabia | 5 | 0 | 5/8 |
| Serbia | 5/15 | 10 | 10 |
| Singapore | 5/10 | 5 | 5 |
| Slovak Republic | 5/15 | 0 | 10 |
| Slovenia | 5/15 | 5 | 5 |
| South Africa | 5/15 | 0 | 0 |
| South Korea | 5/10 | 0 | 0 |
| Spain | 5/15 | 0 | 0 |
| Sweden | 5/15 | 0 | 0 |
| Switzerland | 0/15 | 0 | 0 |
| Taiwan | 10 | 10 | 10 |
| Thailand | 15/20 | 10/25 | 15 |
| Tunisia | 10/12 | 12 | 12 |
| Turkey | 10/15 | 10 | 10 |
| Turkmenistan | 5/15 | 10 | 10 |
| Ukraine | 5/15 | 10 | 5 |
| United Arab Emirates | 0 | 0 | 0 |
| United Kingdom | 0/10/15 | 0 | 0 |
| United States | 5/15 | 0 | 0 |
| Uruguay | 15 | 15 | 10/15 |
| Uzbekistan | 10 | 10 | 10 |
| Vietnam | 10 | 10 | 10 |

On 4 March 2021, Hungary published the law for the ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). Hungary has stated to implement the minimum standard (i.e., the general purpose for the avoidance of double non-taxation, adopting the general anti-abuse rule, adopting the rules on arbitration) in its ratification instrument.

# INDIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| National/Chennai | Sudha Ashok | +91 8056028505<br>sudha.a@pkfindia.in |
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| New Delhi | S. Manigandan | +91 99 999 46374<br>manigandan@pkfindia.in |
| Hyderabad<br>72 | Viswanadh Kuchi | +91 99 729 23589<br>viswanadh.kuchi@pkfindia.in |
| Mumbai | R. Suriyanarayanan | +91 98 210 11692<br>rsn@pkfindia.in |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of India |
| Capital: | New Delhi |
| Main languages: | Hindi, English |
| Population: | 1.4 billion (2022 estimate) |
| Monetary unit: | Indian Rupee (INR) |
| Internet domain: | .in |
| Int. dialling code: | +91 |

## KEY TAX POINTS

- Companies resident in India are subject to income tax on their worldwide income and capital gains. Non-resident companies are subject to income tax on their income from Indian sources.
- Dividend distribution tax payable by the Company has been abolished from tax year 2020-21 onwards.
- Transfer pricing rules provide for income from or expense or interest arising from international transactions among associated enterprises to be computed at an arm’s length basis.
- Authority for Advance Rulings to be discontinued and replaced by Board for Advance Rulings (‘BAR’).
- There is also a mechanism of unilateral and bilateral Advance Pricing Agreements (APA mechanism) for transfer pricing transactions.
- The profits of small businesses or professions may be subject to presumptive taxation; income is deemed to be a percentage of gross receipts in case of presumptive taxation.
- There is no inheritance tax and wealth tax.
- Any person earning taxable income from India, should obtain PAN (Permanent Account Number) and file income tax return in India (subject to certain exceptions).

## A. TAXES PAYABLE

The following are the major taxes applicable:

1. Income Tax/Corporate tax – A direct tax levy on Income.
2. Goods and Services Tax – An Indirect Tax levy on transaction of supply of goods and services, being a combined levy by Central and State Governments.
3. Securities Transaction tax on dealing in securities through recognised stock exchanges.
4. Commodities Transaction tax on dealing in commodities through recognised commodity exchanges.
5. Equalisation Levy on gross consideration paid/payable for online advertisement, provision of digital advertising space and any other services as may be notified by Government.
6. Customs Duty – It is an indirect tax collected on import and export of goods.
7. Stamp Duty – Tax levied on legal documents.
8. Land and Property Tax – It is an ad valorem tax on the value of property.

## INCOME TAX

The Indian tax year is a financial year from 1 April to 31 March. The amount of tax payable by Companies is computed after reckoning income tax at prescribed rates and surcharge (SC) computed on income tax.

The aggregate of income tax and Surcharge (SC), wherever applicable, is further increased by 4% Cess. All tax rates mentioned hereinafter in this Country Chapter are net effective rates, inclusive of SC & Cess specified above.

Section 40 (a)(ii) of the IT Act has been amended to clarify that the term "Tax" shall include and shall be deemed to have always included any surcharge or cess paid along with tax. Accordingly, payment of surcharge and cess are not allowed as a deduction.

## COMPANY TAX

Residential status

The scope of taxable income varies depending upon the residential status of the Company. The following companies are resident in India:

a) Company incorporated in India.

b) Any other Company whose place of effective management is in India.

Non-resident companies are those which are not resident companies.

Resident companies are subject to income tax on all sources of income and capital gains wherever arising. Foreign companies are subject to income tax only on their income from Indian sources. Company tax is levied as follows for the tax year 2021-22:

## DETERMINATION OF TAXES

| Companies | Rate*: if net income does not exceed INR 10 million | Rate*: if net income is in the range of INR 10 million – 100 million | Rate*: if net income exceeds INR 100 million |
|---|---|---|---|
| Optional Rate for domestic Company as per Section 115BAA*** | 25.17% | 25.17% | 25.17% |
| Optional Rate for new domestic company into manufacturing as per Section 115BAB** | 17.16% | 17.16% | 17.16% |
| Domestic companies with a turnover up to 400 crores in financial year 2020-21 | 26.00% | 27.82% | 29.12% |
| Domestic companies other than covered above | 31.20% | 33.384% | 34.944% |
| Foreign companies | 41.60% | 42.432% | 43.680% |

*The rates given are after considering surcharge and cess. Surcharge is applicable at 7% for domestic companies and 2% for foreign companies if the net income exceeds INR 10 million but does not exceed INR 100 million and 12% for domestic companies and 5% for foreign companies if the net income exceeds INR 100 million.

Surcharge applicable in case of Section 115BAA and Section 115BAB is at 10%. However, there are marginal relief provisions for border line cases transitioning into a higher tax slab. Cess is applicable at 4% on income tax and surcharge.

**In order to provide relief to new domestic companies engaged solely in the business of manufacture or production of any article or thing, a new section 115BAB has been inserted with effect from tax year 2019-20 onwards, which provides an option to domestic companies to pay tax at 15%, provided inter-alia, the following conditions are met:

- The Company has been setup and registered on or after 1 October 2019 and commenced manufacturing on or before 31 March 2024;
- The Company is engaged in the business of manufacture or production of any article or thing and is not engaged in any other business;
- The Company is a new Company and not formed by splitting up or by reconstruction, of a business already in existence;
- The Company has not used any machinery or plant previously used for any purpose;
- The Company has not used any building previously used as a hotel or a convention centre;
- The Company does not claim certain deductions specified in the section and loss pertaining to the same.

Once the option is exercised it will apply to subsequent assessment years and it cannot be subsequently withdrawn for the said year or any other previous year.

***Domestic companies have been given an option to opt for income tax rate at 22% as per section 115BAA with effect from tax year 2019-20 onwards, provided inter alia, the following conditions are met: the Company does not claim certain deductions specified in the section and does not claim the loss pertaining to the same.

Once the option is exercised it will apply to subsequent assessment years and it cannot be subsequently withdrawn for the said year or any other previous year.

The following income of foreign companies is taxed at the following specified rates on a gross basis and not at the regular tax rate.

| Income | Rate: if net income does not exceed INR 10 million | Rate: if net income is in the range of INR 10 million – 100 million | Rate: if net income exceeds INR 100 million |
|---|---|---|---|
| Royalties and fees for technical services (subject to certain conditions) received pursuant to an agreement, if such agreement is made after 31 March 1976* | 10.40% | 10.608% | 10.92% |
| Interest income received by a foreign company or a non-resident non corporate taxpayer from Government or an Indian concern on money borrowed or debts incurred by Government or the Indian Concern in foreign currency | 20.80% | 21.216% | 21.84% |
| Interest Income from an infrastructure debt fund referred to in clause (47) of Sec 10 | 5.20% | 5.304% | 5.460% |
| Interest income from units of Mutual Funds purchased in foreign currency | 20.80% | 21.216% | 21.84% |
| Income (including dividend) from Global Depository Receipts (GDRs) under section 115AC | 10.40% | 10.61% | 10.92% |
| Income of offshore funds (overseas company) under section 115AB | 10.40% | 10.61% | 10.92% |
| Payment by way of interest by an Indian specified company or a business trust to a foreign company on foreign currency approved loans or long-term infrastructure bonds from outside India or by way of issue of rupee denominated bonds, as referred to in sec 194LC | 5.20% | 5.304% | 5.460% |
| Payment by way of interest by an Indian specified company or a business trust to a foreign company by way of issue of any long-term bond or rupee denominated bonds during the period from 1 April 2020 to 30 June 2023 which is listed on a recognised stock exchange in any International Financial Services Centre, as referred to in sec 194LC | 4.16% | 4.243% | 4.368% |
| Interest income received by a non-resident or a foreign company from a business trust with effect from 1 October 2014 | 5.20% | 5.304% | 5.460% |
| Any other dividend income | 20.80% | 21.22% | 21.84% |
| **Income of Foreign Institutional Investors (FIIs) in listed securities:** | | | |
| - Short-term capital gains in respect of transactions chargeable to Securities Transaction Tax | 15.60% | 15.912% | 16.380% |
| - Long-term capital gains in excess of INR 0.1 million in respect of transactions chargeable to Securities Transaction Tax | 10.40% | 10.608% | 10.92% |
| - Short-term capital gains in cases other than the one mentioned above | 31.2% | 31.824% | 32.76% |
| - Long-term capital gains other than those subjected to Securities Transaction Tax (without indexation) | 10.40% | 10.608% | 10.92% |
| - Interest income of a rupee denominated bond of an Indian company or Government security which is payable after 31st May 2013 but before 1st July 2023, received by a foreign institutional Investor or a qualified foreign investor as referred to in section 194 LD | 5.20% | 5.304% | 5.460% |
| - Interest income of a municipal debt securities of an Indian company or Government security which is payable after 31st March 2020 but before 1st July 2023, received by a foreign institutional Investor or a qualified foreign investor as referred to in section 194 LD | 5.20% | 5.304% | 5.460% |
| - Any Income from securities (Dividends & Interest ) Sec 196D | 20.80% | 21.216% | 21.84% |

* The definition of ‘royalty’ includes the transfer of all or any right for use (or right to use) computer software (including granting of

license) irrespective of the medium through which such right is transferred. Furthermore, royalty includes any consideration in respect of any right, property or information, whether or not:

a) The possession or control of such right, property or information is with the payer.

b) Such right, property or information is used directly by the payer.

c) Location of such right, property or information is in India.

Royalty also includes any consideration for the use of any process, where the process includes transmission by satellite (including up-linking, amplification and conversion for down linking of any signal), cable, and optic fibre or by any other similar technology, whether or not such process is secret.

## CAPITAL GAINS TAX

Gains arising from transfer of a long-term capital asset, i.e., assets held for a period of more than two years (one year in case of shares/securities of companies listed on a recognised stock exchange in India or a unit of an equity-oriented fund or a unit of business trust and two years in case of unlisted shares and immovable property) are regarded as long-term capital gains.

Gains arising from transfer of a short-term capital asset i.e., assets held for less than the respective period stated above are regarded as short-term capital gains.

Long-term capital gains on the sale of other assets are taxed separately at the following rates:

| Particulars | Rates | | | | | |
|---|---|---|---|---|---|---|
| | Income does not exceed INR 10 million | | Income exceeds INR 10 million but does not exceed INR 100 million | | Income exceeds INR 100 million | |
| **Long-term capital gains:** | **For foreign companies** | **For Indian companies** | **For foreign companies** | **For Indian companies** | **For foreign companies** | **For Indian companies** |
| For listed securities or zero-coupon bonds (Without STT) | 10.40% without indexation or 20.80% with indexation, whichever is lower. | 10.40% without indexation or 20.80% with indexation, whichever is lower | 10.61% without indexation or 21.22% with indexation, whichever is lower | 11.13% without indexation or 22.26% with indexation, whichever is lower | 10.92% without indexation or 21.84% with indexation, whichever is lower | 11.65% without indexation or 23.30% with indexation, whichever is lower |
| For unlisted securities (in case of residents) | NA | 20.80% with indexation | NA | 22.26% with indexation | NA | 23.30% with indexation |
| For unlisted securities (in case of non- residents) | 10.40% without indexation or foreign exchange conversion benefit | NA | 10.61% without indexation or foreign exchange conversion benefit | NA | 10.92% without indexation or foreign exchange conversion benefit | NA |
| **Short-term capital gains:** | **For foreign companies** | **For Indian companies** | **For foreign companies** | **For Indian companies** | **For foreign companies** | **For Indian companies** |
| For listed securities or units or zero-coupon bonds (subject to securities transaction tax) | 15.60% | 15.60% | 15.912% | 16.69% | 16.377% | 17.472% |
| For others | 41.60% | 31.20% | 42.428% | 33.384% | 43.68% | 34.944% |

Long-term capital losses can only be set off against long-term capital gains. Short-term capital losses can be set off against any capital gain. Capital losses can be carried forward for a period of eight years for set off against capital gains of the same type in subsequent years. There are no provisions for carrying back losses to earlier years. Capital gains are taxable in India even on account of indirect transfers of assets.

Non-resident Indians (NRIs) earning long-term, capital gains on specified assets acquired in convertible foreign exchange are taxed at 11.44% or 11.960% (if SC is applicable) or 10.40% and on other assets at 22.08% or 23.920% (if SC is applicable) or 20.8%. Any other income from investments is taxed at 22.08% or 23.920% (if SC is applicable) or 20.8%.

## INCOME FROM OTHER SOURCES

Income from other sources is the residual head of income. Any income which is not specifically taxed under any other head of income will be taxed under this head. For example, when the consideration received by a company (in which the public are not substantially interested) from a resident person, for issue of shares exceeding the face value of such shares (share premium), the difference between the consideration and the fair market value of such shares shall be chargeable to tax under "income from other sources".

## MINIMUM ALTERNATE TAX (MAT)

With effect from FY 2019-20, in the case of companies, if the tax payable on their taxable income for any financial year is less than

15%* of their 'book profit', minimum alternate tax is payable on the total income for financial year of such book profits. MAT is also applicable to foreign companies. The rate of MAT is as follows:

| | If book profit doesn't exceed INR 10 million | If book profit is in the range of INR 10 million – 100 million | If book profit exceeds INR 100 million |
|---|---|---|---|
| Domestic Company | 15.60% | 16.692% | 17.472% |
| Foreign Company | 15.60% | 15.912% | 16.38% |

*If the Company is located in International Financial Service Centres, then applicable MAT will 9%.

'Book profit' means net profit as per the profit and loss account as adjusted (increased or reduced) by certain specified items, which includes income tax paid or payable and the provisions made for unascertained liabilities, amounts carried to any reserves, provision for diminution in the value of assets, losses brought forward or unabsorbed depreciation, whichever is less as per books, deferred tax, interest on tax, SC, Cess, income exempt from tax.

**Other key points with respect to MAT**

a. For the purpose of computing book profits, income charged under presumptive basis should be excluded. The MAT paid could be carried forward and set off against normal tax (in excess of MAT for that year) of future years for up to 15 years. With effect from FY 2011-2012, carried forward MAT shall also apply to a limited liability partnership which has been converted from a private company or unlisted public company.

b. MAT is also applicable in respect of SEZ units as well as developers. MAT is not applicable to:
   - Any income arising from life insurance business referred to in section 115B.
   - Domestic company who has exercised the option referred to under section 115BAA or section 115BAB.

c. With effect from 1 April 2021, where there is an increase in the book profit of the income of a financial year due income of past year(s) on account of secondary adjustment or APA ('Advance Pricing Agreement') entered by the taxpayer, the tax officer shall recompute the book profit and tax payable of past years in the prescribed manner.
   - The taxpayer will have to make an application in this regard to the assessing officer.
   - The procedure and time periods applicable for "rectification proceedings" will be applicable.

## TONNAGE TAX FOR SHIPPING INDUSTRY

The tonnage tax scheme for eligible shipping companies provides for a tonnage-based presumptive tax. Indian shipping companies now have the option to pay taxes on tonnage income in place of normal taxable income. There is a lock-in period of 10 years. If a company opts out, it is debarred from re-entry for 10 years. Tonnage income is to be taxed at the normal corporate tax rate. Tax is payable even if there is a loss in a year. Tonnage income is separately calculated for each qualifying ship by multiplying the number of days in the previous year with the daily tonnage income as per specified slab rates.

## DIVIDEND DISTRIBUTION TAX

Until 31 March 2020, the dividend was not taxable in the hands of the recipient due to the applicability of Dividend Distribution Tax (DDT). From tax year 2020-21 onwards, the DDT is abolished, and any dividend received after the aforesaid year shall be taxable in the hands of the recipient. Dividend declared, distributed or paid by a domestic company shall be subject to deduction of tax at source under Section 194 of the Act. Such tax shall be deducted at the rate of 10% on dividend subject to the threshold limit of INR 5,000. However, a beneficial tax rate as per tax treaty, if any, may be availed by the recipient.

## DIVIDENDS FROM FOREIGN COMPANIES

An Indian Company receiving a dividend from a Foreign Company in which the Indian Company holds 26% or more of equity share capital is liable to tax at 15% with surcharge and cess as applicable.

It has now been provided that the special rate of tax under section 115BBD shall not be available to Indian Companies with effect from Assessment year 2023-24.

## BRANCH PROFITS TAX

Profits of a branch office of a Foreign Company in India are taxed @ 40% in India on income received and/or accrued in India (net of allowable expenses) at the rate applicable to Foreign Companies.

| | |
|---|---|
| If net income does not exceed INR 10 million, plus health and education cess @4% | 41.60% |
| If net income exceeds INR 10 million but does not exceed INR 100 million, plus an additional @ 2% surcharge and health & education cess | 42.432% |
| If net income exceeds INR 100 million, plus an additional @ 5% surcharge and health & education cess | 43.68% |

Under section 285, every person, being a non-resident having a liaison office in India set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999 (42 of 1999) will have to file a statement (Form No 49C- Rule-114DA, duly verified by the Chartered Accountant) pertaining to the liaison office to the authority within 60 days from the end of such financial year.

There are special provisions relating to the conversion of the Indian branch of a foreign bank into a subsidiary Indian Company under section 115JG in the Act.

## ADVANCE RULINGS

In order to determine the tax liability in India in advance, and thereby avoid litigation and uncertainty in tax matters, a mechanism of 'Advance Rulings' is available to non-residents in relation to Indian transactions. Indian residents can also seek advance rulings on transactions undertaken or proposed to be undertaken with non-residents.

The 'Authority for Advance Rulings' (AAR) has been empowered to determine whether an arrangement which is proposed to be undertaken by any person (whether resident or non-resident) is an impermissible avoidance arrangement as referred to in Chapter X-A or not. A resident (falling within any such class or category of persons as the Central Government notifies) can approach the Advance Ruling authority in relation to its tax liability arising out of a transaction which is undertaken (or is proposed to be undertaken) by it.

The advance ruling is binding on the applicant and on the tax authorities. Application can be made to the AAR seeking a ruling on any question of fact or law on payment of a prescribed fee. The ruling is generally delivered within six months of making the application and is made in writing giving reasons for the decision of the AAR.

From tax year 2021 onwards, AAR is discontinued and replaced by Board for Advance Rulings ('BAR'). The BAR shall consist of two members, each being an officer not below the rank of Chief Commissioner. Orders of the BAR appealable before the High Court by the taxpayer or the tax department. BAR shall function on and after a notified date.

## GOODS AND SERVICE TAX

The 101st Constitutional Amendment Act has amended various Articles in the Constitution of India to provide concurrent power to both the Central Government and State Governments to levy tax on supplies that now subsume earlier taxable events of manufacture, sale and service under the erstwhile tax regime. The GST Law was introduced with effect from 1st July 2017.

The Central GST Act provides for levy of Central Goods & Services Tax (CGST) on Intra-state supplies of goods or services or both. Concurrently, respective State GST Acts provide for levy of respective State GST (SGST) on intra-State supplies of goods or services or both. The Integrated GST Act provides for levy of IGST on Inter-State supplies of goods or services or both. Thus, in short, CGST and SGST will be levied on intra-State supplies of goods and services whereas IGST will be levied on inter-State supplies of goods and services. Each State Government has enacted statute for levy of GST on supplies of goods and services. Union Territories Goods & Services Tax (UTGST) is applicable in case of Union territories (UT) which do not have legislature. They do not have SGST. Delhi and Puducherry are Union Territories that have their own legislature. Hence, they have their own SGST. The GST Law was extended to Jammu and Kashmir with effect from 8 July 2017. Area up to 200 nautical miles from baseline inside sea is also part of "India" for the purpose of GST.

I

It is a blanket indirect tax that had subsumed several indirect state and federal taxes such as Value added tax (VAT) and Central Excise duty, and different state taxes, central surcharges, entertainment tax, luxury tax and a slew of related levies by local bodies.

GST is based on the VAT concept of allowing input tax credit of tax paid on inputs, input services and capital goods, for payment of output tax. This avoids a cascading effect of tax on taxes.

In addition, GST Compensation Cess is payable on most of luxury such as motor cars, sin or unhealthy goods and services like pan masala, tobacco products, coal, aerated waters, etc.

In case of a supply within State/Union Territory, CGST will be 50% of IGST Rate and SGST/UTGST will be the remaining 50% of applicable IGST rate.

**Rates of Tax under GST (Equal to IGST rates)**

| Goods | Services |
|---|---|
| 0% | 0% |
| 0.25% | - |
| 3% | - |
| 5% | 5% |
| 12% | 12% |
| 18% | 18% |
| 28% | 28% |

## INPUT TAX CREDIT MECHANISM

Uninterrupted and seamless chain of credit for taxes paid on purchases (Input Tax Credit, shortly ITC) is one of the key features of Goods and Services Tax. Under the earlier system of taxation before GST, credit of taxes being levied by Central Government was not available as set-off for payment of taxes levied by State Governments, and vice versa. One of the most important features of the GST system is that the entire supply chain would be subject to GST to be levied by Central and State Government concurrently. As the tax charged by the Central or the State Governments would be part of the same tax regime, credit of tax paid at every stage would be available as set-off for payment of tax at every subsequent stage except for certain notified supplies on which ITC is not available to supplier/taxpayer. Tax credit is not allowed on purchase of goods and services which are used for further supply (interchangeably used with word "sale" which is normal and major form of supply) of goods/services/both which are exempted.

As GST seeks to consolidate multiple taxes into one, various transitional provisions are incorporated into GST law to ensure that the transition to the GST regime was very smooth and hassle-free, and no ITC/benefits earned in the existing regime are lost.

Though credit on both Central tax (CGST), State Tax/Union Territory tax (SGST/UTGST) and Integrated Tax (IGST) is available freely, the following protocol to be adhered, to avail and utilise the credit of these taxes.

Input tax credit availed, utilised, refunded and carry-forward balance is maintained electronically for all registered taxpayers at common portal namely 'Goods and Service Tax Network'.

Credit of CGST cannot be used for payment of SGST/UTGST and credit of SGST/UTGST cannot be utilised for payment of CGST. Credit of IGST can be used for payment of CGST/SGST/UTGST or vice versa. It is to be noted that only after the credit of IGST has been fully utilised the credit of CGST or SGST/UTGST, lying in balance in Electronic Credit Ledger, can be utilised in any order.

The amendments to the CGST Act now provide for additional conditions to be satisfied by a person registered under GST to be entitled for availing input tax credit after reconciling the details of the invoice available with him against the statement of outward supplies furnished by the corresponding supplier with effect from 1 January 2022.

These conditions have been imposed to arrest the issue of tax frauds by way of fake tax invoices/circular trading of tax invoices. Taxes paid on purchases shall be eligible for credit consequent upon suppliers furnishing the details of such tax invoices in their statement of outward supplies and availability of details of such tax invoices in the recipient's statement of inward supplies. The condition has been imposed in addition to the basic conditions such as recipient in possession of tax invoices & goods or services or both with intention to use in course or furtherance of business.

Additional conditions have now been imposed vide Finance Act 2022 to provide that credit of input tax on purchases communicated to the recipient statement of inward supplies shall be restricted, if the supplier has

- Defaulted in payment of tax for such continuous periods as may be prescribed;
- Tax payable in excess of tax paid to the Government for such periods as may be prescribed;
- Availed input tax credit more than credit entitled to him.

The statutory time limit to avail input tax has been extended up to 30th November following the end of the financial year to which the tax invoice or debit note pertains to or furnishing of the annual return, whichever is earlier. Furthermore, the statutory time limit to rectify an omission or incorrect particulars already furnished in the tax return has also been extended up to 30th November following the end of the financial year, or the actual date of furnishing of the relevant annual return, whichever is earlier. These amendments made by the Finance Act 2022 would be notified in due course of time to bring the provisions into force.

Every registered taxpayer shall now be required to self-assess the entitlement to input tax credit which shall be a credit to his electronic credit ledger and concept of provisional credit has been done away with by the Finance Act 2022 which will be notified in due course of time to bring the provisions into force.

The taxpayer is expected to maintain records of inward supplies (purchases) & input tax credit availed at each place of business specified in the certificate of registration for a minimum period of 72 months from the due date for furnishing an annual return for the year pertaining to such accounts and records.

## ANTI-PROFITEERING MECHANISM TO PROTECT CONSUMERS

From the experience of many countries, it was expected by the Indian Government that when GST is introduced it could lead to inflation and increase in the prices of the commodities. The availability of the tax credit right from the production stage to the final consumption stage should have reduced the final prices. However, some suppliers were not passing on the benefit of reduced tax or tax credit to the consumer, thereby indulging in undue profiteering which could lead to inflation.

National Anti-profiteering authority was therefore constituted by the Central Government to examine whether tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him, and this is to ensure that the consumer is protected from arbitrary price increase in the name of GST. Such Authority originally constituted with a validity of 2 years from the date of introduction of GST, has been extended for a further period of 2 more years.

## REGISTRATION REQUIREMENT UNDER GST LAW

Any person whose aggregate turnover (computed on all India basis) in a financial year exceeds INR 4 million (for persons dealing exclusively in goods) or INR 2 million (for persons dealing in goods "and" services or only services), is required to apply for registration under Indian GST Law to get GST Identification Number (GSTIN). Such limits would be INR 2 million and INR 1 million respectively for persons conducting business in special category states including a few north-eastern states.

Under compact scheme of composition, a taxpayer with an aggregate turnover of up to INR 15 million in a financial year who exercises such an option is required to pay subsidised and consolidated rates of GST, subject to certain conditions. Simplified Composition Scheme is also introduced for very small taxpayers who are having an aggregate turnover of up to INR 5 million.

In case of import of services and other notified goods/services, a mechanism has been prescribed whereunder the recipient of the supply is liable to pay tax which is referred to as Reverse Charge Mechanism (RCM).

Business entities who are liable to pay such tax under RCM mechanism, Non-resident Taxable persons, Electronic Commerce Operators, Persons who are making supply through such Electronic Commerce Operators are a few notable exceptional categories of taxpayers, who are required to take mandatory registration under GST law without any limit on aggregate turnover.

## SPECIAL PROVISIONS FOR TAXPAYERS OF FOREIGN ORIGIN AND SPECIFIED ORGANISATIONS

Persons/Entities who are in India for specified period/purpose are broadly classified into following categories mainly to manage compliance with tax laws and to administer payment of taxes and its refund:

a. Non-Resident taxable person
b. Specialised Agencies/Institutions of International Importance
c. Foreign Tourist

In GST registration, normally a taxpayer is allotted a 15-digit GST identification number called "GSTIN" in which 10 digits (3rd digit to 12th digit) are "PAN" number under Income tax Laws.

Specialised Agencies/Institutions of International Importance shall be granted a Unique Identify Number instead of the GST registration number. Such persons would be entitled to claim refund of tax paid on notified purchases from registered suppliers subject to fulfilment of prescribed conditions.

## NON-RESIDENT TAXABLE PERSONS

"Non-resident taxable person" (NRTP) means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.

NRTPs need to get themselves registered under GST at least 5 days before commencement of business and they will be given registration for a temporary period of 90 days which are extendable for a further 90 days. Application for registration is to be signed by Authorised Signatories appointed in India. NRTPs are not entitled to Input Tax credit except for goods imported by them. NRTP entities need to file monthly tax statements during such period they remain in India. Taxes are expected to be estimated and paid in advance before commencement of business. Any shortage in taxes will attract interest and any excess tax paid will be refunded after filing of all tax statements which are due. If the business is expected to continue beyond such period, they are expected to go through normal registration route rather than registration as NRTP.

## SPECIALISED AGENCIES/INSTITUTIONS OF INTERNATIONAL IMPORTANCE

A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other such notified persons or class of persons, are entitled to refund of tax paid by them on purchase of goods or services or both.

## INTERNATIONAL TOURISTS

Tax refund for international tourists' scheme provides an opportunity for foreign tourists to buy goods manufactured during their stay in any Country and claim the refund of tax suffered by such goods at the time of their exit from the Country. This is an internationally accepted practice by various Countries to encourage the sale of their goods to foreign tourists. In GST regime, this practice is being implemented by the Government of India, subject to certain exceptions.

## ZERO RATED SUPPLY

By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the sale exempt from payment of tax, but also there is no bar on taking and enjoying credit of taxes paid on the input side for making/providing the supply of goods and services. Such an approach would in true sense make the goods or services zero rated. In India (a) Export of goods and services (b) Supply of goods and services to Special Economic Zone which are considered as duty free zones and under the supervision of Indian Customs department are termed as zero-rated supply.

The amendment by the Finance Act 2021 made to the provisions under Integrated Goods & Services Act, would restrict the benefit of zero rating on supply made to SEZ unit or SEZ developer which are used for authorised operations. This amendment made by Finance Act 2022 would be notified to be brought into force in due course of time which would necessitate the registered suppliers to obtain confirmations from SEZ unit/developers that the supplies made to them have been used for authorised operations.

Until such amendment is notified registered suppliers would be required to maintain at a minimum necessary documentary evidence that supplies have been made to SEZ Unit/developers.

The former option to make zero rated supplies either on payment of tax and claim refund of tax paid as such or export under letter of undertaking or Bond without payment of tax and claim refund of unutilised input tax credit will not be available once the Central Government issues the notification under the amendments made to the IGST Act by Finance Act 2021 specifying the category or persons or class of supplies in respect of which supplies shall be made only under the cover of letter of Undertaking without payment of IGST.

The exporter of goods shall be responsible to ensure realisation of export proceeds within the timelines prescribed under Foreign Exchange Management Act and non-compliance would result in depositing back to the Government Exchequer any amount of refund claimed along with interest.

The exporter of services is required to realise receivables in foreign exchange or such mode prescribed by the Reserve Bank of India within 1 year from the date of issue of a tax invoice failing which applicable tax along with interest would be required to be paid by the supplier.

## E-WAY BILL MECHANISM

Electronic Waybill (e-way bill) is basically a compliance mechanism where by way of a digital interface the person causing the movement of goods uploads the relevant information prior to the commencement of movement of goods and generates e-way bill on the tax portal. This mechanism facilitates faster movement of goods, improves the turnaround time of trucks and helps the logistics industry by reducing the travel time as well as costs. This also helps the Government to ensure that goods being transported comply with the GST Law, track movement of goods and check tax evasion.

## E-INVOICING

The GST Council has approved the introduction of electronic invoicing ('e-invoice') in GST in a phased manner. Steps have been initiated to introduce 'e-invoicing' for reporting of Business to Business (B2B) invoices and exports and accordingly certain classes of registered persons have been notified who shall register the details of invoices issued by them on 'Invoice Registration Portal' developed by National Informatics Centre and generate Invoice reference number. Effective 1 April 2022 notified registered persons whose aggregate turnover exceeds an amount of Rs 200 million crores shall ensure compliance with E-invoice process.

## REFUNDS

The provisions enabling a right to refund are contained in the CGST Act. The Act provides for the following circumstances under which a person who has paid tax, interest, penalty, fees or any other amount can make an application for a refund, subject to a minimum of INR 1,000:

- Refund of excess balance in the electronic cash ledger.
- Refund of input tax credit on exports of goods and services without payment of tax.
- Refund on account of supplies to a SEZ unit/developer without payment of tax.
- Refund on account of input tax credits accumulated due to the inverted tax structure (i.e., the rate of tax on inputs is higher than the rate of tax on onward supply).
- Refund by the recipient of a deemed export.
- Refund on account of supplies to a SEZ unit/developer with payment of tax.
- Refund on account of export of services with payment of tax.
- Refund of tax paid on an intrastate supply which is subsequently held to be an interstate supply, and vice versa.
- Refund of excess payments of tax.
- Refund on account of assessment/provisional assessment/appeal/any other order.

The CGST Act provides for a statutory limitation period of two years from the relevant date specified for each of the circumstances within which the refund application may be made. Claims for refund for any tax period may be made monthly/quarterly/half-yearly/annually or may even combine multiple financial years provided the application is filed within the statutory time limit.

Refund of any unutilised input tax credit is allowed only against zero-rated supplies made without payment of tax under letter of undertaking or in respect of supplies made for which the rate of tax is under the inverted duty structure (see below). The registered person must carry forward to subsequent tax periods any input tax credit that remains unutilised for any other reason until the closure, transfer or change in registration category of the business, in which case the treatment of input tax needs to be dealt with in the manner already discussed above in this chapter.

The Indian government may, however, restrict the claim of credit accumulation under the inverted duty structure for certain specified supplies of goods or services (or both). A registered person is also unable to claim a refund of unutilised input tax credit where the goods exported are subject to export duty and in cases where the supplier has already availed drawback in respect of CGST or claims a refund of IGST paid on such supplies.

Inverted duty structure means the rate of GST on purchases is higher than the rate of GST on outward supplies, resulting in an accumulation of input tax credit. A refund is allowed for accumulated input tax credit in the taxpayer's account which is unutilised.

The applicant must prove, by way of documentary evidence prescribed in the CGST Rules, entitlement to the refund and that the amount of tax, interest or any other amount paid in relation to which the refund is claimed was collected from the applicant or paid by the applicant, and that the liability to tax and interest has not been passed to any other person.

The statutory time limit to file an application for claim of refund of tax is two years from the specified relevant date. In respect of zero-rated supplies made to Special Economic Zone units or developers, the due date for filing refund application where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies now would be two years from the due date of furnishing tax returns in respect of such supplies. This amendment made by Finance Act 2022 would be notified to be brought into force in due course of time.

The statutory time limit to file an application for claim of refund of tax paid by Specialised Agencies/Institutions of International Importance now would be two years from the last date of the quarter in which such supplies were received. This amendment made by Finance Act 2022 would be notified to be brought into force in due course of time



## RECORD KEEPING REQUIREMENTS & AUDIT

It is a legal requirement for all Indian GST registered entities to keep accounting records. The main items to be kept include the following:

- Purchase and sales invoices.
- Records of input tax incurred and claimed.
- Details of output tax payable, collected and paid, including under the reverse charge.
- Documentation relating to the import or export of goods or services.
- Details of supplies attracting payment of tax on a reverse charge basis, along with relevant documents.
- Register of tax invoices, bills of supply, debit notes, credit notes, receipt vouchers, payment vouchers and refund vouchers.
- Details of advances received, paid and adjusted.
- The name and complete address of suppliers and recipients.

The registered person supplying services is required to maintain the accounts showing quantitative details of goods used in the provision of services, and details of all services purchased and supplied.

Books of account include any electronic form of data stored on any electronic device.

The provisions of mandatory GST audit by Chartered Accountant or Cost Accountant have been omitted from the CGST Act. Going forward, there would be no requirement to submit an audited reconciliation statement reconciling the turnover between the books of accounts and tax returns filed and process of submission of reconciliation statement under self-certification route has been stipulated in the Act.

Normal registered persons would be required to furnish a self-certified annual return and reconciliation statement between returns and books of accounts.

## INTEREST FOR NON-COMPLIANCE

The delayed filing of tax returns beyond the specified due date shall attract an obligation to pay interest only on that portion of the tax that is paid in cash and not through utilising an input tax credit. This amendment has been introduced retrospectively effective from 1 July 2017.

Incorrect benefit and utilisation of input tax credit attracts interest at 24% and the registered taxpayer is now mandated to reverse his input tax credit where the applicable tax payable by the supplier has not been paid to the Government. Such input tax credit reversed may be re-availed where the supplier has made the payment of the tax payable to the Government. This amendment made by Finance Act 2022 would be notified to be brought into force in due course of time.

## EQUALISATION LEVY

Considering the potential of the new digital economy and the rapidly evolving nature of business operations, it is found essential to address the challenges in terms of taxation of digital transactions.

In order to address such challenges, a new Chapter titled "Equalisation Levy" was introduced in the Finance Act 2016 to provide for an equalisation levy of 6 % of the amount of consideration for specified services (online advertisement) received or receivable by a non-resident not having a permanent establishment ('PE') in India, from a resident in India who carries out a business or profession, or from a non-resident having a permanent establishment in India. No levy shall be made if the aggregate amount of consideration for specified services received or receivable by a non-resident from a person resident in India or from a non-resident having a permanent establishment in India does not exceed INR 0.10 million in any financial year.

The scope of EL has been expanded. As from 1 April 2020, an equalisation levy of 2% would be levied on the amount of consideration received or receivable by an e-commerce operator from an e-commerce supplier (goods/services owned by the e-commerce operator). Further, no levy shall be made on account of the sale, turnover or gross receipts as the case may be is less than INR 20 million during the FY.

In addition, as from tax year 2021-22 onwards, equalisation levy shall not be levied on consideration received or receivable for specified services or for e-commerce supply which is taxable as royalty or fees for technical services.

## CUSTOMS DUTY

Basic Customs duty, Social Welfare Surcharge, and IGST, (in few cases GST Compensation Cess, Road and Infrastructure Cess) are payable on import of goods. In respect of specified petroleum products like Petrol, Diesel, Crude, Natural Gas, Aviation fuel, and on Tobacco Products, there is a Countervailing Duty (CVD) in lieu of IGST.

In the Finance Act 2020, a new Cess called "Health Cess" at the rate of 5% is imposed on the import of medical devices. Proceeds of Health Cess shall be used for financing the health infrastructure and services. Such (additional) Health Cess shall not be leviable on import of inputs/parts used in the manufacture of medical devices.

Customs duty is payable on goods imported into India. The normal rate of import Duty is:

| Particulars | Rate |
|---|---|
| Basic Customs Duty (Generally prevalent rate) | 10% |
| Social Welfare Surcharge (in lieu of Customs Cess in the form of Education Cess & Secondary & Higher Education Cess until February 2018) | 10% |
| IGST on import of goods | Equal to IGST under GST Laws. |
| GST Compensation Cess (for some luxury or demerit goods) | Equal to GST Compensation Cess under GST Laws |
| Health Cess on import of specified medical devices | 5% |

The Tariff rate may vary depending upon the products. In addition to the above, Additional Customs duty, Road and Infrastructure Cess are levied on certain items like Petroleum products.

The jurisdiction of Customs Law is up to 200 Nautical miles from base line. It has been extended for limited purposes to prevent offences or contraventions committed outside India by any person.

Finance Act 2020 has brought in a new section of provisions in Customs law to provide for additional safeguards and checks in case of importers claiming preferential tariff treatment in line with Foreign Trade Agreements. These procedures are expected to go beyond origin certificates as normally secured by importers and to include furnishing security equal to differential duty in certain cases.

Finance Act 2021 has brought in a new section to impose liability by way of penalty on any person not exceeding five times the amount of refund claimed of any duty or tax on goods, by way of obtaining any invoice by fraud, collusion, wilful misstatement or suppression of facts to utilise input tax credit on the basis of such invoice for discharging any duty or tax on such goods that are entered for exportation under claim of refund.

## CENTRAL EXCISE DUTY

After GST, Central Excise duty is getting continued but levied on few selected goods like tobacco and tobacco products, petroleum products, i.e., petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

## SALES TAX & STATE LEVY

State VAT has been subsumed in GST with effect from 1 July 2017. Alcoholic beverages for human consumption, on sale would be subject to levy of State Excise duty and State Value Added Tax (VAT) while specified Petroleum products are subject to State VAT.

## SECURITIES TRANSACTION TAX

Securities transaction tax (STT) is applicable to the purchase or sale of equity shares, derivatives, units of equity-oriented funds through a recognised stock exchange or the sale of a unit of an equity-oriented fund or to a mutual fund. STT is also applicable on the sale of unlisted equity shares under an offer for sale to the public included in an initial public offer (IPO) and where such shares are subsequently listed on a recognised stock exchange.

STT will also be applicable on the transactions in units of a business trust, on the same line as are applicable to transactions in equity shares in a Company. STT is to be collected by the Recognised Stock Exchange for taxable securities in that stock exchange, a prescribed person for the sale of units in a mutual fund and a lead merchant banker for an initial public offer. The transaction value is determined as follows:

a) Options - aggregate of strike price and option premium.

b) Futures - traded price.

c) Other securities - purchase/sale price.

STT is to be collected by the Recognised Stock Exchange for taxable securities, the mutual funds in the case of sale of units to the mutual funds and paid to the Government. STT paid is allowable as a deduction in the computation of taxable income under the head profits or gains from a business or profession. STT Rates applicable are given below:

| Product | Transaction | STT rate | Basis for charge |
|---|---|---|---|
| Equity – Delivery | Purchase | 0.10% | Turnover |
| | Sale | 0.10% | Turnover |
| Equity – Intraday | Purchase | Nil | - |
| | Sale | 0.025% | Turnover |
| Futures | Purchase | Nil | - |
| | Sale | 0.010% | Turnover (Lot*Lot size*Price) |

| Product | Transaction | STT rate | Basis for charge |
|---|---|---|---|
| Options | Purchase | 0.125% | Settlement price on exercise |
| | Sale | 0.17% | Premium |
| Equity Oriented Mutual Fund- Delivery | Purchase | Nil | - |
| | Sale | 0.001% | Turnover |
| Equity Oriented Fund to Mutual fund | Sale | 0.001% | Turnover |
| Unlisted Equity under offer of sale | Sale | 0.2% | Turnover |

## COMMODITIES TRANSACTION TAX

Commodities transaction tax (CTT) is levied on taxable commodities transactions entered into in a recognised stock exchange. The CTT rate with effect from the 1st day of April 2020 are as follows:

| Sl. No. | Taxable commodities - Transaction | Rate | Payable by |
|---|---|---|---|
| 1. | Sale of commodity derivative | 0.01 per cent. | Seller |
| 2. | Sale of commodity derivatives based on prices or indices of prices of commodity derivatives | 0.01 per cent. | Seller |
| 3. | Sale of option on commodity derivative | 0.05 per cent. | Seller |
| 4. | Sale of option in goods | 0.05 per cent. | Seller |
| 5. | Sale of option on commodity derivative, where option is exercised | 0.0001 per cent. | Purchaser |
| 6. | Sale of option in goods, where option is exercised resulting in actual delivery of goods | 0.0001 per cent. | Purchaser |
| 7. | Sale of option in goods, where option is exercised resulting in a settlement otherwise, then by the actual delivery of goods | 0.125 per cent. | Purchaser |

The salient features of CTT are as follows:

a) Taxable commodities transaction means sale of commodity derivatives or sale of commodity derivatives based on prices or indices of prices of commodity derivatives or option on commodity derivatives or option in goods in respect of commodities, other than agricultural commodities, traded on a recognised stock exchange.

b) Every recognised commodity exchange shall collect the commodities transaction tax from the seller who enters into taxable commodities transaction in that recognised stock exchange.

c) The taxpayer will deposit commodities transaction tax within 7 days immediately after the end of the month in which such tax is collected. For non-payment or short payment or payment after due date, interest would be charged at the rate of 1% per month (or part thereof).

In order to mobilise growth of International Financial Services Centres (IFSC), the Budget 2016 amended that no Securities Transaction Tax (STT) and Commodities Transaction Tax (CTT) shall be levied on transactions of securities carried out through recognised stock exchange located in IFSC where the consideration for such transaction is paid or payable in foreign currency.

## LOCAL TAXES

## STAMP DUTY

Stamp Duty is payable at the prescribed rates on instruments recording certain transactions, including transfers of immovable property and shares. Generally, Stamp Duty is levied by the respective states as per the state Act. In the absence of such a state enactment, the provisions of the central Act (i.e. Indian Stamp Act 1899) shall apply.

The Finance Act 2019 amended the Indian Stamp Act, 1899 (Amended Stamp Act). The amendments came into force from 1 April 2020. Pursuant to the Amended Stamp Act, the Indian Stamp (Collection of Stamp Duty through Stock Exchanges, Clearing Corporations, and Depositories) Rules 2019 (Rules) have been enacted. The Rules also came into force from 1 April 2020.

The Amended Stamp Act relates to the levy of stamp duty on securities. The Amended Stamp Act aims to clarify and streamline the process for the payment of stamp duty on securities.

The Rules have been introduced as a guidance note for the stock exchanges and the depositories for collection of stamp duty, determination of transactions (whether on delivery basis or not), transfer of duty to respective states, filing of returns, etc.

In addition, the Rules also provide clarity on the modalities of payment of stamp duty for transactions involving issue/transfer of shares in dematerialised form.

**Key reforms of the Amended Stamp Act and the Rules**

- Definitions: The Amended Stamp Act amends the existing definitions to align them with the definitions provided under other statutes. The Amended Stamp Act also introduces some new definitions such as “debenture”, “market value” and “securities”. The new definition of “securities” is extensive and has the net effect of extending the list of instruments liable to stamp duty.
- Dispensation of exemption to transfer of securities: under the former regime, transfer of securities in physical form was subject to the payment of stamp duty and transfer of securities in dematerialised form was exempted. This exemption has been done away with, and stamp duty is now payable on transfer of securities (with consideration) in dematerialised form.
- Similarly, the transfer of units of a Mutual Fund including units of the Unit Trust of India, that are dealt by a depository, were previously exempted from stamp duty. This exemption has been removed.
- Stamp Duty on principal instrument only: a single transaction through the stock exchange or depository often involves the

execution of several instruments (e.g., notes, memorandums, etc.). In order to avoid multiplicity of payments of stamp duty on such transactions, the Amended Stamp Act provides that stamp duty is payable only on the principal instrument. The principal instrument for different transactions is specified in the Amended Stamp Act. The Amended Stamp Act clarifies that no stamp duty shall be charged on any instrument (other than the principal instrument) on a single transaction.

- Onus of payment of stamp duty: the Amended Stamp Act specifies the persons liable to pay stamp duty in different transactions. The table below summarises the newly introduced provisions in this regard:

| Nature of transaction | Onus |
|---|---|
| Sale of security through stock exchange | Buyer |
| Sale of security otherwise than through stock exchange | Seller |
| Transfer of security through depository | Transferor |
| Transfer of security otherwise than through a stock exchange or depository | Transferor |
| Issue of security (whether through a stock exchange or a depository or otherwise) | Issuer |
| In case of any other instrument not specified in Section 29 of the Indian Stamp Act, 1899 | By the person making, drawing or executing such instrument |

- Revised Stamp Rates: Prior to the introduction of the Amended Stamp Act, stamp duty was payable at a flat rate of 0.25% of the consideration on a transfer of shares. There was no stamp duty prescribed on the issue of shares (apart from the share certificate issued to the shareholder). The Amended Stamp Act specifies the following rates of stamp duty for different kinds of transactions involving securities:

| Sl. no | Entry | Stamp duty |
|---|---|---|
| 1. | Debentures | |
| i | Issuance of debentures | 0.005% |
| ii | Transfer or re-issuance of debentures | 0.0001% |
| 2. | Securities other than debentures | |
| i | Issuance of securities | 0.005% |
| ii | Transfer of securities on delivery basis | 0.015% |
| iii | Transfer of securities on non-delivery basis | 0.003% |
| iv | Derivatives | |
| a) | Futures (equity and commodity) | 0.002% |
| b) | Options (equity and commodity) | 0.003% |
| c) | Currency and interest rate derivatives | 0.0001% |
| d) | other derivatives | 0.002% |
| v | Government securities | 0% |
| vi | Repo on corporate bonds | 0.00001% |

- Mechanism for collection of stamp duty: The Amended Stamp Act and the Rules provide for the mechanism for collection of stamp duty for different transactions as follows:

a) Stamp duty viz.-à-viz. sale of listed securities made through stock exchanges:
   1. Date of collection of stamp duty: the stamp duty in respect of sale of listed securities through the stock exchange will be collected on the settlement day.
   2. Stamp duty on consideration: Where a transaction in securities is reported to a stock exchange, the stamp-duty will be collected on the entire sale consideration when the transfer is reported, even if the consideration is paid in part or in instalments to be paid in future.
   3. Stamp duty on tender offer, open offer, private placements, etc.: where a transaction arises from tender offer, open offer or offer for sale or private placements through stock exchange, the stamp-duty will be collected from the offeror on the market value of the security being acquired or sold out, at the offer price once the offer is successfully completed.

b) Stamp duty viz.-a-viz. transfer of securities in the depository system:
   1. Date of collection of stamp duty: the stamp duty in respect of transfer of securities in the depository system will be collected before the execution of all off-market transfers.
   2. Stamp duty on consideration: The stamp duty will be collected on the consideration amount specified by the transferor in the delivery instruction slip. The consideration reported to the depository will be considered as the actual consideration amount.
   3. Stamp duty on pledge of securities: the stamp duty will be collected from a pledgee on the market value of securities, at the time of transfer of securities pursuant to invocation of pledge.

c) Stamp duty viz.-à-viz. creation of a new security and change in records in the depository upon the issue of securities:
   1. Date of collection of stamp duty: the stamp duty in respect of creation of new security and change in records in the depository upon issue of securities will be collected from the issuer prior to executing any transaction in the depository system.
   2. Stamp duty on total market value: the stamp duty is payable on the total market value of the securities contained in the allotment list.
   3. No stamp duty on creation or destruction of securities: stamp duty in respect of creation or destruction of securities on account of corporate actions such as stock split, stock consolidation, mergers and acquisitions, or such similar actions, etc.

will not be collected by the depository to the extent that it does not involve a change in beneficial ownership. However, a fresh issue to an investor as part of a corporate action will be subject to stamp-duty.

4. Stamp duty on tender offer, open offer, private placements, etc.: in case of transactions arising from tender offer or open offer or offer for sale or private placement conducted through a depository, stamp-duty shall be collected from the offeror, on the market value of the security being acquired or sold out, at the offer price, once the offer is successfully completed.

## LAND AND PROPERTY TAX

Land and Property Tax is levied by each state separately.

## B. DETERMINATION OF TAXABLE INCOME

A Company is considered to be resident in India if it is incorporated in India. However, the concept of Place of effective management (POEM) introduced in the Finance Act, 2016 will play an important role in determining whether the Company is resident in India or not. Indian companies are taxable in India on their worldwide income, irrespective of its source and origin. Foreign companies are taxed only on income that arises from operations carried out in India or income deemed to have arisen in India. The Central Board of Direct Taxes (CBDT) has issued a set of guidelines for determining the POEM of companies for taxation purposes. Since residence is to be determined each year, POEM would also be determined on a year-to-year basis.

In the case of non-resident taxpayers engaged in certain businesses, income is assessed on a presumptive (deemed income) basis as follows:

| Nature | Business income as a percentage of gross receipts |
|---|---|
| Shipping | 7.5% |
| Exploration of mineral oil | 10% |
| Operations of aircraft | 5% |
| Turnkey power projects | 10% |



## DEDUCTIONS AND ALLOWANCES

In computing business income, expenditure (payable to a resident) from which tax is not deducted or deducted but not deposited till the due date of filing of return such expenditure will be disallowed to the extent of 30% and the same can be claimed in the year when the tax is deposited. In case of payment to non-resident on which tax is not deducted or deducted but not deposited by the due date of filing of return, the entire expenditure will be disallowed, and it will be only allowed in the year when the tax is deposited.

## CAPITAL ALLOWANCES

Certain expenditure qualifies for a weighted deduction of 100%. For instance, capital expenditure on research and development (other than land) qualifies for full tax write-off and in certain cases, is eligible for a 100% deduction subject to fulfilment of prescribed conditions. Expenditure incurred on merger/demerger of an undertaking is allowed as a deduction in five equal instalments beginning with the year in which the merger/demerger takes place.

## DEPRECIATION

Depreciation allowance is available as per the following rates depending on the nature of the asset and the same is classified below into specified blocks:

| Assets | Rates |
|---|---|
| Buildings (depending upon its nature) | 5%, 10% |
| Buildings<br>i. Purely temporary erections such as wooden structures<br>ii. Buildings acquired on or after the 1st day of September 2002 for installing machinery and plant forming part of water supply project or water treatment system and which is put to use for the purpose of business of providing infrastructure facilities under clause (i) of sub-section (4) of 80IA | 40% |
| Furniture and fixtures fittings including electrical fittings | 10% |
| Plant and machinery | 15%, 30%, 40% |
| Plant and machinery:<br>i. Air pollution control equipment<br>ii. water pollution control equipment<br>iii. solid waste control & recycling equipment<br>iv. Machinery and plant, acquired and installed on or after the 1st day of September 2002 in a water supply project or a water treatment system and which is put to use for the purpose of business of providing infrastructure facility<br>v. Wooden parts used in artificial silk manufacturing machinery<br>vi. Cinematograph films - bulbs of studio lights<br>vii. Match factories - Wooden match frames<br>viii. Salt works - Salt pans, reservoirs, and condensers, etc., made of earthy, sandy or clayey material or any other similar material<br>ix. Mines & quarries: Tubs, winding ropes, haulage ropes, sand stowing pipes, safety lamps<br>x. Books, being annual publications for profession<br>xi. Books owned by taxpayers carrying on business in running lending libraries etc. | 40% |

| Assets | Rates |
|---|---|
| Computers including Computer software | 40% |
| Intangible assets (patents, trademarks know-how, licenses, copyrights, etc) | 25% |
| Ships | 20% |

Additional depreciation of 20% on the cost of new plant and machinery (other than ships or aircraft) is allowable only in the year of commissioning for manufacture. Assets used for less than 180 days in the year of acquisition are entitled to half of the normal depreciation allowance (including additional/ enhanced depreciation). Depreciation not set off against current year income can be carried forward for set-off against any future income for an unlimited period.

In case an asset is acquired and put to use for the purposes of business for a period of less than 180 days in that previous year, and the deduction under section 32(1) (ii a) in respect of such asset is restricted to 50% of the amount calculated for the previous year, the balance 50% shall be allowed in the immediately succeeding previous year.

With effect from 1 April 2020, "goodwill of business or profession" is specifically excluded from the definition of assets and therefore, depreciation cannot be claimed. Further, Explanation to section 50 was introduced by the Finance Act 2021 to provide that WDV of such block of asset and short-term capital gain, if any, shall be determined in accordance with rule 8AC.

The Finance Bill 2022 proposes to make consequential amendment in section 50 of the IT Act to clarify that for the purpose of section 50 of the IT Act, reduction of goodwill from the block of assets shall be deemed to be transferred.

This amendment is applicable retrospectively from Assessment year 2021-22.

## STOCK / INVENTORY

The valuation of closing stock is normally done based on cost or market value, whichever is lower.

## INTEREST DEDUCTIONS

Interest paid on borrowings used for business purposes is tax deductible. For new businesses, interest incurred prior to commencement of commercial production is to be capitalised. Interest paid on amounts borrowed for investment in securities is allowed as a deduction from interest income. However, an interest barrier rule has been introduced from financial year 2017-18 onwards. If an Indian Company pays interest exceeding INR 10 million to a non-resident lender, being an associated enterprise, the excess interest as computed below shall not be allowed as deduction.

Excess Interest = Total Interest expenditure in excess of 30% of Earnings before interest, taxes, depreciation, and amortisation (EBITDA) or the actual amount of interest paid to associated enterprise, whichever is lower.

Finance Act 2020 provides that the above provisions shall not apply to interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident person engaged in the business of banking.

Carry-forward of Excess interest: the excess interest of the current year (which is not allowed as a deduction) shall be carried forward to the following assessment year. In the next assessment year, it shall be allowed as a deduction against the business/ profession income of the borrower to the extent of maximum allowable interest expenditure in accordance with section 94B (2). This carry-forward is allowed for 8 assessment years (immediately succeeding the assessment year for which the excess interest was first computed)

## EXPENDITURE INCURRED FOR EXEMPT INCOME

Expenditure incurred in earning income that is exempt from income tax is not allowed as a deduction. Various courts have held that expenditure incurred for earning exempt income is not to be disallowed if the taxpayer has not earned exempt income during the year.

In order to clarify the legislative intent, Disallowance under section 14A of the IT Act is proposed to be applied even where the relevant exempt income in relation to which the expenditure is incurred, has not accrued or arisen or has not been received by the taxpayer during the previous year.

This amendment is proposed to take effect from FY 2021-22.

## LOSSES

The table given below highlights the rule of carry-forward of losses in brief:

| Type of loss to be carried forward to subsequent years | Profit against which carried forward loss can be set off in subsequent years | Number of years loss can be carried forward |
|---|---|---|
| House property loss | Income from House property | 8 years |
| Speculation loss | Speculation profits | 4 years |
| Non-speculation business loss: | | |
| • Loss due to unabsorbed depreciation, capital expenditure on scientific research | Any income not being salary income | No time limit |
| • Loss from a specified business under section 35AD | Income from a specified business under section 35AD | No time limit |
| • Other remaining business loss | Any business profit, whether from speculation or otherwise | 8 years |
| Short-term Capital Loss | Any income under the head Capital Gains | 8 years |
| Long-term Capital Loss | Long-term Capital Gains | 8 years |

**Restriction on set-off of a loss against Undisclosed Income Section 79A**

Currently, there is no restriction on set off of any loss or unabsorbed depreciation against undisclosed income detected during a search under section 132 or requisition under section 132A or survey under section 133A, other than section 133A(2)

A new section 79A is now inserted to provide that any loss, either of the current period or brought forward, or unabsorbed depreciation cannot be adjusted against undisclosed income detected during search, survey.

This amendment is applicable with effect from Assessment year 2022-23.

## CORPORATE RESTRUCTURING & MERGER

Specific provisions have been made in the Income Tax Act 1961 (the Act) in relation to corporate mergers/amalgamations. Corporate restructuring is tax neutral subject to the fulfilment of certain conditions.

## DEMERGER

Under the Act, "demerger" means any transfer by a demerged company of one or more undertakings to another company (resulting company) pursuant to a scheme of arrangement under Sections 230 and Section 235 of the Companies Act. With effect from 1st April 2000, the transfer of shares in a scheme of demerger has been made tax neutral, subject to fulfilment of certain conditions.

## SLUMP SALE

The Act defines 'slump sale' to mean the transfer of one or more undertakings by any means as a result of the sale for a lump-sum consideration without values being assigned to the individual assets and liabilities. Profits or gains arising from slump sales are taxable as long-term capital gains if the undertaking is owned and held by the taxpayer for more than 36 months prior to the date of transfer. Otherwise, they are taxable as short-term capital gains. Net worth of the undertaking so transferred shall be deemed to be the cost of acquisition and no indexation benefit is allowed for slump sales.

With effect from 1 April 2021, sale consideration for slump sale shall be fair market value (FMV) of the capital assets as on the date of transfer (rules will be prescribed for the manner of calculation of FMV). Further, for computing the net worth, the value of goodwill which has not been purchased by the taxpayer will be considered as Nil.

Finance Act, 2021 widened the definition of the term "Slump Sale" to cover a case of transfer of an undertaking by any means which was until then restricted to a case of transfer 'as a result of the sale". Though the definition of "Slump sale" was expanded to cover transfer by any means and not merely by sale, it continued to provide that the transfer of the undertaking in such 'sale' should be for a lump sum consideration without assigning values to the individual assets and liabilities.

The word 'sales' which is appearing at certain places is substituted by the word 'transfer' and the definition now covers a case of transfer of any undertaking by any means for a lump sum consideration without assigning individual values to assets and liabilities in such transfer.

This amendment is applicable retrospectively from Assessment year 2021-22.

## BUYBACK

Buyback refers to the purchase of own shares by a company from its shareholders in lieu of consideration. Consideration received by a shareholder from the company for purchase of its own shares is taxable as a long-term capital gain, if shares were held for more than 12 months prior to transfer to the Company. Indexation benefit is available for long-term capital gains. Otherwise, they are taxable as short-term capital gains in the year in which the shares are purchased by the Company.

Income arising to a shareholder in respect of buy back of unlisted/listed shares by the Company will be exempt from tax. This exemption is available only in those cases where additional income tax is payable on distributed income under section 115QA by the Company opting for buy back of unlisted / listed shares.

## FOREIGN SOURCED INCOME

Profits derived by a foreign branch of an Indian enterprise are taxable in India. However, credit is allowed for foreign taxes paid by the branch in India either under the tax treaties or under the Act.

## BUSINESS TRUSTS

The real estate investment trust (REIT) and Infrastructure investment trust (Invit) are together referred to as Business Trusts. The trusts would raise capital by issuing units (to be listed on a recognised stock exchange) and also raise debt directly from resident and non-resident investors. The taxation regime for these Business Trusts, applicable provides the manner, in which the income in the hands of such trusts is to be taxed and the taxability of the income distributed by them to the unitholders.

## INCENTIVES

## FOREIGN DIRECT INVESTMENT POLICY

Remarkable changes in the policy relating to FDI have been announced by the Government in 2016. The highlights of the policy are:

- FDI caps in various sectors have been enhanced. (Appendix – I);
- Subject to the provisions of the FDI policy, foreign investment in the `manufacturing' sector is under automatic route. Further, a manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without Government approval.
- Approval of the Government will be a prerequisite for investment by swap of shares for sector under Government approval route. No approval of the Government is required for investment in automatic route sectors by way of swap of shares.

## TAX HOLIDAY FOR ECONOMIC ZONES

A tax holiday is available in respect of profits derived from exports by a 100% export-oriented undertaking, or an undertaking located in a free trade zone, export processing zone, SEZ, software technology park, etc.

In the case of new units located in a SEZ commencing activities on or after 1 April 2006 and before 1 April 2020, the tax incentives available under sec 10 AA are as follows:

| | |
|---|---|
| First five years | 100% of profits |
| 6th to 10th year | 50% of profits |
| 11th to 15th year | Amount not exceeding 50% of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the “Special Economic Zone Re-investment Reserve Account”) to be created and utilised for the purposes of the business of the assessee in the manner laid down |

## PROFITS OF INDUSTRIAL UNDERTAKINGS

A tax holiday for a specified number of years is available in respect of either the entire or part of the profits derived by an industrial undertaking located in a backward state or district or an industrial undertaking engaged, inter alia, in any of the following activities:

(a) Infrastructure facility.
(b) Telecommunication Service.
(c) Industrial parks.
(d) Generation or distribution of power.
(e) Power transmission.
(f) Renovation of existing network for transmission of power.
(g) Hospitals in rural area.
(h) Hotels and convention centres in specified area.
(i) Undertaking establishments in the North-eastern State carrying on specified business.
(j) Undertakings deriving profits from operating and maintaining hospitals in places other than urban agglomerations.



**Extension of date of incorporation for eligible start-ups for exemption**

Under the existing regime, Sec 80IAC, 100% deduction is allowed by an eligible start-up for 3 consecutive years out of 10 years at the option of the assessee. This is subject to the satisfaction of conditions laid down, which inter-alia includes being incorporated before 1 April 2022.

In order to promote eligible start-ups, it is proposed to extend the requirement of the deadline date of incorporation to 1 April 2023.

## INCOME FROM SALE OF CRUDE OIL

Exemption can be availed under section 10(48), by a Foreign Company in respect of income received on account of sale of crude oil to any person in India. Income should be received in Indian currency in India pursuant to an agreement entered into by the Central Government or approved by the Central Government. The Foreign Company should not be engaged in any other activity in India. The scope of section 10(48) has been enlarged to include income on account of sale of any other goods or rendering of services as notified by the Central Government. The aforementioned exemption is also extended to any income arising to a Foreign Company through storage of crude oil in a facility in India and sale therefrom to any person resident in India [Sec 10(48A)] is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government. The aforementioned exemption is also extended to any income arising to a Foreign Company through sale from leftover stock of crude oil, from the facility in India after the expiry of the agreement or an arrangement entered into by the Central Government or approved by the Central Government.

## GENERAL ANTI AVOIDANCE RULES (GAAR)

General Anti Avoidance Rules have been inserted with effect from 1 April 2014. The provisions relating to GAAR are contained in Chapter X-A (Section 95 to 102). The procedural provisions relating to the mechanism for invocation of GAAR and passing of the assessment order in consequence thereof are contained in section 144BA. The provisions of chapter X-A and section 144BA have come into force with effect from 1st April 2017.

In an environment of moderate rates of tax, aggressive tax planning by corporates, and use of opaque low tax jurisdictions for residence as well as for sourcing of capital, it is necessary that the correct tax base be subject to tax. The GAAR regime has been introduced to codify the doctrine of ‘substance over form’. Under GAAR, the real intention of the parties and effect of transactions and purpose of an arrangement is taken into account for determining the tax consequences, irrespective of the legal structure that has been superimposed to camouflage the real intent and purpose.

The main features of the GAAR regime are:

(1) An arrangement whose main purpose is to obtain a tax benefit can be declared as an ‘impermissible tax-avoidance arrangement’, if it satisfies at least one of the following four tests:
    (a) It creates rights and obligations which are not normally created between parties dealing at arm’s length.
    (b) It results in abuse or misuse of provisions of tax laws.
    (c) It lacks commercial substance.
    (d) It is carried out in a manner which is normally not employed for bona fide purpose.
(2) An arrangement will be deemed to lack commercial substance if it involves:
    (a) Round trip financing (i.e., transactions where funds are transferred among the parties to the arrangement).
    (b) An accommodating party.
    (c) Elements that have effect of offsetting or cancelling each other.
    (d) A transaction which disguises the value, location, source, ownership, or control of fund.
    (e) A location which serves no other substantial commercial purpose, except obtaining tax benefit.
(3) Once an agreement is declared to be an Impermissible Avoidance Agreement (IAA), the tax authorities will be entitled to, inter alia, re-characterise the transaction, ignore the transaction, disregard the accommodating parties, reallocate income/ expenses, etc.

(4) Approving Panel: The approving panel shall consist of a chairperson who is or has been a Judge of a High Court, one member of the Indian Revenue Service not below the rank of Chief Commissioner of Income Tax and one member who shall be an academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices.

(5) Status of direction of approving panel: the direction issued by the approving panel shall be binding on the taxpayer as well as the income tax authority:

(6) Definition of 'associated person and connected person': As per the amendment there will be only one inclusive provision defining the expression 'connected person' under section 102.

## C. FOREIGN TAX RELIEF

### UNILATERAL TAX CREDIT WHERE THERE IS NO TAX TREATY

U/s 91 of the Income Tax Act, 1961: where a resident of India has paid tax in any country with which India does not have a tax treaty, credit is available in India for such tax payments.

The following conditions are required to be satisfied by the for availing unilateral tax credit – Person claiming the credit must be resident in India for the said previous year:

- Income is from a source outside India.
- Tax has been paid in the foreign country. The taxpayer should be able to prove that he/she has paid income tax on such income in the foreign country.
- Absence of agreement u/s 90 for the relief or avoidance of double taxation.

### TAX CREDIT UNDER TAX TREATIES

India has entered into tax treaties (DTTs) with several partner countries. Under the applicable tax treaty, Indian residents paying taxes in other countries can claim a credit in India for foreign tax payments. The Finance Act 2012 states that provision of DTTs will not be applicable if General Anti Avoidance Rules (GAAR) are invoked.

As per the amendment to section 90 and 90A of the Finance Act 2012, any term which is defined neither in the Act, nor in the DTT, can be assigned a meaning by the Central Government through a Notification. The meaning assigned is generally in line with the intent and objective as understood during the course of negotiations leading to the formalization of the treaty. This meaning assigned through the Notification shall be effective from the date of coming into force of the DTT.

Earlier, a Tax Residency Certificate (TRC) issued by the partner country was considered sufficient proof for accepting the status of residence for applying DTTs. With effect from 1st April 2013, submission of a TRC is considered a necessary but not sufficient condition, as the taxpayer shall also provide prescribed documents and information for availing DTTs benefits referred under section 90 and 90A of the IT Act.

Multilateral Instruments for India shall be applicable for various DTTs concluded by India.

## D. CORPORATE GROUPS

There are no provisions in India for consolidation of accounts for tax purposes or provisions for group taxation.

## E. TRANSFER PRICING AND COUNTRY-BY-COUNTRY REPORTING

Transfer pricing refers to inter-company pricing arrangements between related business entities and commonly applies to inter-company transfers of services and tangible/intangible properties. In India, detailed transfer pricing provisions were introduced by the Finance Act, 2001 in order to facilitate the computation of reasonable, fair, and equitable profits and tax in India in the case of businesses carried on by multinational companies. Essentially, transfer pricing is the process of adjusting the prices of cross-border transactions between related/ associated parties. Section 92 of the Act provides that the price of any transaction between Associated Enterprises (AE), either or both of whom are non- residents for tax purposes (international transaction), shall be computed having regard to the arm's length principle. Subsequently, the Finance Act, 2012 also brought 'specified domestic transactions', where transactions are carried out between two related Indian entities under the purview of transfer pricing.

Two enterprises are considered to be associated if there is direct/indirect participation in the management or control or capital of an enterprise by another enterprise or by the same persons in both the enterprises. In determining whether there is participation in management or control, various factors are taken into consideration including:

- Direct/indirect shareholding with 26% or more of the voting power
- Advancing of loans of 51% or more of the total assets
- Appointment of more than 50% of the Board of Directors
- Dependence on intellectual property rights owned by either party, etc.

An additional clarification was issued highlighting the concept of a 'deemed international transaction', thereby widening the scope of transfer pricing in India. This provision considers a transaction between two residents in India as an international transaction subject to certain conditions.

**Determination of 'Arm's-Length Price'**

A crucial aspect of transfer pricing is the process of determining the Arm's-Length Price (ALP). The Central Board of Direct Taxes (CBDT) has prescribed six methods for determining the ALP:

- Comparable Uncontrolled Price Method.
- Resale Price Method.
- Cost Plus Method.
- Profit Split Method.
- Transactional Net Margin Method.
- Other Method.

The ‘other method’ has been prescribed to potentially cover transactions involving intangibles and business restructuring for which the above methods may not be the most appropriate.

The choice of the appropriate method is determined with respect to the nature and class of transaction, the classes of associated persons, the functions performed by them and other relevant factors.

The Finance Act, 2014 had introduced the range concept for determination of ALP and use of multiple-year data for comparable analysis of transactions. The tax rules mention the manner and scope of computation of ALP when adopting the range concept and the use of multiple-year data.

**International Transactions**

Apart from routine transactions relating to the purchase and sale of goods and services, the Finance Act, 2012 enhances the definition to include transactions involving business restructuring, intangibles, goodwill, corporate guarantees, etc. There is no threshold exemption limit for this compliance.

Also, it is mandatory to obtain an accountant’s certificate in the prescribed format for all international transactions between AEs. This report would have to contain prescribed particulars of the transaction and would have to be filed with the tax authorities by 31st October after the relevant financial year, along with the tax return.

Stringent penal provisions have been prescribed for non-compliance with the prescribed requirements under the new transfer pricing regime.

**Advance Pricing Agreements**

The Finance Act, 2012 introduced Advance Pricing Agreements (APAs). An APA is an agreement between a taxpayer and the tax authorities for specifying the manner in which the ALP is to be determined with respect to an international transaction. The ALP shall be determined on the basis of the prescribed methods or any other method.

An APA would be valid for a maximum of five consecutive years unless there is a change in the provisions or the facts having a bearing on the international transaction. The roll-back provisions are also available according to which, an APA would also be applicable to international transactions undertaken in the previous four financial years, subject to certain conditions.

The attribution of income in case of a non-resident person to the Permanent Establishment may also be determined under an APA in order to provide certainty.

**Extensive Transfer Pricing Documentation**

As a notable development, India’s transfer pricing documentation requirements are being aligned with the Organization for Economic Co-operation and Development’s (OECD) recommendations under the Base Erosion and Profit Shifting (BEPS) Project. In line with the international consensus on this topic, companies need to maintain and furnish extensive, group-level details to the Indian tax authorities by way of a Country-by-Country (CbC) report and Master File, in addition to the current transfer pricing documentation requirements in India.

The CbC report shall include economic information within the multinational group, such as the nature of main business activities, revenues, profit/loss, income taxes paid, stated capital, accumulated earnings, number of employees, tangible assets, etc. for each country in which the group operates. For non-furnishing or inaccurate furnishing of the CbC report, master file and related details by an entity that is obligated to furnish the said details, a stringent penalty structure ranging from INR 5,000 to INR 50,000 per day of default would apply.

On 5 April 2021, the Central Board of Direct Taxes (CBDT) has amended Rule 10DA and Rule 10DB of the Income-tax Rules, 1962. The threshold limit for applicability of Country-by-Country (CbC) reporting has been specified under Rule 10DB. The Board has increased said limit from Rs. 5,500 crores to Rs. 6,400 crores. CbC reporting is mandatory if consolidated group revenue of the international group is Rs. 6,400 crores in the preceding year. It will be effective from 1 April 2021.

Further, for more than one constituent entities of an international group, the group can designate any one of its constituent entities to file Master File on behalf of all constituent entities. Thus, Non-resident need not file separate master file in India.

## SECONDARY ADJUSTMENTS IN TRANSFER PRICING

The Finance Act, 2017 has introduced the concept of secondary adjustment on Transfer Pricing (TP) Adjustments by a new section 92CE - “Secondary adjustments in certain cases”. Further, Finance Act, 2019 has brought certain amendments in the provisions of secondary adjustments.

Sub-Section (3) of Section 92CE gives a definition of various terms used in relation to this topic. Sub-section (3) also defines the term ‘Primary Adjustment’ and ‘Secondary Adjustment’ as follows:

### Primary Adjustments

Primary Adjustment to a transfer price means the determination of transfer price in accordance with the arm’s-length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee. Section 92 provides that any income arising from an international transaction shall be computed having regard to the arm’s-length price. The manner of determination of arm’s-length price is given in section 92C. Primary adjustment denotes any adjustment in the price charged for such international transactions in accordance with the arm’s-length price (ALP).

### Secondary Adjustments:

Secondary Adjustments means an adjustment in the books of accounts of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between a cash account and actual profit of the assessee.

### Cases where secondary adjustment is required to be made:

According to Section 92CE (1), the assessee shall make a secondary adjustment, where the primary adjustment to the transfer price has been made:

- Either *suo motu* by the assessee in the return of income, or

- By the Assessing Officer during the assessment proceedings and accepted by the assessee, or
- In accordance with an Advance Pricing Agreement (APA) entered into by the assessee under section 92CC on or after 1 April 2017, or
- In accordance with the Safe Harbour Rules under section 92CB, or
- Arising as a result of resolution of an assessment by way of the Mutual Agreement Procedure (MAP) under an agreement entered into under section 90 or section 90A for avoidance of double taxation.

### Cases where secondary adjustment is not mandatory:

Proviso to sub-section (1) of section 92CE states that secondary adjustment is not required to be made in the following two cases:

- Where the amount of primary adjustment made in any previous year is not more than Rs. 1 crore, or
- Where the primary adjustment is made in respect of assessment year 2016-17 or any earlier assessment year.

### Effect of Secondary Adjustments:

Sub-section (2) of section 92CE provides that the excess money receivable from the AE as a result of primary adjustment should be repatriated by the AE to the assessee in India within the prescribed time period. If the excess money is not so repatriated, the amount shall be deemed to be an advance money by the assessee to such AE and the interest on such advance shall be computed in such manner as may be prescribed.

Thus, the excess money shall be treated as "Loans & Advances" in the books of the assessee, and he will be required to book notional interest income on such advances until the excess money is repatriated into India. The time period for repatriation and the rate of interest has been prescribed in Rule 10CB of Income Tax Rules. Rule 10CB prescribes that the time limit for repatriation of excess money shall be on or before 90 days from the relevant date.

The practical application of the provisions of section 92CE was posing serious concerns as it is quite difficult for the assessee to repatriate the excess money within the prescribed time period from foreign AEs in many cases due to prevailing laws in the country of such foreign AE. Further, accounting issues also arise as how to account for the deemed loans in the books of foreign counterpart and the manner of reporting in consolidated financial statements.

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In order to remove such difficulties, amendments have been made to the Income Tax Act by Finance Act, 2019 wherein the Indian entity has been given an option to repatriate excess money from any other non-resident AE of the Indian entity or to pay additional tax on such excess money at the rates as prescribed. If the assessee chooses to exercise any of these options, the excess money shall not be deemed to advance to foreign entity and no notional interest shall be payable thereon. The following two options have been given by the Finance Act, 2019:

- **Explanation to section 92CE (2):** The assessee has been given an option that the excess money or part thereof may be repatriated from any of the associated enterprises of the assessee which is not a resident of India. Thus, if there is any difficulty in repatriation of excess money from the foreign AE concerned, the taxpayer may get excess money repatriated from any other non-resident AE of the taxpayer.
- **Sub-section (2A) of section 92CE:** The assessee has been given another option in case the excess money is not repatriated within the prescribed time period of 90 days. He may at his option pay additional income tax @ **18% + applicable surcharge & cess** on such excess money or part thereof.

**<u>The following points are to be noted in respect of the option allowed under sub-section (2A) of section 92E:</u>**

a. Tax paid @ 18% (plus surcharge & Cess) shall be treated as a final payment of tax towards the excess money or part thereof not repatriated. [Section 92CE(2B)]
b. No credit shall be allowed for tax paid on the excess money or part thereof to the assessee or any other person. [Section 92CE(2B)]
c. No deduction under any other provisions of the Income Tax Act shall be allowed to the assessee in respect of tax paid on the excess money or part thereof. Thus, the assessee cannot claim the tax so paid as revenue expenditure under section 37 of the Act. [Section 92CE(2C)]

If the assessee opts to pay additional tax u/s 92CE(2A), he will not be required to make the secondary adjustments and compute imputed/ notional interest under sub-section (2) of section 92CE from the date of payment of such tax. [Section 92CE(2D)]

## FACELESS SCHEMES DEFERRED FOR TRANSFER PRICING ASSESSMENT AND DISPUTE RESOLUTION PROCEEDINGS

- Directions/procedures for undertaking transfer pricing assessment and dispute resolution proceedings under the faceless scheme shall be notified no later than 31 March 2024.
- The Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or Commissioner having jurisdiction over the taxpayer may revise the transfer pricing order, if prejudicial to the interest of revenue.

## SAFE HARBOUR TRANSFER PRICE FOR INTERNATIONAL TRANSACTIONS

Safe harbour transfer price for international transactions: the Tax Authorities accept the transfer price declared by the assessee for certain eligible international transactions as per the ceilings and subject to the circumstances. However, these provisions will no longer be applicable as from tax year 2021-22 onwards.

## F. WITHHOLDING TAX

Tax at the prescribed rates is required to be deducted at source from payments of rent (for use of land, building, machinery, plant, equipment, furniture or fittings), salary, professional fees, fees for technical services, royalty, interest, commission, etc. to residents. Tax is also required to be deducted from payments to non-residents, in respect of interest or any other sum chargeable under the Act. With retrospective effect from 1 April 1962, tax will be deductible whether the withholder is a resident or non-resident and tax will be deductible even if a non-resident does not have any place of business, residence, business connection or any other presence in India. The rates are the same as those listed in Section A.

From 1 June 2013, under section 194IA, any person responsible for paying (other than the person referred to in 194LA) to a resident transferor any sum by way of consideration for transfer of immovable property (other than agricultural land in rural area in India) is liable to deduct tax at 1% if the amount of consideration is equal to or exceeds INR 5 million.

In case there is TDS (Tax deducted at source) default pertaining to any sum (other than salary) payable outside India or payable to a non-resident which is taxable in India, then expenditure will not be disallowed if TDS is deposited within the due date of submission of return of income under section 139(1). If TDS is deposited after this date expenditure will be deductible in the year in which TDS is deposited. In case of TDS default, 100% of expenditure will be disallowed for payments to non-residents.

**Key TDS and TCS provisions:**

- Finance Act 2021 has inserted withholding of tax at a concessional rate on the income from securities held by foreign portfolio investors (FPIs).
  - o Any person responsible for paying any income (other than the interest payable in respect of Rupee Denominated Bond of an Indian company or Government Security) to foreign portfolio investors (FPIs) in respect of securities is liable to deduct tax under section 196D. The said section provides for deduction of tax at the rate of 20%.
  - o As FPIs are incorporated outside countries, their taxability in India is also subject to double taxation avoidance agreements ('DTAAs'), if applicable. Thus, considering the applicability of DTAA in case of FPIs, Section 196D is amended to provide that tax shall be deducted at the rate provided under DTAA if same is lower than the existing TDS rate of 20%.
- The Finance Act 2021 has inserted new tax provisions for deduction and collection of TDSS and TCS at the higher rates in case of non-filers of the income tax return in India. The rate of TDS/TCS shall be at the double of the specified rate or 5%, whichever is higher.
- Further, Finance Act 2021 has inserted new TDS provisions from 1 July 2021 onwards, which provide that any person, being a buyer who is responsible for paying any sum to any resident Indian (i.e. seller) for purchase of any goods of the value or aggregate of such value exceeding 5 million in any preceding year, shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier, deduct tax an amount equal to 0.1% of such sum exceeding 5 million.
- From tax year 2020-21, as per section 194O, which states that any amount paid by an e-commerce operator for sale of goods or provision of service, facilitated by it through its digital or electronic facility or platform, to the e-commerce participant will be subject to deduction of tax at the rate of 1% on gross amount of sales or service.
- Tax Collected at Source ('TCS') provision on sale of goods (other than export sales) under section 206C effective from 1 October 2020. TCS is applicable to the seller of goods as follows:
  - o TCS is applicable at the rate 0.1% if the consideration received from the buyer in a previous year is in excess of INR 5 million and in non-PAN/Aadhaar cases at the rate of 1%.
  - o It is applicable only to sellers whose total sales, gross receipts or turnover from business exceed INR 10 crore (100 million) during the financial year, immediately preceding the relevant financial year.
- The TCS on sale of goods shall not be collected in the following cases:
  - o if the buyer is liable to deduct TDS; or
  - o if the seller is subject to any other TCS; or
  - o if the buyer from whom TCS is collectable is the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State and a local authority.

**TDS on purchase of immovable property**

Under the current regime, tax at the rate of 1% is required to be deducted on the amount of consideration equal to or exceeding INR 50 Lakhs paid by the transferee to the transferor of certain immovable property other than agriculture land.

It is now proposed that the TDS at 1% on the purchase of immovable property shall be deducted at a value which is the higher of the purchase consideration or the stamp duty value of the property. However, no tax is to be deducted when both the purchase consideration and the stamp duty value are less than INR 50 lakhs.

**Higher rates of TDS / TCS for non-return filers**

a). Currently, TDS/TCS is required to be deducted at higher rates in cases where (i) Payee has not filed return of income for both of the last 2 financial years and (ii) aggregate of TDS/TCS in case of the payee is INR 50,000 or more in each of those 2 financial years.

b). In order to widen the tax base, it has been proposed to amend the provisions so as to provide that even in cases where the return of income has not been filed for the previous financial year and the TDS/TCS is INR 50,000 or more, the TDS shall be deducted at higher rates.

c). Further, it has also been proposed that individuals and HUFs for whom a simplified tax deduction system has been provided without requirement of TAN (i.e., section 194-IA, 194-IB and 194M of the Act), shall not be burdened with the additional responsibility to deduct TDS at higher rates.

## G. EXCHANGE CONTROL

The foreign exchange regulations have been substantially liberalised in India, whereby no licence is required for setting up an industry except in a few cases such as electronic aerospace and defence equipment, industrial explosives, hazardous chemicals, distillation and brewing of alcoholic drinks, cigars and cigarettes, items reserved for small-scale sector and industries/sectors reserved for the public sector.

India has one of the most liberal and transparent policies on Foreign Direct Investment (FDI) among the emerging economies. The FDI policy has been rationalised on an ongoing basis to avoid multiple layers of regulatory approvals to facilitate foreign investment. FDI can be divided into two broad categories:

- FDI under Automatic Approval route.

- FDI with prior approval of the Government.

Under the automatic approval route, no Government approval or Reserve Bank of India is required if the FDI is within the notified sectoral caps. However, if the FDI is above the prescribed sectoral cap, the approval of Government through the Foreign Investment Facilitation Portal (FIFP) is required. FDI is allowed under the automatic route in almost all activities/sectors except the following, which require FIFP approval:

- Activities/items that require an Industrial License (except for some cases);
- Proposals in which the foreign collaborator has an existing financial/technical collaboration in India in the same field.
- All proposals falling outside notified sectoral policy/caps.

In certain cases, such as distillation and brewing of alcohol, industrial explosives and manufacture of hazardous chemicals, FDI is permitted without FIFP approval subject to obtaining an industrial license from the appropriate authority. However, FDI is prohibited in the following cases:

- Gambling and betting.
- Lottery business.
- Atomic energy.
- Business of chit fund.
- Nidhi company.
- Trading in Transferable Development Rights (TDRs);
- Manufacture of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- Real estate business (except development of townships, construction of residential and commercial premises, roads or bridges, real estate broking service to the extent specified by Foreign Exchange Management Act (FEMA).



## H. PERSONAL TAX

Individuals are taxed on their income based on income slabs on a progressive basis at various rates ranging from 5% to 30%.

## RESIDENTIAL STATUS

The scope of taxable income varies depending upon the residential status of the individual. Resident taxpayers are classified into two categories:

- Ordinarily resident; or,
- Not ordinarily resident.

An individual is classified as “resident” if he spends:

- At least 182 days in India during the tax year; or
- 60 days in India during the year and at least 365 days in the preceding four years.

An individual being a citizen of India or person of Indian origin is classified as “resident” on qualifying for the following conditions:

i. the person comes on a visit to India in any previous year is regarded as “resident” in India if the:
   a) Period of stay in India is 120 days or more during the tax year, and
   b) 365 days or more in the preceding four years.

   or

ii. Irrespective of the number of days of stay, if the citizen of India or person of Indian origin is in receipt of an income exceeding INR 1.5 million during the previous year only from India sourced income and if he is not liable to tax in any other country by reason of his residential status.

On qualifying as a resident and an individual is classified as “Not Ordinarily resident” if he has been:

a. a non-resident in nine out of the ten preceding years, or
b. in India for less than 730 days during the preceding seven years, or
c. an Indian Citizen or a person of Indian origin whose total income in India, other than foreign sourced income, exceeds INR 1.5 million during the previous year and his period of stay in India is 120 days or more but less than 182 days.
d. an Indian Citizen who is deemed to be resident in India whose total income, other than income from foreign sources, exceeds INR 1.5 million rupees during the previous year shall be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

Non-resident taxpayers pay tax only on Indian-sourced income. Income of a non-resident shall be deemed to accrue or arise in India under Section 9(1)(v) (relating to interest paid outside India), Section 9(1)(vi) (relating to royalties paid outside India) or Section 9(1)(vii) (relating to fees for technical services paid outside India) and shall be included in total income regardless of whether:

- The non-resident has a place of residence, place of business or business connection in India;
- The non-resident has rendered services in India.

The assessment year is the period of 12 months from 1 April to 31 March. Income earned in the period of 12 months or less immediately preceding the assessment year is taxed in the assessment year

## DETERMINATION OF TAXES

The Individual income is calculated under the following heads:

1. Salary.
2. House property.
3. Business/ Profession.

4. Capital gains.
5. Other sources.

In certain cases, income is taxed on a presumptive basis, wherein the income under each head is computed separately and aggregated to arrive at the gross total income, after allowing permissible deductions under each head. For Resident Senior Citizens (men or women who are 60 years or more at any time during the previous year but not more than 80 years on the last day of the previous year).

| Income (INR) | Tax rates |
|---|---|
| Up to 300,000 | Nil |
| 300,001 - 500,000 | 5% |
| 500,001 - 1,000,000 | 20% |
| Above 10,00,000 | 30% |

For Resident Super Senior Citizens (men or women who are 80 years or more at any time during the previous year).

| Income (INR) | Tax rates |
|---|---|
| Up to 500,000 | Nil |
| 500,001 - 1,000,000 | 20% of |
| Above 10,00,000 | 30% |

For any other resident individual (below the age of 60 years) and any non-resident individual:

| Income (INR) | Tax rates |
|---|---|
| Up to 250,000 | Nil |
| 250,001 - 500,000 | 5% |
| 500,001 - 1,000,000 | 20% |
| Above 10,00,000 | 30% |

The Finance Act 2020 has brought a new regime applicable only to Individual & HUF at the option of tax payer. Income tax slab rates as per new tax regime are as follows:

| Income (INR) | Tax rates |
|---|---|
| Up to 250,000 | Nil |
| 250,001 – 500,000 | 5% |
| 500,001 – 750,000 | 10% |
| 750,001 – 1,000,000 | 15% |
| 1,000,001 – 1,250,000 | 20% |
| 1,250,001 – 1,500,000 | 25% |
| Above 1,500,000 | 30% |

| Total Income | Tax Rate (Section 115BAC) | Tax Rate ( Normal Provision) |
|---|---|---|
| Up to Rs.250000 | NIL | NIL |
| 250,001 – 500,000 | 5% | 5% |
| 500,001 – 750,000 | 10% | 20% |
| 750,001 – 1,000,000 | 15% | 20% |
| 1,000,001 – 1,250,000 | 20% | 30% |
| 1,250,001 – 1,500,000 | 25% | 30% |
| Above 1,500,000 | 30% | 30% |

The conditions under which can be opted for the new tax regime are as follows:

- If the new regime is opted for, then Alternative Minimum Tax (AMT) is not applicable.
- Where income does not include business or professional income, regime to be exercised every year [at the time of filing of return of income under section 139(1)].
- Where income includes business or professional income, regime to be exercised on or before the due date specified for filing of return under section 139(1), commencing on or after 1 April 2021 and such option once exercised shall apply to subsequent assessment years.
- Certain deductions/exemptions are to be foregone in order to be eligible for new tax regime.
- If an Assessee does not opt for the new scheme, he will continue to be governed by the normal provisions. The slabs, tax rates and surcharge as applicable to Individuals and HUFs have remained unchanged except on Long Term Capital Gains, as mentioned below.

For financial year, 2022-23 the surcharge applicable to Individuals & HUF rates are as follows:

| Income (INR) | Tax rates |
|---|---|
| Up to 5,000,000 | Nil |
| 5,000,001 – 10,000,000 | 10% |
| 10,000,001 – 20,000,000 | 15% |
| 20,000,001 – 50,000,000 | 25% |
| Above 50,000,000 | 37%1 |

Note:

1. Surcharge on Income taxable under section 111A -Short Term Capital Gains and Income from Long Term Capital Gains from all assets and dividend income would be restricted to 15%. Earlier, in case of Long-Term capital gains, reduced surcharge was restricted only for long-term capital gains from transfer of listed shares and equity oriented mutual funds u/s 112A.

There is no change in rate of Surcharge in other cases.

It is subject to marginal relief (in the case of a person having net income exceeding INR 10 million, the amount payable as income tax and surcharge shall not exceed the total amount payable as income tax on total income of INR 10 million by more than the amount of income that exceeds INR 10 million).

The tax computed above is increased by SC wherever applicable and is further increased by 4% Cess.

A resident individual (who has net income of INR 500,000 or less) is eligible for a rebate under section 87A. It is deductible from income tax before calculating cess. The amount of rebate is 100% of income tax or INR 12,500, whichever is less.

**Tax Rates for Firms, LLPS**

The effective tax rates (including Surcharge and Cess) for Assessment Year 2023-24 will be as follows:

| Person | Total income in Rs. | |
|---|---|---|
| | Up to Rs.1 Crore | Above Rs.1 Crore |
| Firms, LLP Etc | 31.2% | 34.944% |

**Tax Rates for Co-operative Society**

The effective Tax Rates (including Surcharge and Cess) for Assessment Year 2023-24 will be as follows:

- For Co-operative societies opting for taxation under section 115BAD, the effective rate is 25.168%
- For other Co-operative Societies

| Income above Rs.30000 up to Rs. 1 Crore | Income above Rs.1 Crore but less than Rs.10 Crore | Income above Rs.10 Crore |
|---|---|---|
| 31.20% | 33.384% | 34.944% |

Rates remain unchanged at 10% up to Rs.10000; 20% between Rs.10000 to Rs.20000; and 30% in excess of Rs.30000

Surcharge is reduced to 7% in case of income from Rs. 1crore up to Rs.10 Crore and remains unchanged at 12% where income exceeds Rs. 10 Crore.

AMT as per Section 115JC is currently charged at 18.5% (Plus Surcharge & Cess) on adjusted total income if the same exceeds Rs. 20 lakhs. The same is now reduced to 15% with effect from Assessment year 2023-24.

**Rationalization of surcharge for Association of Persons (AOP)**

Under the existing regime, the members of an AOP suffer a graded surcharge of up to 37%. Considering the members of the consortium are mainly companies, it is proposed that for AOPs consisting of only companies as its members that the rate of surcharge will be capped at 15%.

An individual can declare two house properties as self-occupied and the limit of INR 200,000 deduction on account of interest payable on borrowed capital on self-occupied houses shall continue to apply to the aggregate of the amounts of interest payable on borrowed capital for more than one self-occupied house properties.

Standard deduction of INR 50,000 is eligible on salary income earned by individual taxpayers.

Tax payable by an individual who has claimed a deduction under sections 35 AD, 10AA, 80H to 80RRB (except 80P) cannot be less than alternate minimum tax which is 22.126% (i.e. 18.5% + SC if total income exceeds INR 10 million + Cess) of adjusted total income. Adjusted total income is to be calculated according to the provisions of sections 115JC to 115JF of the Act. Alternate minimum tax is not applicable if adjusted total income does not exceed INR 2,000,000.

If provisions of Alternate minimum tax are applicable, the individual assessed will have to obtain a report in Form no. 29C from a Chartered Accountant.

Associations of persons are taxed at the rate applicable to the individual members if shares are determinant. Otherwise taxed at 30% (maximum marginal rate). If a non-resident is a member, then it is taxed at 40%.

## FILING OF RETURN

Non-resident taxpayers are required to file return of income in India on or before the due date specified by the Government. However, if the total income of the non-resident consists of any or all of the following income and withholding tax has been deducted on the same, then he is not required to file a return of income in India:

- dividend income; or
- interest income; or
- income from royalty; or
- fees for technical services

Please note that in a scenario where withholding tax is deducted based on beneficial tax rate as per tax treaty, instead of as per domestic law of India, the non-resident shall be required to file return of income in India.

**Return of Income in case of business reorganisation**

Where an entity has furnished return of income u/s 139 and subsequently order of approval of amalgamation/merger/demerger is received, the successor entity may furnish a modified return within a period of 6 months from the date of the order of reorganisation.

Finance Act 2022 introduced a new provision 139(8A) - Filing of an updated Return

An updated return of income can be furnished by a person for any assessment year whether or not the return of income has already been furnished for such assessment year under any other provisions of section 139. Such updated return can be furnished at any time (after the expiry of the time limit for furnishing a belated or revised return of income) within 24 months from the end of the relevant assessment year.

Further, it is subject to the condition that the person filing such updated return shall pay additional income-tax as applicable depending upon when such return is being filed. However, Return filed under section 139(3) loss return can be updated.

In the following cases, the updated return cannot be updated:

- It has the effect of reducing the total tax liability which is determined based on a return already furnished under the other provisions of section 139;
- It results in a refund, or it increases the refund determined based on a return already furnished under the other provisions of section 139;
- Any proceeding for assessment, reassessment or re-computation, or revision of income is pending or has been completed for the relevant assessment year;
- Any prosecution proceedings initiated.

Such person is required to pay additional tax in addition to normal income-tax and interest payable thereon as under:

| Particulars | Amount of additional tax |
|---|---|
| Where updated return is furnished before expiry of 12 months from end of relevant AY | 25% of aggregate of tax* and interest payable on the additional income reported in updated return |
| Where updated return is furnished after 12 months but before expiry of 24 months from end of relevant AY | 50% of aggregate of tax* and interest payable on the additional income reported in updated return |

## CERTAIN RECEIPTS TREATED AS GIFTS

Any sum of money or property, the aggregate value of which exceeds INR 50,000, received without consideration by an individual on or after 1st October 2009, is taxable except for amounts received:

(a) From relatives.

(b) On the occasion of marriage.

(c) Under a will/inheritance.

(d) In contemplation of death of the payer.

(e) From any local authority.

(f) From any fund or foundation or university or other educational institution or hospital or other medical institution or other prescribed institutions.

(g) From trusts or institutions registered with the Indian revenue authorities.

In respect of movable property, value shall be the fair market value as on the date of the receipt in accordance with the method prescribed. In respect of immovable property, value shall be the Stamp Duty value.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends[2] (%) | | Interest (%) | Royalties (%) | Fee for technical services (%) |
|---|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | | |
| **Treaty countries:** | | | | | |
| Albania | 10 | 10 | 10 | 10 | 10 |
| Armenia | 10 | 10 | 10 | 10 | 10 |
| Australia | 15 | 15 | 15 | 10/15[24] | 10 |
| Austria | 10 | 10 | 10 | 10 | 10 |
| Azerbaijan[33] | 15 | 15 | 15 | 15/20[25] | 10 |
| Bangladesh | 15 | 10[1] | 10 | 10 | 10 |
| Belarus | 15 | 10[1] | 10 | 15 | 10 |
| Belgium | 15 | 15 | 10/15[16] | 10/20[26] | 10 |
| Bhutan | 10 | 10 | 10 | 10 | 10 |
| Botswana | 10 | 7.5[2] | 10 | 10 | 10 |
| Brazil | 15 | 15 | 15 | 15/25[27] | 10 |

| | Dividends[2] (%) | | Interest (%) | Royalties (%) | Fee for technical services (%) |
|---|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | | |
| Bulgaria | 15 | 15 | 15 | 15/20[25] | 10 |
| Canada | 25 | 15[3] | 15 | 10/15[32] | 10 |
| China | 10 | 10 | 10 | 10 | 10 |
| Colombia | 5 | 5 | 10 | 10 | 10 |
| Croatia | 15 | 5[4] | 10 | 10 | 10 |
| Cyprus | 10 | 10 | 10 | 10 | 10 |
| Czech Republic | 10 | 10 | 10 | 10 | 10 |
| Denmark | 25 | 15[5] | 10/15[16] | 20 | 10 |
| Egypt | 0 | 0 | – | – | 10 |
| Estonia | 10 | 10 | 10 | 10 | 10 |
| Ethiopia | 7.5 | 7.5 | 10 | 10 | 10 |
| Faroe Islands | 25 | 15[5] | 10/15[16] | 20 | 10 |
| Fiji | 5 | 5 | 10 | 10 | 10 |
| Finland | 10 | 10 | 10 | 10 | 10 |
| France | 10/15 | 5/10/15[6] | 10/15[17] | 10/20[28] | 10 |
| Georgia | 10 | 10 | 10 | 10 | 10 |
| Germany | 10 | 10 | 10 | 10 | 10 |
| Greece | --[18] | --[18] | --[18] | --[18] | 10 |
| Hong Kong | 5 | 5 | 10 | 10 | 10 |
| Hungary | 10 | 10 | 10 | 10 | 10 |
| Iceland[19] | 10 | 10 | 10 | 10 | 10 |
| Indonesia | 10 | 10 | 10 | 10 | 10 |
| Ireland | 10 | 10 | 10 | 10 | 10 |
| Israel | 10 | 10 | 10 | 10 | 10 |
| Italy | 25 | 15[7] | 15 | 20 | 10 |
| Japan | 10 | 10 | 10 | 10 | 10 |
| Jordan | 10 | 10 | 10 | 20 | 10 |
| Kazakhstan | 10 | 10 | 10 | 10 | 10 |
| Kenya | 10 | 10 | 10 | 10 | 10 |
| Korea (South) | 15 | 15 | 10 | 10 | 10 |
| Kuwait | 0/10 | 0/10 | 10 | 10 | 10 |
| Kyrgyzstan | 10 | 10 | 10 | 15 | 10 |
| Latvia | 10 | 10 | 10 | 10 | 10 |
| Libya | 0 | 0 | --[18] | --[18] | 10 |
| Lithuania | 15 | 5[4] | 10 | 10 | 10 |
| Luxembourg | 10 | 10 | 10 | 10 | 10 |
| Malaysia | 5 | 5 | 10 | 10 | 10 |
| Malta | 10 | 10 | 10 | 10 | 10 |
| Mauritius | 15 | 5[4] | 7.5[20] | 15 | 10 |
| Mexico | 10 | 10 | 10 | 10 | 10 |
| Moldova[33] | 15 | 15 | 15 | 15/20[25] | 10 |
| Mongolia | 15 | 15 | 15 | 15 | 10 |
| Montenegro | 15 | 5[8] | 10 | 10 | 10 |
| Morocco | 10 | 10 | 10 | 10 | 10 |

| | Dividends[2] (%) | | Interest (%) | Royalties (%) | Fee for technical services (%) |
|---|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | | |
| Mozambique | 7.5 | 7.5 | 10 | 10 | 10 |
| Myanmar | 5 | 5 | 10 | 10 | 10 |
| Namibia | 10 | 10 | 10 | 10 | 10 |
| Nepal | 10 | 5 | 10 | 15 | 10 |
| Netherlands | 10/15 | 5/10/15[6] | 10/15[21] | 10/20[29] | 10 |
| New Zealand | 15 | 15 | 10 | 10 | 10 |
| North Macedonia | 10 | 10 | 10 | 10 | 10 |
| Norway | 10 | 10 | 10 | 10 | 10 |
| Oman | 12.5 | 10[9] | 10 | 15 | 10 |
| Philippines | 20 | 15[7] | 10/15[22] | –/15[30] | 10 |
| Poland | 10 | 10 | 10 | 15 | 10 |
| Portugal | 15 | 10[10] | 10 | 10 | 10 |
| Qatar | 10 | 5[11] | 10 | 10 | 10 |
| Romania | 10 | 10 | 10 | 10 | 10 |
| Russia | 10 | 10 | 10 | 10 | 10 |
| Saudi Arabia | 5 | 5 | 10 | 10 | 10 |
| Serbia | 15 | 5[8] | 10 | 10 | 10 |
| Singapore | 15 | 10[1] | 10/15[23] | 10 | 10 |
| Slovak Republic | 25 | 15[5] | 15 | 30 | 10 |
| Slovenia | 15 | 5[4] | 10 | 10 | 10 |
| South Africa | 10 | 10 | 10 | 10 | 10 |
| Spain | 15 | 15 | 15 | 10/20[29, 31] | 10 |
| Sri Lanka | 7.5 | 7.5 | 10 | 10 | 10 |
| Sudan | 10 | 10 | 10 | 10 | 10 |
| Sweden | 10 | 10 | 10 | 10 | 10 |
| Switzerland | 10 | 10 | 0/10 | 10 | 10 |
| Syria | 10 | 5[11] | 10 | 10 | 10 |
| Taiwan | 12.5 | 12.5 | 10 | 10 | 10 |
| Tajikistan | 10 | 5[8] | 10 | 10 | 10 |
| Tanzania | 10 | 5[12] | 10 | 10 | 10 |
| Thailand | 10 | 10 | 10 | 10 | 10 |
| Trinidad and Tobago | 10 | 10 | 10 | 10 | 10 |
| Turkey | 15 | 15 | 10/15[16] | 15 | 10 |
| Turkmenistan | 10 | 10 | 10 | 10 | 10 |
| Uganda | 10 | 10 | 10 | 10 | 10 |
| Ukraine | 15 | 10[1] | 10 | 10 | 10 |
| United Arab Emirates | 10 | 10 | 5/12.5[23] | 10 | 10 |
| United Kingdom | 10/15 | 10/15[13] | 15 | 10/15[32] | 10 |
| United States | 25 | 15[14] | 10/15[23] | 10/15[32] | 10 |
| Uruguay | 5 | 5 | 10 | 10 | 10 |
| Uzbekistan | 10 | 10 | 10 | 10 | 10 |
| Vietnam | 10 | 10 | 10 | 10 | 10 |
| Zambia | 15 | 5[15] | 10 | 10 | 10 |

Notes:

1. The 10% reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital or shares of the dividend-

paying company, as the case may be.

2. The 7.5% reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the share capital of the dividend-paying company.
3. The 15% reduced rate applies if the beneficial owner is a company which controls directly or indirectly at least 10% of the voting power in the dividend-paying company.
4. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
5. The 15% reduced rate applies if the beneficial owner is a company which owns at least 25% of the shares of the dividend-paying company.
6. The standard rate under the treaty is 15% However, by virtue of a most favoured nation clause the rate is reduced to 5% (for holdings of 10%) and 10% in all other cases.
7. The 15% reduced rate applies if the beneficial owner is a company which owns at least 10% of the shares of the dividend-paying company.
8. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
9. The 10% reduced rate applies if the beneficial owner is a company which owns at least 10% of the shares of the dividend-paying company.
10. The 10% reduced rate applies if the beneficial owner is a company that, for an uninterrupted period of two fiscal years prior to the payment of the dividend, owns directly at least 25% of the capital stock of the dividend-paying company.
11. The 5% reduced rate applies if the beneficial owner is a company which owns at least 10% of the shares of the dividend-paying company.
12. The 5% reduced rate applies if the beneficial owner is a company that owns at least 25% of the shares of the dividend-paying company.
13. The 15% rate applies where the dividends are paid out of income (including gains) derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax. The 10% rate applies in all other cases.
14. The 15% reduced rate applies if the beneficial owner is a company which owns at least 10% of the voting stock of the dividend-paying company.
15. The 5% reduced rate applies if the recipient is a company which owns at least 25% of the shares of the dividend-paying company during the period of six months immediately preceding the date of payment of the dividends.
16. The 10% reduced rate applies if the interest is paid on any loan of whatever kind granted by a bank.
17. The standard rate under the treaty is 15% while the 10% reduced rate applies to interest on loans made or guaranteed by a bank or other financial institution carrying on bona fide banking or financing business or by an enterprise which holds directly or indirectly at least 10% of the capital of the interest-paying company. However, by virtue of a most favoured nation clause the standard rate is reduced to 10%.
18. The domestic rate applies as there is no reduction under the treaty.
19. The treaty benefits do not apply in respect of dividends, interest, royalties, technical fees or capital gains if (i) by reason of special measures the tax imposed by Iceland on the recipient corporation with respect to dividends, interest, royalties, technical fees or capital gains is substantially less than the tax generally imposed on corporate profits and (ii) 25% or more of the capital of the recipient corporation is owned directly or indirectly by one or more persons who are not individual residents of Iceland (article III of the protocol).
20. The 7.5% rate applies as from 1 April 2017 (1 July 2017 in Mauritius) under the 2016 protocol to the treaty. Interest derived and beneficially owned by any bank resident in the other contracting State carrying on bona fide banking business is exempt, subject to the condition that such interest arises from debt claims existing on or before 31 March 2017.
21. The standard rate under the treaty is 15% while the 10% reduced rate applies to interest paid to banking or financial institutions or to an enterprise which holds directly or indirectly at least 10% of the capital of the interest-paying company. However, by virtue of a most favoured nation clause (cfr. the Germany-India treaty) the standard rate is reduced to 10%.
22. The 10% reduced rate applies if the interest is received by a financial institution (including insurance companies). The 15% rate applies in all other cases.
23. The reduced rate applies if the interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution (including an insurance company).
24. The 10% reduced rate applies to payments for the use of or the right to use or forbearance of the use of right to use any industrial, commercial or scientific equipment, the rendering of any ancillary technical or consultancy services.
25. The 15% reduced rate applies to payments related to copyrights of literary, artistic or scientific works, other than cinematographic films or films or tapes used for radio or television broadcasting.
26. The standard rate under the treaty is 20%. However, by virtue of a most favoured nation clause (cfr. the Austria-India treaty) the standard rate is reduced to 10%.
27. The 25% rate applies to payments arising from the use or the right to use trademarks. The 15% rate applies in all other cases.
28. The standard rate under the treaty is 20%. However, by virtue of a most favoured nation clause (cfr. the Germany-India, India-Sweden and India-USA treaties) the rate is reduced to 10%.
29. The lower rate applies to the use of, or the right to use, industrial, commercial or scientific equipment.
30. In the case of India, the 15% rate applies to payments by an enterprise in pursuance of any collaboration agreement approved by the Government of India. In other cases the domestic rate applies.
31. The standard rate under the treaty is 20%. However, by virtue of a most favoured nation clause (cfr. the Germany-India treaty) the rate is reduced to 10%.
32. The 10% reduced rate applies to payments for the use of, or the right to use, any industrial, commercial or scientific equipment or related services. In the treaty with Canada, it is specified that the higher rate applies to payment of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work, including cinematography films or work on film tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof.
33. The position regarding the applicability of the treaty with the former USSR. remains unclear. Currently there is no statement from India regarding the applicability of the treaty in relations with these countries. In practice, these countries generally do not apply the former conventions. India has concluded new treaties with several other former USSR countries.

## APPENDIX I:

Sector-wise FDI Limit:

| Sector | FDI Limit | Entry Route & Remarks |
|---|---|---|
| ***Agriculture & Animal Husbandry***<br>• Floriculture, Horticulture, Apiculture and Cultivation of Vegetables & Mushrooms under controlled conditions<br>• Development and Production of seeds and planting material<br>• Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture<br>• Services related to agro and allied sectors | 100% | Automatic |
| ***Plantation Sector***<br>• Tea sector including tea plantations<br>• Coffee plantations<br>• Rubber plantations<br>• Cardamom plantations<br>• Palm oil tree plantations<br>• Olive oil tree plantations | 100% | Automatic |
| ***Mining***<br>Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores | 100% | Automatic |
| Mining (Coal & Lignite) | 100% | Automatic |
| ***Mining***<br>Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities | 100% | Government |
| ***Petroleum & Natural Gas***<br>Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products etc. | 100% | Automatic |
| ***Petroleum & Natural Gas***<br>Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs. | 49% | Automatic |
| Defence Manufacturing | 100% | Automatic up to 49%<br>Above 49% under Government route in cases resulting in access to modern technology in the country |
| ***Broadcasting***<br>• Teleports (setting up of up-linking hubs/Teleports)<br>• Direct to Home (DTH)<br>• Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalisation and addressability<br>• Mobile TV<br>• Head end-in-the Sky Broadcasting Service (HITS) | 100% | Automatic |
| ***Broadcasting***<br>Cable Networks (Other MSOs not undertaking up gradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)) | 100% | Automatic |
| ***Broadcasting Content Services***<br>• Terrestrial Broadcasting FM (FM Radio)<br>• Up-linking of 'News & Current Affairs' TV Channels | 49% | Government |
| Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels | 100% | Automatic |
| ***Print Media***<br>• Publishing of newspaper and periodicals dealing with news and current affairs<br>• Publication of Indian editions of foreign magazines dealing with news and current affairs | 26% | Government |
| Publishing/printing of scientific and technical magazines/specialty journals/ periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting. | 100% | Government |
| Publication of facsimile edition of foreign newspapers | 100% | Government |

| Sector | FDI Limit | Entry Route & Remarks |
|---|---|---|
| ***Civil Aviation – Airports***<br>Green Field Projects & Existing Projects | 100% | Automatic |
| ***Civil Aviation – Air Transport Services***<br>• Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline<br>• Regional Air Transport Service<br>Foreign airlines can invest up to 49% under approval route subject to below conditions:<br>a. Foreign investment(s) in Air India including that of foreign Airline(s) shall not exceed 49% either directly or indirectly.<br>b. Substantial ownership and effective control of Air India shall continue to be vested in Indian National.) | 100% | Automatic up to 49%<br>Above 49% under Government route<br>100% Automatic for NRIs |
| ***Civil Aviation***<br>• Non-Scheduled Air Transport Service<br>• Helicopter services/seaplane services requiring<br>***DGCA approval***<br>• Ground Handling Services subject to sectoral regulations and security clearance<br>• Maintenance and Repair organizations; flying training institutes; and technical training institutions | 100% | Automatic |
| Construction Development: Townships, Housing, Built-up Infrastructure (including real estate broking service) | 100% | Automatic |
| Industrial Parks (new & existing) | 100% | Automatic |
| Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO | 100% | Government |
| Private Security Agencies | 74% | Automatic up to 49%<br>Above 49% & up to 74% under Government route |
| Telecom Services | 100% | Automatic up to 49%<br>Above 49% under Government route |
| Cash & Carry Wholesale Trading | 100% | Automatic |
| E-commerce activities (e-commerce entities would engage only in Business to Business (B2B) e-commerce and not in Business to Consumer (B2C) e-commerce.) | 100% | Automatic |
| Single Brand retail trading<br>Local sourcing norms will be relaxed up to three years and a relaxed sourcing regime for another five years for entities undertaking Single Brand Retail Trading of products having 'state-of-art' and 'cutting edge' technology. | 100% | Automatic |
| Multi Brand Retail Trading | 51% | Government |
| Duty Free Shops | 100% | Automatic |
| ***Railway Infrastructure***<br>Construction, operation and maintenance of the following<br>• Suburban corridor projects through PPP<br>• High-speed train projects<br>• Dedicated freight lines<br>• Rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities<br>• Railway Electrification<br>• Signalling systems<br>• Freight terminals<br>• Passenger terminals<br>• Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivity to main railway line<br>• Mass Rapid Transport Systems. | 100% | Automatic |

| Sector | FDI Limit | Entry Route & Remarks |
|---|---|---|
| Asset Reconstruction Companies | 100% | Automatic |
| Banking- Private Sector | 74% | Automatic up to 49%<br>Above 49% & up to 74% under Government route |
| Banking- Public Sector | 20% | Government |
| Credit Information Companies (CIC) | 100% | Automatic |
| Infrastructure Company in the Securities Market | 49% | Automatic |
| Insurance Company | 49% | Automatic |
| Intermediaries or Insurance Intermediaries including insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, Surveyors and Loss Assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India from time to time. | 100% | Automatic |
| Pension Sector | 49% | Automatic |
| Power Exchanges<br>*(FIIs/FPIs allowed to invest in primary market as well)* | 49% | Automatic |
| White Label ATM Operations | 100% | Automatic |
| Financial services activities regulated by RBI, SEBI, IRDA or any other regulator. | 100% | Automatic |
| Pharmaceuticals (Green Field) | 100% | Automatic |
| Pharmaceuticals (Brown Field) | 100% | Automatic up to 74%<br>Above 74% under Government route |
| Food products manufactured or produced in India<br>Trading, including through e-commerce, in respect of food products manufactured or produced in India. | 100% | Government |

**Prohibited Sectors**

FDI is prohibited in the following sectors:

- Lottery Business including Government/private lottery, online lotteries, etc.
- Gambling and Betting including casinos etc.
- Chit funds.
- Nidhi company.
- Trading in Transferable Development Rights (TDRs).
- Real Estate Business or Construction of Farmhouses (Real estate business does not include development of townships, construction of residential/commercial premises, roads or bridges and real estate broking service).
- Manufacturing of cigars, cheroots, cigarillos, and cigarettes, of tobacco or of tobacco substitutes.
- Activities/sectors not open to private sector investment e.g. Atomic Energy and Railway operations (other than permitted activities).

## INDONESIA

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Jakarta/Surabaya/Medan | Jakarta (Head Office) | +62 21 2993 2121 |
| | Donny Rindorindo | donny_r@pkfhadiwinata.com |
| | Gregorius Hadiwinata | greg@pkfhadiwinata.com |

### BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Indonesia |
| Capital: | Jakarta |
| Main languages: | Indonesian |
| Population: | 279 million (Q1 2022 estimate) |
| Monetary unit: | Indonesian Rupiah (IDR) |
| Internet domain: | .id |
| Int. dialling code: | +62 |

## KEY TAX POINTS

- Companies resident in Indonesia are subject to income tax on their worldwide income including capital gains. A permanent establishment of a foreign company is subject to tax in Indonesia on its worldwide income.
- Branch profits are taxed at the same rate as corporate profits. A 20% withholding branch profit tax is also payable on after tax income in addition to the corporate tax, subject to the application of a double tax treaty.
- Indonesian individuals are taxed on their worldwide income.
- Non-resident companies are subject to tax on income, including capital gains, derived from Indonesia.
- Based on Law No. 7 Year 2021 (Harmonized Tax Regulation) VAT is levied at a rate of 11% starting from 1 April 2022, and at 12% by 1 January 2025 (at the latest) on taxable supplies of goods and most services rendered in the Customs Area. Prior to the implementation of Law No. 7 Year 2021, VAT was levied at a standard rate of 10%, while for export of taxable goods and services the VAT rate still remains the same at 0%. Note that the 0% VAT rate on export of services must meet the requirements as stipulated under Minister of Finance Regulation No. 32/PMK.010/2019 (refer to Section VAT below for a detailed explanation).
- There is a sales tax on the transfer or importation of luxury goods, currently levied at rates between 10% and 95%.
- Stamp duties apply to the transfer of land, and certain documents are subject to Stamp Duty.
- Double tax relief credits are generally available to Indonesian residents in respect of overseas tax paid on foreign-sourced income, up to a maximum of the Indonesian tax payable on the income concerned.
- Generally, residents are subject to a creditable withholding tax of 15% on payments received from fellow Indonesian residents, while dividends – subject to certain conditions – are exempted from tax based on Law of the Republic of Indonesia No. 11 of 2020 on Job Creation.
- Payments to non-residents are generally subject to a 20% final withholding tax, subject to the application of a double tax treaty.



## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

## COMPANY TAX

A company will be considered taxable in Indonesia if it has a presence and conducts business in that country. Resolution of this question depends on whether the entity has a ‘permanent establishment’ in Indonesia. This term is widely defined to include a place of management, branch, representative office, office building, agent, factory or workshop, construction or mining site. Where such a presence exists, the permanent establishment is taxable on its worldwide income. Where similar businesses to that carried on by the permanent establishment are conducted in Indonesia, care must be taken to ensure that the ‘force of attraction’ principle does not result in that business income being taxed at the level of the permanent establishment.

Company tax is payable by monthly instalments. The collection of tax from interest, royalties, rentals and dividends, professional service fees, technical and management service fees, installation service fees, repair and maintenance service fees is by way of withholding tax. Where the recipient is a tax resident of Indonesia, the tax withheld is taken into account in determining the company’s final tax liability (except for tax on interest from banks, space rentals, and construction services which are treated as a final tax). Where the recipient is not a resident, the tax withheld represents a final tax.

Under Income Tax Law No. 36 Year 2008, which applies as of 1 January 2009, corporations were taxed at a single rate of 28% and reduced to 25% in 2010 until 2019. On 31 March 2020, the Government Regulation in Lieu of Law No. 1 Year 2020 (Perppu No.1/2020) was issued to help secure national economic stability during the Covid-19 pandemic. Under Perppu No. 1/2020, the tax rate for corporations and permanent establishments is reduced from the current rate of 25% to 22% for Fiscal Year 2020–2021 and to 20% starting from Fiscal Year 2022. Subsequently, on 18 May 2020, the government issued Law No. 2 Year 2020 to endorse Perppu No.1/2020 becoming law.

Under Law No. 7 Year 2021, which was endorsed on 29 October 2021, corporations – including permanent establishments – are taxed at 22% commencing from year 2022. In this regard, Law No. 7 Year 2021 has superseded Perppu No.1/2020, which previously provided for a 20% corporate tax rate for fiscal year 2022.

Corporations with an annual gross income of up to IDR 50 billion are entitled to a tax discount of 50% of the standard rate on taxable income derived from the portion of gross income up to IDR 4.8 billion. As for public companies, corporate tax deduction at 3% will be granted when meeting the following requirements:

(1) Minimum listing requirement is 40%;

(2) The minimum public ownership is 300 parties where each party holds less than 5% of the paid-in shares; and,

(3) The above two conditions must be fulfilled for at least six months (183 days) in a tax year.

Domestic Public Listed Companies with at least 40% of their paid-in capital traded on the Indonesian Stock Exchange and meeting certain requirements, may enjoy a further 3% tax reduction on the general tax rate, i.e., 19% from Fiscal Year 2020 onwards. Certain requirements are regulated under the Government Regulation (“GR”).

## CAPITAL GAINS TAX

Capital gains and losses are mainly included as ordinary income and taxed accordingly, except for transactions in stock on the Indonesian stock market and on private property. The gain/loss is ignored and tax is instead charged on the transaction value as follows:

| | | |
|---|---|---|
| Stock | 0.1% of transaction value | Final tax, except for founder shares sold by founder = 0.5% of transaction value |
| Private property:<br>Land and building | 2.5% of transfer value | Final tax for individuals, foundations and corporations |

## BRANCH PROFITS TAX

Branch profits are taxed at the same rate as corporate profits. However, a withholding branch profits tax of maximum 20%, subject to protection under a double tax treaty, is also payable on after-tax income in addition to the corporate tax. This additional tax is payable irrespective of whether the profits are remitted. Refer to 'Withholding Taxes' below for variations in the above rate. An exemption from withholding tax may be granted to a permanent establishment which reinvests its net profit in Indonesia.

## SALES TAX ON LUXURY GOODS

Under VAT Law No. 42 Year 2009, effected 1 April 2010, the tariff of sales tax on luxury goods is set at a minimum 10% and a maximum up to 200%, imposed on imported or domestically produced items. Currently, the rates of sales tax on luxury goods applied vary from 10% to 95%. However, exports – even if classified as luxury goods – are taxed at a 0% tariff.

The tax is collected at the manufacturer/import level. Payment of the sales tax is required by the 15th day of the following month and returns need to be submitted by the 20th day of the following month.

| Luxury items subject to sales tax | Tax Rate (%) |
|---|---|
| Luxury houses and town houses non-strata title with selling price of IDR 20 billion and above | 20 |
| Apartments, condominiums, towns houses strata title and the likes with selling price of IDR 10 billion and above | 20 |
| Air balloons and unpowered aircrafts | 40 |
| Bullets of fire arms and other types fire arms, except for nation's use | 40 |
| Luxury cruisers, ferries and yachts, except for nation and commercial's use | 75 |
| Aircrafts and helicopters, except for nation and commercial's use | 50 |
| Firearms, revolvers, pistols, except for nation's use | 50 |
| Motor vehicles with the capacity of 10 to 15 passengers | 10 |
| Motor vehicles of 1500 cc to 2500 cc with the capacity of fewer than 10 passengers | 20 |
| Sedan or station wagon with the cylinder up to 1500 cc | 30 |
| 2-wheel drive motor vehicles other than sedan and station wagon with the cylinder of 2500 cc to 3000 cc | 40 |
| 4-wheel drive motor vehicles, sedan and station wagon, with the cylinder of 1500 cc to 3000 cc | 40 |
| Special purpose vehicles for golf | 50 |
| Motorcycles with the cylinder capacity of 250 cc to 500 cc | 60 |
| Special purpose vehicles to be used in the snow, beach, mountains and the like | 60 |
| Sedan and station wagon with the capacity of more than 3000 cc | 95 |
| Diesel sedan and station wagon with the capacity of more than 2500 cc | 95 |
| Motorcycles with the capacity cylinder of more than 500 cc | 95 |
| Caravan trailer and semi-trailer for housing and camping | 95 |

## VALUE ADDED TAX (VAT)

VAT is levied at a standard rate of 10%. Based on Law No. 7 Year 2021 (Harmonized Tax Regulation), starting from 1 April 2022, the VAT rate is changed to 11% and levied on importers, manufacturers, wholesalers and retailers and on the provision of most services. While the VAT laws permit amendments to the rates for individual items, currently the products with a rate other than 10%/11% are cigarettes and used cars. Services such as package deliveries and travel agents are taxed at 1%, while factoring is imposed at 5% on the fees received. Exports of taxable goods are effectively excluded from VAT by being subject to the tax at a nil rate. Under VAT Law No. 42 Year 2009, which took effect from 1 April 2010, the export of services is subject to 0% VAT. Ministry of Finance (MoF) Regulation No. 32/PMK.010/2019 further defines that the zero-rated VAT is applicable to the following services:

1. Sub-contracting services with certain requirements:
    - The buyer or recipient of taxable service is outside the Customs area and is a non-resident taxpayer and does not have a permanent establishment as specified in Income Tax Law;
    - Specification and material are provided by the buyer or the recipient of the taxable service;
    - Materials are defined as raw materials, work in process and/or supporting material to be further processed into finished taxable goods;
    - Ownership of finished goods is in the hands of the buyer or the recipient of the taxable service;
    - The sub-contracting entrepreneur delivers the products by request from the buyer or the recipient of the taxable service to outside the Customs area;
2. Construction services including construction planning, construction work and construction supervision located outside the Customs area;
3. Repair and maintenance services which are attached to services of movable goods utilised outside the customs area.
4. Technology and information services;
5. Research and development services;
6. Sea and air transportation rental services for international activities;
7. Business consulting and management services, legal consultancy services, architectural and interior design consulting

services, human resources consulting services, engineering consulting services, marketing consulting services, accounting or bookkeeping services, audit or financial reporting services, and tax services;

8. Trading services in the form of services to find sellers of goods in the Customs Area for export purposes; and
9. Interconnection services, satellite operation and/or communication/data connectivity.

With regard to the above-mentioned export services, certain requirements must be met as described under a Ministry of finance Regulation. In case of failure to meet the defined requirements, said services will be considered as services provided in the Customs Area subject to a 10% VAT rate.

VAT is payable by the end of the following month of the relevant transaction prior to the submission deadline of the monthly tax return. In the case of certain services rendered by non-residents of Indonesia such as the use of intangible taxable goods and/or offshore services, the recipient of these services has an obligation, by way of self-assessment, to pay and report import VAT by the 15th of the following month.

Goods excluded from VAT:

- Food served in hotels and restaurants, including food and drinks provided by catering services;
- Money, gold and securities.

Services excluded from VAT:

- Religious services;
- Art and entertainment services;
- Hotel and boarding house services;
- Services provided by the government relating to public administration and formality requirements;
- Parking services;
- Food and catering services.

I

## VAT ON E-COMMERCE

Based on Perppu No. 1 Year 2020 Indonesian VAT is imposed on the use of certain intangible goods and services provided by overseas parties to Indonesian customers as a trade through an electronic system. The procedures of such trade through an electronic system are stipulated under the Minister of Finance Regulation.

VAT on e-commerce is imposed on foreign sellers, foreign service providers, or foreign e-commerce marketplaces and domestic e-commerce marketplaces, appointed as VAT Collectors, when their activities on the Indonesian market meet either of the following criteria:

- transaction value in Indonesia exceeding IDR 600 million in a year or IDR 50 million in a month; or
- total e-commerce traffic or accessor in Indonesia exceeds 12,000 users in a 12-month period, or 1,000 users in one month.

Appointment of VAT Collector on e-commerce transactions will be as follows:

- The appointed VAT Collector is determined by the Director General of Taxes (DGT) and shall take effect at the beginning of the month following the date of the decision on the appointment;
- Appointed VAT Collector is given an identity number as a means of tax administration, which is used as a personal identification or appointed VAT Collector's identity in exercising its rights and meeting its tax obligations;
- The appointed VAT Collectors should pay the VAT collected from Indonesian customers to the State Treasury (electronically) and submit reports through the designated electronic tax filing system provided by the DGT.

## FRINGE BENEFITS TAX (FBT) / BENEFITS IN KIND

Based on the Harmonized Tax Regulation of Law No. 7 Year 2021, benefits in kind received by employees will be included as employee benefits subject to tax at the level of the employees.

## LOCAL TAXES

Provincial tax is charged mostly at 10%, i.e., hotel and restaurant services, parking services.

## STAMP DUTY ON LAND RIGHT TRANSFER

Effective from 1 January, 2011, Stamp Duty on building and/or land right transfer is charged under the provincial government at 5% of the transfer cost.

## OTHER TAXES

## DOCUMENTARY STAMP TAX

Stamp Duty comes at a nominal amount of IDR 10,000. The types of documents upon which Stamp Duty is payable include:

- Letters of agreement, prepared for the purpose of evidencing acts, facts or conditions of a civil nature;
- Notarial deeds;
- All documents bearing a sum of money above IDR 5 million, including letters of promise to pay, securities, in any form and name, and transaction documents;
- Documents to be used as instruments of evidence before a court.

## LAND AND BUILDING TAX

Land and building tax is payable annually on land, buildings and permanent structures, although the effective rates are typically 0.5% of the value of the property.

## IMPORT DUTIES

Import duties are due at the following rates:

| Group | Goods | Rate (%) |
|---|---|---|
| Automobiles | Passenger and commercial vehicles | 5 – 50 |
| Automobile components | Incompletely knocked down<br>Part-by-part | 0 – 7.5<br>0 – 10 |
| Vessels | Ship, boats, and floating structure | 0 – 5 |
| Electronic goods | Camera, refrigerator, cellular phone et al. | 0 – 15 |
| Footwear | Footwear under HS Code 64 | – |
| Beverages, ethyl alcohol and alcoholic drinks | Ethyl alcohol, beer, wine, spirits, and other beverages. | 5 – 150 or IDR 14,000/ltr |
| Essential oils and resinoids | Odoriferous substances | 5 – 150 |
| Agricultural products | Animal and vegetable products | 0 – 30 |
| Textile, textile products and accessories | Bags, harnesses, apparels, and clothing accessories, etc. | 5 – 35 |
| Other | Chemicals, pharmaceutical products, rubber, etc. | 0 – 40 |

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is calculated under normal accounting principles adjusted for specific tax rules. A deduction is allowed for all outgoings and expenses incurred for obtaining, collecting and maintaining taxable income.

Deductions are not allowed in relation to the following items:

- Income tax payments (including penalties);
- Capital expenditure (see 'Depreciation' below);
- Private expenses;
- Non-business gifts, aid and donations, except 'zakat' (Islamic alms) and other compulsory religious donations approved by the government;
- Profit distributions;
- Employers' contributions for life, health, and accident insurance and contributions to non- approved pension funds unless the contributions are treated as taxable income of employees;
- Provisions (except for financial institutions);
- Dividends;
- Expenses related to income which are taxed at a final rate, i.e. interest on loans related to time deposits;
- Expenses related to income which are exempt from tax, i.e. interest on loans used to buy shares where dividends to be received are not subject to income tax;
- Salaries or compensation received by a partnership or firm as members where their participation is not divided into shares.

## INVESTMENT INCENTIVES

Taxpayers investing in certain business sectors and/or in certain areas/locations may be entitled to taxation incentives in the form of:

- A reduction in net income up to a maximum of 30% (5% per year for six years) from the total investment realised;
- Accelerated depreciation and amortisation;
- Tax loss compensations for a longer period but not exceeding 10 years;
- An exemption is granted from dividend withholding tax when at least 30% of the dividend is re-invested into certain investment instruments as stipulated under the Ministry of Finance Regulation. This exemption applies to both corporations and individuals.

## DEPRECIATION

Where fixed assets (either tangible or intangible) have a beneficial life of greater than one year, tax relief for the cost of acquisition is available through depreciation. The following depreciation rates are applicable:

| Beneficial Life | Straight-line method (%) | Declining-balance method (%) |
|---|---|---|
| A. Non-building: | | |
| 1 – 4 years | 25 | 50 |
| 4 – 8 years | 12.5 | 25 |
| 8 – 16 years | 6.25 | 12.5 |
| 16 – 20 years | 5 | 10 |
| B. Building: | | |
| Permanent | 5 | -- |
| Non-permanent | 10 | -- |

Note: Depreciation of property is taken into account commencing the month, instead of the year, that the property is acquired which means that the first year depreciation is accounted for on a pro rata basis, while the net book value is depreciated accordingly over its remaining beneficial years, unless it is retired or sold within its beneficial life.

## STOCK / INVENTORY

Taxpayers may value inventory using either the 'first-in, first-out' (FIFO) or Average Cost methods. Whichever method is selected, it must be consistently applied.

## CAPITAL GAINS AND LOSSES

Gains and losses on capital items are taxable in Indonesia without special treatment being afforded to such items, except for gains and losses on sales of share certificates of listed companies and on sales of land and buildings as previously mentioned.

## DIVIDENDS

An exemption exists under particular circumstances for dividends received by companies incorporated in Indonesia where the payer is also an Indonesian company. In the absence of a double tax treaty, withholding tax at 20% is levied on dividend payments to non-residents. Reference should be made to the section on withholding tax and the individual treaties.

An exemption from dividend withholding tax is granted when at least 30% of the dividend is re-invested into certain investment instruments as stipulated under the Ministry of Finance Regulation. Otherwise, the difference between the 30% threshold and the re-invested portion will be subject to income tax. This exemption applies to corporations, permanent establishments and individuals.

## INTEREST DEDUCTIONS

While the Minister of Finance is empowered to prescribe required debt equity ratios for foreign companies, no limit has been set to date. Due to the existence of this power, however, caution should be exercised to ensure debt is not considered equity, with the result that the related interest and borrowing costs are disallowed.

## LOSSES

While loss carry backs are not permitted, losses may be carried forward for up to 5 years. The period over which losses are able to be carried forward can be extended by decree from the Minister of Finance.

## DEBT-TO-EQUITY RATIO

The debt-to-equity ratio (DER) is limited to a maximum of 4:1 in order to claim the borrowing costs as an allowable deduction for tax purposes. Should the DER exceed the prescribed 4:1 threshold, the excess borrowing costs will be disallowed as deductible in determining the amount of taxable income. The 4:1 DER does not apply to the following taxpayers: banks, financial institutions, insurance and reinsurance institutions, mining businesses (subject to certain contracts or agreements), taxpayers whose income is fully subject to final tax under respective regulations, and businesses in infrastructure sectors. If a taxpayer's equity balance is zero or negative, the entire borrowing costs are disallowed as a deduction in calculating the amount of taxable income.

## C. FOREIGN TAX RELIEF

Where an Indonesian resident has foreign branches (or earns other foreign-source income), the income of those branches will be taxable in Indonesia. Where such income has been subject to foreign tax, tax credits will be granted, subject to a maximum of the Indonesian tax payable on the income concerned.

## D. CORPORATE GROUPS

The consolidation of returns is not allowed.

## E. RELATED PARTY TRANSACTIONS

- The tax authorities will disallow a deduction for excessive/non-arm's-length transactions between related parties.
- The tax authorities are authorised to re-allocate the amount of income and deductions between related parties and to characterise debt as equity to calculate the amount of taxable income for a taxpayer that has a special relationship with other taxpayers in accordance with the arm's-length principle.

Following the recommendation of Action 13 of the OECD's Base Erosion and Profit Shifting Project, Indonesia issued Ministry of Finance Regulation 213/PMK.03/2016 to implement a three-tiered standardised approach to TP documentation, which will provide the tax administrations with adequate information to perform a TP risk assessment and make informed decisions during a TP audit to minimise disputes. PMK-213 is effective from 30 December 2016 and thus applies from fiscal year 2016 onwards.

A taxpayer with related-party transactions is required to prepare a master file and a local file if:

- the gross revenue in the prior fiscal year is more than IDR 50 billion;
- the value of related-party transactions in the prior fiscal year exceeds:
    - o IDR 20 billion in respect of tangible goods; or
    - o IDR 5 billion in respect of the provision of services, payment of interest, use of intangible goods, or other related-party transactions; or
- the affiliated party is domiciled in a country or jurisdiction with lower income tax rates than the prevailing tax rate in Indonesia.

## F. WITHHOLDING TAX

Generally, residents are subject to a creditable withholding tax of 15% with any balance being payable or refundable, while non-residents are subject to a final withholding tax of 20%. Withholding taxes are collected when the taxable transaction takes place or payment becomes due. The rates of withholding tax are as follows:

| | Residents[1] (%) | Non-residents[1] (%) |
|---|---|---|
| Dividends[2] | 15 | 20 |
| Interest | 15 | 20 |

| | Residents[1] (%) | Non-residents[1] (%) |
|---|---|---|
| Royalties | 15 | 20 |
| Prizes and awards | 15 | 20 |
| Rental and other income related to the use of property, other than land/space rental | 2 | 20 |
| Technical, management, consulting, and other services | 2 | 20 |

NOTES:

1. All percentage rates are on gross amounts unless otherwise noted.
2. Withholding tax on dividends paid to Indonesian corporate shareholders will be exempt only if the following conditions are met:
   i. The dividend is sourced from retained earnings;
   ii. The recipient has at least a 25% shareholding in the dividend-payer.

A 100% withholding tax is imposed, in addition to the applicable tax rate, on individuals and corporations, other than non-residents, who do not have a tax identification number (NPWP).

## FINAL WITHHOLDING TAXES

The following transactions are subject to a final withholding tax. These taxes apply to residents and permanent establishments of non-residents.

| | |
|---|---|
| Sale of listed shares[1] | 0.1% of the gross proceeds |
| Additional tax on sale of listed Founder shares by a founder shareholder[1] | 0.5% of the IPO price |
| Sale of land or buildings[1] | 2.5% of the sales value (final tax for individuals, foundations and corporations). An extra 5% stamp duty for the land and/or building acquisition rights is payable by the purchaser |
| Transfer of real estate to a Real Estate Investment Fund (Kontrak Investasi Kolektif (KIK) - Dana Investasi Real Estate (DIRE) | 0.5% of the gross proceeds |
| Interest or discount on Government CDs and savings deposits and interest or discount on bonds2 | 20% (except for banks and certain approved pension and mutual funds; and loan interest on simple houses) |
| Asset revaluation approved by the Tax Office | 10% of the difference between the book value and the revalued amount of the assets (unless current year tax losses, which will firstly be applied against the revaluation difference) |
| Prizes from lotteries | 25% of gross proceeds |
| Land and/or building rental (include service charge) | 10% of gross proceeds |

NOTES:

1. These rates also apply to non-residents (subject to the application of a double tax treaty).
2. No withholding tax is payable in respect of savings, deposits or Government CDs with a principal amount up to IDR 7,500,000.

Under Government Regulation No. 51 dated 20 July 2008, Construction Services are subject to final tax at the following rates:

- 2% on construction services provided by qualified small enterprises;
- 4% on construction services provided by non-qualified enterprises;
- 3% on construction services provided by enterprises other than those mentioned above;
- 4% on construction planning and supervisory services provided by qualified enterprises; and,
- 6% on construction planning and supervisory services provided by non-qualified enterprises.

(Note that the above Government Regulation is effective as of 1 January 2008.)

Further to Government Regulation No. 9 dated 21 February 2022, Construction Services are subject to final tax at the following rates:

a) 1.75% on construction work carried out by Service Providers who have a small qualifying business entity certificate or certificate work competence for individual businesses;
b) 4% on construction work carried out by Service Providers who do not have a business entity certificate or work competency certificate for individual business;
c) 2.65% on construction work carried out by Service Providers other than Service Providers as referred to in letter a and letter b above;
d) 2.65% on integrated construction works carried out by a Service Provider who has a business entity certificate;
e) 4% on integrated construction work carried out by Service Providers who do not have a business entity certificate;
f) 3.5% on construction consulting services carried out by Service Providers who have a business entity certificate or work competency certificate for individual business; and
g) 6% on construction consulting services carried out by Service Providers who do not have a business entity certificate or a work competency certificate for individual business.

## GOVERNMENT REGULATION NO. 23 YEAR 2018 REGARDING 0.5% FINAL TAX

Government Regulation No. 23 Year 2018 (“GR-23”) entered into force on 1 July 2018 replacing GR No. 46 Year 2013 regarding final tax on taxpayers within a certain turnover.

Under GR-23, the final tax rate is reduced from the previous tax rate of 1% to 0.5% applicable to taxpayers with annual gross turnover not exceeding IDR 4.8 billion per annum based on the previous year's activity. However, it does not include the following income:

a. Income derived from the delivery of certain freelance services by individuals;
b. Income derived from overseas which is payable or has been taxed in the source country;
c. Income subject to final tax under certain tax regulations; and
d. Income not subjected to tax.

The following taxpayers are also excluded from the application of the 0.5% final tax under the GR-23:

a. Taxpayers who choose to be submitted to the normal tax regime (Article 17 or Article 31E Income Tax);
b. Limited partnerships or firms set up by individuals who have special expertise, i.e. professionals and freelance services;
c. Companies that obtain an Income Tax Allowance or Tax Holiday; and
d. Taxpayers in the form of a permanent establishment.

The final tax should be self-assessed or withheld by the transaction counterpart. For withholding purposes, final-taxed taxpayers should apply to the DGT for a Statement Letter, allowing them to abide by GR-23 and hence to be subject to 0.5% on their gross income.

GR-23 sets the following new limitation periods during which taxpayers can benefit from the final tax regime before they are submitted to the normal tax regime:

a. Seven years for individuals (will expire by the end of 2024);
b. Four years for cooperatives, limited partnerships, or firms (expired by the end of 2021); and
c. Three years for limited liability companies (expired by the end of 2020).

The limitation period commences from the tax year since the taxpayer is registered - for those registered after the commencement of GR-23 - and from tax year 2018 - for the taxpayers registered prior to the commencement of GR-23.



## WITHHOLDING TAX - ARTICLE 22

Article 22 income tax is typically applicable to the following:

1) The import of goods. A creditable withholding tax of 2.5% for importers with an import licence or 7.5% imposed if the importer does not possess the appropriate import licence;
2) The sale of goods to the government requiring payment from the State Treasury, the State Budget General Directorate, or certain state-owned companies. The tax rate applied to these transactions is 1.5% of its selling price; and,
3) The sale/purchase of steel, cars, cement and paper products. The tax rates are: purchase of steel: 0.30%; automotive products: 0.45%; cement: 0.25%; and paper products: 0.10% of its selling price.
4) The sale/purchase of high value luxury goods is subject to 5% tax.

An additional 100% withholding tax is imposed on individuals or corporations, other than non-tax residents, who do not possess a NPWP.

## G. EXCHANGE CONTROL

While the importation of capital is relatively uninhibited, foreign investment must be approved. Similarly, foreign currency can be transferred essentially free of control although minor reporting requirements do exist. Importantly, repatriation of capital, other than resulting from the sale of existing shares to Indonesians, is prohibited for the period the investor enjoys any tax holiday.

## H. PERSONAL TAX

Residents of Indonesia are taxed on their worldwide income. Non-residents are only taxed on income derived from Indonesia. An individual will be a resident of Indonesia if they are present in Indonesia for more than 183 days or reside in Indonesia during a fiscal year and intend to stay in Indonesia. Certain double tax treaties modify the above rules. Individual taxable income is progressively taxed at the following rates:

| Taxable Income (IDR) | (IDR) |
|---|---|
| 0 – 60,000,000 | 0 + 5% on excess |
| 60,000,001 – 250,000,000 | 3,000,000 + 15% on excess |
| 250,000,001 – 500,000,000 | 31,500,000 + 25% on excess |
| 500,000,001 – 5,000,000,000 | 94,000,000 + 30% on excess |
| Above 5,000,000,000 | 1,444,000,000 + 35% on excess |

An additional 20% tax is imposed on individuals, other than non-tax residents, who do not possess an NPWP.

## ALLOWABLE DEDUCTIONS

In determining the annual taxable income of an individual, the following may be deducted from gross income:

| | (IDR) |
|---|---|
| Occupational support: 5% of gross income, up to maximum of | 6,000,000 |
| Pension: 5% of gross income, up to maximum of | 2,400,000 |
| Non-taxable income (effective 1 January 2016): | 54,000,000 |
| • For the taxpayer | |
| • Additional for a married taxpayer | 4.500,000 |
| • Additional for each lineal family member related by blood | 4,500,000 each |

A married female employee is only allowed non-taxable income for herself if she has a certificate from the local authorities that her husband does not work. Non-resident individuals are subject to a final tax of 20% where the payments represent compensation for work performed in Indonesia regardless of where they are paid. Lump sum pension payments and severance pay on individual residents are subject to final tax on the gross amount at the following rates:

| Lump Sum Pensions Payments | |
|---|---|
| **Taxable Income** | **(IDR)** |
| 0 – 50,000,000 | exempt/non-taxable income |
| Above 50,000,000 | 5% |

| Severance pay | |
|---|---|
| **Taxable Income** | **(IDR)** |
| 0 – 50,000,000 | exempt/non-taxable income |
| 50,000,001 – 100,000,000 | 5% |
| 100,000,001 – 500,000,000 | 2,500,000 + 15% on excess |
| Above 500,000,000 | 62,500,000 + 25% on excess |

However, pension payments made to non-resident individuals are taxed under Article 26 of the Income Tax Law at a rate of 20% on the gross amount. Where home leave or education costs are reimbursed, the amount of the reimbursement is taxable in full at the level of the employee. Note that food and beverages provided at the workplace by an employer to its employees are not subject to tax but deductible for the employer.

I

## SOCIAL SECURITY

Under the government regulations, employers are required to register themselves and their employees for a social security program managed by the social security agency, the so-called BPJS (formerly known as Jamsostek). While the employers must pay a certain portion of the premium contributions, the employees' contributions are normally collected through payroll deductions from their gross regular salaries/wages. Currently, the BPJS premium contributions consist of BPJS Employment Insurance and BPJS Health Insurance as follows:

| Description | Borne by employer | Borne by employee |
|---|---|---|
| BPJS Employment Insurance | | |
| • Working accident coverage | 0.24% up to 1.74% | -- |
| • Death insurance | 0.3% | -- |
| • Old age savings | 3.7% | 2% |
| BPJS Health Insurance | | |
| • Health care[1] | 4% | 1% |
| BPJS Pension | | |
| • Pension[2] | 2% | 1% |

1. Maximum calculation base is IDR 8,000,000/month.
2. Maximum calculation base is subject to yearly adjustment based on BPJS regulation.

Note that the requirement of participating in BPJS social security applies to all employees, including expatriates who have been working in Indonesia for more than six months.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Withholding taxes are levied on corporations and individuals, residents and non-residents as follows:

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Non-treaty countries** | | | | |
| Companies | 20 | 20 | 20 | 20 |
| Individuals | 20 | -- | 20 | 20 |
| **Treaty countries:** | | | | |
| Algeria | 15 | 15 | 15 | 15 |
| Armenia | 15 | 10[1] | 10 | 10 |
| Australia | 15 | 15 | 10 | 10/15[10] |
| Austria | 15 | 10[2] | 10 | 10 |
| Bangladesh | 15 | 10[3] | 10 | 10 |
| Belarus | 10 | 10 | 10 | 10 |
| Belgium | 15 | 10[1] | 10 | 10 |
| Brunei | 15 | 15 | 15 | 15 |

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Bulgaria | 15 | 15 | 10 | 10 |
| Cambodia | 10 | 10 | 10 | 10 |
| Canada | 15 | 10[1] | 10 | 10 |
| China | 10 | 10 | 10 | 10 |
| Croatia | 10 | 10 | 10 | 10 |
| Czech Republic | 15 | 10[4] | 12.5 | 12.5 |
| Denmark | 20 | 10[2] | 10 | 15 |
| Egypt | 15 | 15 | 15 | 15 |
| Finland | 15 | 10[1] | 10 | 10/15[11] |
| France | 15 | 10[2] | 10/15[9] | 10 |
| Germany | 15 | 10[2] | 10 | 7.5/10/15[12] |
| Hong Kong | 10 | 5[1] | 10 | 5 |
| Hungary | 15 | 15 | 15 | 15 |
| India | 10 | 10 | 10 | 10 |
| Iran | 7 | 7 | 10 | 12 |
| Italy | 15 | 10[1] | 10 | 10/15[13] |
| Japan | 15 | 10[5] | 10 | 10 |
| Jordan | 10 | 10 | 10 | 10 |
| Korea (Rep.) | 15 | 10[1] | 10 | 15 |
| Korea (Dem. People's Rep.) | 10 | 10 | 10 | 10 |
| Kuwait | 10 | 10 | 5 | 20 |
| Laos | 15 | 103 | 10 | 10 |
| Luxembourg | 15 | 10[1] | 10 | 10/12.5[20] |
| Malaysia | 10 | 10 | 10 | 10 |
| Mexico | 10 | 10 | 10 | 10 |
| Mongolia | 10 | 10 | 10 | 10 |
| Morocco | 10 | 10 | 10 | 10 |
| Netherlands | 10/15[21] | 5[22] | 5/10[23] | 10 |
| New Zealand | 15 | 15 | 10 | 15 |
| Norway | 15 | 15 | 10 | 10/15[14] |
| Pakistan | 15 | 10[2] | 15 | 15 |
| Papua New Guinea | 15 | 15 | 10 | 10 |
| Philippines | 20 | 15[1] | 10/15 | 15 |
| Poland | 15 | 10[4] | 10 | 15 |
| Portugal | 10 | 10 | 10 | 10 |
| Qatar | 10 | 10 | 10 | 5 |
| Romania | 15 | 12.5[1] | 12.5 | 12.5/15[15] |
| Russia | 15 | 15 | 15 | 15 |
| Serbia | 15 | 15 | 10 | 15 |
| Seychelles | 10 | 10 | 10 | 10 |
| Singapore | 15 | 10[2] | 10 | 8/10 |
| Slovak Republic | 10 | 10 | 10 | 10/15[16] |
| South Africa | 15 | 10[3] | 10 | 10 |
| Spain | 15 | 10[1] | 10 | 10 |
| Sri Lanka | 15 | 15 | 15 | 15 |
| Sudan | 10 | 10 | 15 | 10 |
| Suriname | 15 | 15 | 15 | 15 |
| Sweden | 15 | 10[1] | 10 | 10/15[17] |
| Switzerland | 15 | 10[1] | 10 | 10 |
| Syria | 10 | 10 | 10 | 15/20[18] |

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Taiwan | 10 | 10 | 10 | 10 |
| Tajikistan | 10 | 10 | 10 | 10 |
| Thailand | 15/20[6] | 15/20[6] | 15 | 15 |
| Tunisia | 12 | 12 | 12 | 15 |
| Turkey | 15 | 10[1] | 10 | 10 |
| Ukraine | 15 | 10[4] | 10 | 10 |
| United Arab Emirates | 10 | 10 | 7 | 5 |
| United Kingdom | 15 | 10[7] | 10 | 10/15[19] |
| United States | 15 | 10[8] | 10 | 10 |
| Uzbekistan | 10 | 10 | 10 | 10 |
| Venezuela | 15 | 10[3] | 10 | 20[24] |
| Vietnam | 15 | 15 | 15 | 15 |

Notes:

1. The reduced 10% rate applies if the beneficial owner is a company which holds directly at least 25% of the equity capital of the paying company.
2. The reduced 10% rate applies if the recipient is a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
3. The reduced 10% rate applies if the beneficial owner is a company which holds (directly) at least 10% of the capital of the paying company.
4. The reduced 10% rate applies if the beneficial owner is a company which holds directly at least 20% of the capital of the paying company.
5. The reduced 10% rate applies if the beneficial owner is a company which owns at least 25% of the voting shares of the paying company during the period of 12 months immediately before the end of the accounting period for which the distribution of profits takes place.
6. 15% if the paying company engages in an industrial undertaking and 20% in other cases.
7. The reduced 10% rate applies if the beneficial owner is a company which controls, directly or indirectly, at least 15% of the voting power of the paying company.
8. The reduced 10% rate applies if the beneficial owner is a company that owns directly at least 25% of the voting stock of the paying company.
9. The reduced 10% rate applies if interest is paid by a bank, a financial institution or by an enterprise the activities of which are mainly carried on in the fields of agriculture, plantation, forestry, fishery, mining, manufacturing, industries, transportation, low cost housing projects, tourism and infrastructure and for interest paid to a bank or to another enterprise.
10. The reduced 10% rate applies to royalties for (i) the use of, or the right to use, any industrial, commercial or scientific equipment (ii) the supply of scientific, technical, industrial or commercial knowledge or information (iii) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the initial application of any such equipment mentioned in (i) or any such knowledge or information mentioned in (ii). The 10% rate also applies to total or partial forbearance in respect of the use or supply of any property or right considered as royalties in the treaty. The 15% rate applies in all other cases.
11. The 10% rate applies to royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films or tapes for television or radio broadcasting.
12. The 10% rate applies to royalties for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience. The 7.5% rate applies to fees for technical services. The 15% rate applies in all other cases.
13. The 10% rate applies to royalties in respect of payments of any kind received as a consideration for the use of, or the right to use industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience. The 15% rate applies in all other cases.
14. The 15% rate applies to royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or films or tapes for radio or television broadcasting. The 10% rate applies to royalties for any patent, trade mark, design or model, plan, secret formula or process, and for the use of or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
15. The 12.5% rate applies to royalties for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, or for the use of, or the right to use, industrial, commercial or scientific equipment, cinematograph films or tapes for television or broadcasting. The 15% rate applies to royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work.
16. The reduced 10% rate applies to royalties for the use of, or the right to use any copyright of motion picture films or films or video for use in connection with television or tapes for use in connection with radio broadcasting or total or partial forbearance in respect of the use or supply or any property or right considered as royalties in the treaty.
17. The 10% rate applies to royalties for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience. The 15% rate applies to royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process.
18. The 15% rate applies to royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or tapes for television or radio broadcasting. The 20% rate applies to royalties for the use, or the right to use, any patent, trade mark, design or model, plan, or any industrial or scientific equipment, or for information concerning industrial or scientific experience.
19. The 10% rate applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment. The 15% rate applies to royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, and films or tapes for radio or television broadcasting, or any patent, know-how, trade mark, design or model, plan, secret formula or process.
20. The 12.5% rate applies to royalties while the 10% rate applies to technical services.
21. The 10% rate applies to dividends paid to a recognised pension fund whose income is generally exempt. The 15% rate applies in all other cases.

22. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
23. The 5% reduced rate applies to interest paid on a loan made for a period of more than two years or is paid in connection with the sale on credit of any industrial, commercial or scientific equipment.
24. A 20% rate applies to royalties while a 10% rate applies to fees for technical assistance.

# IRAQ

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Erbil | Mohammed Khattab | +964 750 8829 873<br>mkhattab@pkfiraq.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Iraq |
| Capital: | Baghdad |
| Main languages: | Arabic, Kurdish |
| Population: | 42.25 million (2022 estimate) |
| Monetary unit: | Iraqi Dinar (IQD) |
| Internet domain: | .iq |
| Int. dialling code: | +964 |



## KEY TAX POINTS

- Companies are broadly subject to a fixed corporation tax rate of 15%.
- Capital gains are treated as part of the ordinary income of companies and taxed at the appropriate corporation tax rate.
- There is no Value Added Tax (VAT) or Goods and Services Tax (GST) in Iraq.
- Related party transactions are required to be reported separately and should be made on a third party arm’s length basis. Where prices paid for the purchase of goods or services are excessive or unreasonable, the Tax Authority can disallow a deduction for the excess portion.
- Resident and non-resident individuals are subject to personal tax at progressive tax rates up to 15%. Resident individuals can claim relevant exemptions whereas no exemptions are available to non-resident individuals.

## A. TAXES PAYABLE

## COMPANY TAX

An Iraqi resident company is liable to corporation tax on all its resources of income and capital gains whenever arising from the following operations:

- Trading activities;
- Manufacturing activities;
- Investments in securities and bonds;
- Interests; and,
- Rent of agricultural grounds.

Corporate tax rates are fixed for each financial year ending 31 December.

**Tax rates**

- Taxes on Limited Liability Companies:

  Limited Liability Companies are subject to a fixed tax rate of 15%.
- Tax on Private Shareholding Companies:

  Private Shareholding Companies are subject to a fixed tax rate of 15%.
- Tax on Mixed Shareholding Companies:

  Mixed Shareholding Companies are subject to a fixed tax rate of 15%.
- Contracts concluded with foreign oil companies which are contracted to work in Iraq or its branches or offices and the parties sub-contracting with it in the field of the production and extraction of oil and gas and their related industries are subject to 35% income tax on income realized inside of Iraq.

Tax returns must be filed by or before the 31st of May of the year of assessment. If the returned self-assessed position is not accepted by the tax authorities they will raise an assessment based on the information available to them and payment of the tax liability is due within 21 days from the assessment date. No quarterly payments are due during a tax year.

## CAPITAL GAINS TAX

Capital gains made by companies are taxed at the appropriate corporation tax rate.

### BRANCH PROFITS TAX
Foreign branches in Iraq are taxable at the corporation income tax ratios, after deduction of any overseas taxation.

### VALUE ADDED TAX
There is no VAT in Iraq. However, special sales tax applies as follows:
- 10% on services rendered by hotels and restaurants;
- 20% on sales of mobile and internet charging cards;
- 5% on importation of vehicles of all kinds; and
- 100% on importation of cigarettes and alcoholic beverages.

### PROPERTY, PLANT AND EQUIPMENT RENTAL
A 10% deduction can be made against the rental income from property, plant and equipment in respect of depreciation and maintenance expenses. The remainder (90%) is then subject to 10% income tax.

## B. DETERMINATION OF TAXABLE INCOME
Any income incurred in Iraq is subject to income tax. Corporate taxable income is determined by ascertaining assessable gross income and reducing it by allowable deductions.

### DEPRECIATION
Depreciation expense on machinery and equipment is deductible based on certain ratios whereas the depreciation on buildings and real estates is not deductible.

### INVENTORY
All Inventory Items are valued at the lower of cost or net realisable value.

### CAPITAL GAINS AND LOSSES
Capital gains and losses are included within the profit chargeable to corporation tax for the accounting period.

### DIVIDENDS
Dividends paid to Iraqi companies are generally exempted from the corporation tax whereas the mentioned income was already taxed.

### INTEREST DEDUCTIONS
The taxpayer generally may deduct business interests paid or incurred within the tax year. Interest must be directly related to the subject income.

### LOSSES
Net operating losses may be carried forward for 5 years against the same taxable income, subject to a maximum deduction of 50% of taxable income in each year.

### FOREIGN SOURCED INCOME
Iraqi corporations are taxed on worldwide income including any foreign branches income.

### INCENTIVES
In certain cases, the investor might take the benefits of tax and customs exemption for five years, this period is extended to reach 10 years.

## C. FOREIGN TAX RELIEF
An Iraqi corporation or a foreign corporation engaged in a business in Iraq, may elect to claim either a credit or a deduction for income tax paid to another country, if the taxes are connected with or related to its business, or if the income is also taxed by Iraq.

## D. CORPORATE GROUPS
There is no provision in Iraq for consolidation of accounts for tax purposes or provisions for group taxation.

## E. RELATED PARTY TRANSACTIONS
Related party transactions are required to be reported separately and the tax authorities are given power to consider whether transactions are at arm's length. Where prices paid for the purchase of goods or services are excessive or unreasonable, the assessing officer can disallow a deduction for the excess portion.

## F. WITHHOLDING TAX
If a resident Iraqi pays an amount to a non-Iraqi (non-resident), this income will be subject to 15% withholding tax if it relates to interest on debentures, mortgages, loans, deposits and advances, as well as annual allowances, pension salaries, or other annual payments. Please note that dividends are not subject to withholding tax.

## G. EXCHANGE CONTROL
There are no exchange control rules in Iraq.

## H. PERSONAL INCOME TAX

**Resident Personal tax**
- First IQD 250,000 is subject to 3% after deduction of exemptions.
- From IQD 250,000 to 500,000 is subject to 5% after deduction of exemptions.
- From IQD 500,000 to 1,000,000 is subject to 10%, after deduction of exemptions.
- Any amount exceeding IQD 1,000,000 is subject to 15%, after deduction of exemptions.

**Non-resident Personal Tax**
- First IQD 250,000 is subject to 3%, no exemptions are granted to the taxpayer.
- From IQD 250,000 to 500,000 is subject to 5%, no exemptions are granted to the taxpayer.
- From IQD 500,000 to 1,000,000 is subject to 10%, no exemptions are granted to the taxpayer.
- Any amount exceeding IQD 1,000,000 is subject to 15%, no exemptions are granted to the taxpayer.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Iraq currently only has one tax treaty in force. The Egypt-Iraq treaty entered into force on 2 December 1968.

# IRELAND



## MEMBER FIRMS

| City | Name | Contact Information |
|---|---|---|
| Dublin | Shane O'Donovan | +353 1 496 1444<br>s.odonovan@pkf.ie |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Ireland |
| Capital: | Dublin |
| Main languages: | English, Irish |
| Population: | 5.02 million (2022 estimate) |
| Monetary unit: | 1 Euro (EUR) = 100 cents |
| Internet domain: | .ie |
| Int. dialling code: | +353 |

## KEY TAX POINTS

- Irish corporation tax is payable by Irish resident companies on their worldwide income and gains.
- Non-resident companies are taxed on income or gains from Irish specified assets and on income or from a branch or agency in Ireland.
- All Irish companies incorporated after January 2015 are deemed resident in Ireland, unless the company is considered tax resident in another country under a Double Taxation Agreement ('DTA').
- A company not incorporated in Ireland may also be deemed Irish resident if its central management and control resides in Ireland.
- The standard rate of corporation tax is 12.5% and generally applies to trading income. Passive income, such as rent and investment income, is generally taxed at 25%. Capital gains of companies are, broadly, taxed at 33%.
- Ireland has signed up to the minimum corporation tax rate of 15% which could apply to multinational companies from 2023.
- Ireland has implemented interest limitation rules and anti-reverse hybrid rules.
- VAT applies to supplies of goods and services by taxable persons. The standard rate of VAT is 23%.
- A double tax credit is generally available to Irish companies in respect of overseas taxes suffered on foreign income.
- Payments of interest, royalties and rent to non-residents are, in certain circumstances, subject to withholding tax at 20% (subject to the relevant double tax treaty).
- Payments of dividends are, in certain circumstances, subject to withholding tax at 25% (subject to the relevant double tax treaty).
- Individuals who are resident, ordinarily resident and domiciled in Ireland are subject to income tax on worldwide income and to capital gains tax on worldwide gains. Irish nationals who are not domiciled in Ireland, are taxed on a remittance basis in respect of overseas income and gains.
- There is specific anti-avoidance legislation for transfer pricing and controlled foreign companies in Ireland.

# A. TAXES PAYABLE

## COMPANY TAX

Irish Corporation Tax is payable by Irish tax resident companies on its worldwide income and capital gains from all sources. All Irish incorporated companies are deemed resident in Ireland, subject to certain exceptions. A company not incorporated in Ireland may also be deemed Irish resident if its place of central management and control is in Ireland. Non-Irish tax resident companies are chargeable to Irish corporation tax where they have a permanent establishment in Ireland.

From 1 January 2015, newly Irish incorporated companies will be deemed to be Irish tax resident (unless under the terms of a double tax treaty the company is determined to be resident elsewhere).

The new residency rules which came into effect from 1 January 2021 for companies incorporated in Ireland before 1 January 2015 which are managed and controlled in an EU Member State or in a country with which Ireland has a double tax treaty will be deemed to be Irish tax resident where that country has a place of incorporation test but not a central management and control test.

### Corporation Tax Rates

The standard rate of corporation tax is 12.5% and generally applies to the trading income of companies, with a rate of 25% applying to other income such as rent or investment income. In addition, where a company has a permanent establishment (e.g. a branch/ office in Ireland) the branch profits will be chargeable to corporation tax at 12.5%. Corporation tax is payable by reference to a company's accounting period. Non-Irish tax resident companies not trading in Ireland will be chargeable to income tax at 20% on any Irish source income (e.g. rental profits/interest income).

### Preliminary Tax

*Small Company*

Where a company has a corporation tax liability of less than EUR 200,000 (i.e. "small company") in their previous accounting period, corporation tax is payable in two stages with the first payment due one month before the end of the accounting period. The amount of the payment will be 100% of the corporation tax liability for the preceding accounting period (or 90% of the corporation tax liability for the current accounting period). The balance of the corporation tax liability for the period is payable nine months after the end of the accounting period with the corporation tax return.

*Large Company*

Large companies with a corporation tax liability of EUR 200,000 or more in their previous accounting period are obliged to pay corporation tax in three stages. The first instalment will be payable in the sixth month of the accounting period and the amount payable will be 50% of the corporation tax liability for the preceding accounting period (or 45% of the corporation tax liability for the current accounting period). The second instalment will be payable in the 11th month of the accounting period and the amount payable will bring the total preliminary tax paid to 90% of the corporation tax liability for the current accounting period. The balance of the corporation tax liability is payable nine months after the end of the accounting period when filing their tax return.

### Corporation tax return

Both small companies and large companies must submit a corporation tax return to the Inspector of Taxes by the 23rd day of the ninth month following the accounting year end. Failure to do so will result in a statutory surcharge and restriction on the use of certain reliefs or allowances such as loss relief.

### Country-by-Country Reporting

Finance Act 2015 introduced Country-by-Country Reporting for Irish parented multinational enterprises with consolidated annualized group revenue of EUR 750 million or more. The first report should be prepared for fiscal years commencing on or after 1 January 2016 and filed within 12 months of the year end. Failure to comply with this reporting requirement or the provision of an incorrect report will result in a penalty of EUR 19,045 and in some instances a further penalty of EUR 2,535 for each day that the report remains outstanding. This is in line with OECD recommendations and is the first of a number of recommendations that will be implemented by Ireland to comply with the standards and recommendations of the BEPS project.

### Increase in rate

In 2022, Ireland signed up for the OECD Inclusive Framework on a new tax structure to combat the tax challenges of digitalisation. This framework includes 2 pillars. Pillar 1 will see a reallocation of the proportion of profits to the jurisdiction of the consumer and Pillar 2 will see the adoption of a new global minimum effective tax rate of 15% applying to multinationals with overall revenue above EUR 750 million. The new framework could come into force as early as 2023.

## CAPITAL GAINS TAX

The current rate of Capital Gains Tax is 33%. Capital gains arising on disposals by Irish tax resident companies are calculated using capital gains tax principles, however, the tax liability arising is subject to corporation tax (with the exception of gains arising on disposals of development land which are subject to capital gains tax).

Non-Irish tax resident companies are chargeable on the sale of specified assets including:

a) Land and buildings in Ireland;

b) Minerals in Ireland or any rights to same;

c) Assets situated in Ireland which are used for the purpose of a trade carried on in Ireland through a branch;

d) Unquoted shares deriving their value or the greater part of their value from (a) or (b) above.

Capital losses on the sale of assets can be set against capital gains arising in the same accounting period and any excess can be carried forward and applied in subsequent accounting periods against future capital gains. Losses created on disposals to connected parties are restricted.

**Participation Exemption**

Where a holding company disposes of a subsidiary, provided certain conditions are satisfied, the disposal may be exempt from capital gains tax. In brief, the parent company must beneficially own 5% of the subsidiary's share capital, the profits of the subsidiary and the assets of the subsidiary are available for distribution on wind up. In addition, both the parent and subsidiary must carry on a trade/be part of a trading group. The exemption will not apply where the subsidiary derives the greater part of its value from land and buildings in the State.

**Relief on Disposals of Certain Land or Buildings**

In order to stimulate activity in the property market, a relief from capital gains tax for land and buildings purchased in the European Economic Area between 7 December 2011 and 31 December 2014 where the property is held for 7 years or more was introduced. The relief applies to both residential and commercial property and to property held by individuals and corporates.

The relief applies by exempting the capital gain attributable to the first 7 years of ownership of the asset. Therefore, if a property is owned for 10 years and subsequently sold, only 3/10ths of any gain on the disposal is chargeable to capital gains tax. No relief is available where the asset is owned for less than 7 years (i.e. the full gain would be liable to capital gains tax).

The requisite holding period has been reduced from 7 years to 4 years in the Finance Act 2017. The measure has created a three-year period (i.e. years 4 to 7) in which the property can be sold and benefit from a full exemption whereas if held longer than 7 years, only proportionate relief is available. The new rule will only apply to disposals made on or after 1 January 2018.

**Debt Write off**

The base cost of an asset for capital gains tax purposes will be reduced where the asset was acquired with borrowings and an amount of the borrowings has been released or written off. If the release or write off occurs before the disposal the base cost is reduced accordingly. If the write off occurs after the disposal it will be treated as a capital gain in the year of write off.

I

## VALUE ADDED TAX (VAT)

A company is obliged to register for VAT if its turnover from the sale of goods exceeds EUR 75,000 or if its turnover from the provision of services exceeds EUR 37,500. The threshold for VAT in Ireland for a trader with no establishment in Ireland is EUR Nil, subject to a number of exceptions. The current standard rate of VAT is 23%. There is a reduced rate of VAT of 13.5% applying in respect of the provision of immovable property and certain services. In addition, a second reduced rate of VAT of 9% applies mainly to printed and electronic newspapers. There is also a 0% rate of VAT that applies to certain goods/services. Some supplies are exempt from VAT such as banking services, insurance services and medical services.

VAT returns are generally made on a bi-monthly basis. However, a company which is constantly in a repayment position may obtain approval to make returns on a monthly basis. For smaller businesses, the frequency of filing VAT returns can also be reduced. VAT is not recoverable on non-business expenditure nor on certain other expenditure such as cars, petrol, hotel accommodation, meals. VAT on conference- related accommodation expenses are allowed if certain conditions are satisfied. In addition, a business is required to repay any VAT previously reclaimed in relation to supplier invoices which have not been paid within 6 months.

Following the withdrawal of the UK from the EU, a procedure allowing for the postponement of paying Import VAT at the point of entry to the EU has become available for VAT registered businesses in Ireland. Businesses already VAT registered in Ireland will automatically be granted this procedure otherwise known as Postponed Accounting. This scheme provides for postponed accounting for VAT on imports from non-EU countries. It enables businesses to account for import VAT on their VAT returns and it allows them to reclaim VAT at the same time as it is declared in a return.

## PAYROLL TAX

All employers are obliged under the Pay As You Earn (PAYE) system to deduct income tax, USC and Pay Related Social Insurance (PRSI) contributions from employees. From 1 January 2022, the weekly income threshold for the higher rate of employer's PRSI will increase from EUR 398 to EUR 410 . This means that the higher rate of employer's PRSI (11.05%) will only apply where the weekly pay of the employee is EUR 410 or more.

## RELEVANT CONTRACTS TAX (RCT)

RCT is a tax regime that applies to payments made by a principal contractor to a subcontractor under a relevant contract (this is a contract to carry out work in the construction, forestry or meat processing industry). RCT applies to both resident and non-resident contractors carrying out such operations in Ireland. RCT does not apply to professionals such as architects, surveyors etc.

RCT is a tax deduction system whereby a principal contractor deducts tax from payments to a subcontractor. The new system will have three RCT rates 0%, 20% and 35% depending on the subcontractor's compliance record. The rate of tax to be deducted will be confirmed by the Revenue Commissioners. There are severe penalties for not operating RCT correctly.

## STAMP DUTY

Stamp duty is a duty levied on documents or instruments, executed in Ireland, relating to conveyances and certain transactions. The following are the main stamp duty rates applicable in respect of different types of property:

**Residential Property**

The following stamp duty rates apply to residential property:

| Aggregate consideration | Duty rate |
|---|---|
| First EUR 1,000,000 | 1% |
| Excess over EUR 1,000,000 | 2% |

**Non-Residential Property**

Non-Residential Property is any property other than residential property, stocks or marketable securities or policies of insurance. The rate of stamp duty applicable to non-residential property was previously 2%. As per the Finance Act 2019, this has been increased to 7.5% for instruments executed on or after 9 October 2019, subject to certain transitional provisions. In addition, there is also anti-avoidance legislation providing that stamp duty up to 7.5% can also apply to transfers of company shares where the shares derive their value from Irish property.

In recognition of current housing supply challenges in Ireland, there is also a stamp duty refund scheme for land purchased for the development of housing, which, in certain circumstances, can lead to a refund of eleven fifteenths of the stamp duty paid, thereby ensuring the rate of stamp duty rate remains at 2%. The stamp duty refund scheme on land which is used for residential property development was extended to include developments commencing before 31 December 2022.

### Stocks and Marketable Securities

A transfer of stock or marketable securities of any company incorporated in the State is liable to stamp duty at 1% of the consideration paid. Where the transfer takes place electronically through the CREST system a 1% charge also arises. Stock or marketable securities where the amount or value of the consideration is EUR 1,000 or less are exempt from stamp duty. There is no stamp duty where property is transferred between associated companies, subject to certain conditions.

## OTHER TAXES

These include Customs and Excise Duties and local taxes such as rates (i.e. Property Tax).

### Local Property Tax (LPT)

Local Property Tax is chargeable on all residential properties in the State effective from 1 July 2013. The 2021 LPT liability will be calculated by reference to the market value of the property on 1 May 2013 and the 2021 LPT rate. The value at 1 May 2013 is valid until 1 November 2021

### Real Estate Investment Trusts (REITs)

REITs are listed companies which allow for individuals to invest in a diversified property portfolio. A REIT is an established internationally recognised model for property investment which is to be introduced in order to allow investors to access property investment in a risk diversified manner. Qualifying income and gains in a REIT will be exempt from corporation tax at the level of the REIT company. The REIT is required to distribute profits annually for taxation at investor level.

### Section 110 Companies

There is a special regime in Ireland for companies set up to securitise certain assets. Provided certain conditions are met, such companies may conduct their activities on a tax neutral basis.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is determined by ascertaining assessable income and then subtracting all allowable deductions. As a general rule, expenses incurred wholly and exclusively for the purpose of the business are deductible. However, specific rules apply in respect of certain categories.

## DEPRECIATION

Book depreciation is disallowed. However, companies can claim capital allowances (i.e. tax depreciation) on expenditure relating to certain types of assets including plant and machinery, motor vehicles and qualifying industrial buildings.

### Plant and Machinery

An allowance of 12.5% per annum can be claimed on a straight-line basis. The plant and machinery must be purchased, leased plant and machinery will be allowable in certain circumstances, and any grants receivable are deducted from the expenditure before arriving at the amount eligible for the capital allowance.

### Industrial Buildings Allowance

An annual allowance of 4% can be claimed on a straight-line basis. Industrial buildings generally refer to manufacturing facilities but also include hotels and certain other structures. The allowance is available in respect of the qualifying cost less any grants received.

### Motor Vehicles

There is an allowance of 12.5% per annum on a straight-line basis in respect of motor vehicles. The maximum amount of qualifying expenditure in relation to a new motor car is EUR 24,000. There is no restriction for vans, trucks and other non-passenger vehicles. The capital allowances available on expenditure incurred on or after 1 July 2008 on private cars used for business purposes are based on the carbon emission level of the car.

| Category | Car | Allowance granted on |
|---|---|---|
| A, B & C | Carbon dioxide emissions up to 155g/km | The specified amount that is EUR 24,000 no matter what the car cost. |
| D & E | Carbon dioxide emissions between 156g/km and 190g/km | Where the car cost is less than or equal to the specified amount that is EUR 24,000, 50% of that amount.<br>Where the cost is more than the specified amount that is EUR 24,000, 50% of the specified amount. |
| F & G | Carbon dioxide emissions 191g/km or more | Nil, that is, no capital allowances are available. |

## STOCK / INVENTORY

Stock and work in progress are valued at the lower of cost or market value on a FIFO basis. LIFO is not available.

## DIVIDENDS

Dividends between Irish resident companies are exempt from corporation tax. Dividends paid by a company located in the EU or in a country with which Ireland has a double tax treaty to an Irish company will be chargeable to corporation tax at 12.5% to the extent that the dividend is paid out of "trading profits". Withholding tax at the standard rate of income tax (25%) applies to dividends paid to individuals resident in Ireland and certain non-residents.

## INTEREST DEDUCTIONS

Interest paid on borrowings for the purposes of a trade is deductible for tax purposes if certain conditions are met. Interest payments to certain foreign parent and associated companies may be treated as distributions and consequently not allowed as a deduction against Irish profits under particular circumstances.

A trading deduction for interest may also be disallowed on funds borrowed from a connected company where those funds are used to acquire assets from another connected company. Similar anti-avoidance measures exist for rental companies funding the acquisition of an asset from a group company by means of a connected party loan.

As part of the EU Anti-Tax-Avoidance Directive Ireland has introduced interest limitation rules and rules relating to reverse anti-hybrid rules. These rules come into force for accounting periods commencing on or after 1 January 2022.

The interest limitation rules provide for a maximum net interest deduction to 30% of tax-adjusted EBITDA.

The reverse anti-hybrid rules will target reverse hybrid mismatches and will likely impact Irish transparent entities.

## LOSSES

Trading losses can be carried forward indefinitely, even on a change of ownership of a company, provided no major change takes place in the nature or conduct of the trade. Losses incurred in a trade can be offset against other trading income in the same accounting period or the preceding accounting period. Trading losses can be offset against non-trading income on a' value basis' (i.e. taking account of the applicable corporation tax rate so that, for example, only half the amount of the losses subject to the 12.5% rate may be set off against income subject to the non-trading rate of 25%).

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## FOREIGN SOURCE INCOME

Foreign sourced income is normally liable to Irish corporation tax.

## CFC REGIME

Finance Act 2018 introduced Controlled Foreign Company ("CFC") legislation in accordance with the EU Anti-Tax Avoidance Directive ("ATAD"). CFC rules are an anti-abuse measure deigned to prevent the diversion of profits to offshore entities in low/no tax jurisdictions. The rules operate by attributing certain undistributed income of a CFC to the controlling parent company for immediate taxation.

CFC charge is computed by reference to the undistributed income where there are non-genuine arrangement in Ireland and the essential purpose is the avoidance of tax. The objective behind the legislation is to align where tax is being paid with where significant people functions are located. This only applies to the extent of the proportionate shareholding held by the company in the CFC.

## TAX INCENTIVES

The following are some of the tax incentives available to companies:

### Knowledge Development Box

Finance Act 2015 introduced the Knowledge Development Box, a tax relief that will result in an effective corporation tax rate of 6.25% on certain profits arising from qualifying assets for accounting periods commencing on or after 1 January 2016. A qualifying asset means an asset that is a computer program, an invention protected by a qualifying patent or IP for small companies and which is the result of research and development activities. Qualifying profits on which relief can be claimed are calculated using a formula included in the legislation in order to determine the income and expenditure attributable to the qualifying asset.

### Research and Development Tax Credit

Where qualifying expenditure is incurred, an R&D credit of up to 30% of expenditure is incurred may be available. R&D for the purposes of the credit includes basic research, applied research or experimental development. These activities must seek to achieve scientific or technological advancement and involve the resolution of scientific or technological uncertainty.

A company which carries on a trade in Ireland, undertakes R&D activities in Ireland or within the EEA and incurs the expenditure shall be entitled to the credit. The credit can be used when the company commences to trade and has a corporation tax liability.

If the company does not have a corporation tax liability then it is possible to receive a refund of the Research & Development tax credit, up to certain limits, over a 33-month timeframe.

Companies in receipt of the R&D credit will have the option to use a portion of the credit to reward key employees who have been involved in the development of R&D, subject to a number of conditions. The credit will be a tax-free payment in the hands of the employee (although they will be taxed as normal on their other income). In the event of an incorrect claim the tax foregone will be recovered from the company and not the employee.

### Employment and Investment Incentive Scheme (EIIS)

The EIIS is available to a substantial number of SMEs across different industry sectors. It should be noted, however, that companies engaged in a number of specific activities continue to be excluded. These include land dealing companies, those engaged in financial services, film production and the operation or management of hotels, and nursing homes, to name a few. Closely held professional services companies are also excluded from the EIIS.

The quantum of tax relief afforded will remain at the marginal income tax rate but only where certain employment targets (linked to increases in both employee numbers and emolument levels) or research and development targets have been achieved. The relief is therefore phased as an initial income tax relief at a rate of 30% with an additional 10% available only at the end of the 4-year holding period if the above-mentioned targets are met. The relief is available up to 2020.

The maximum level of funding that a company can raise through the EIIS will be EUR 15 million and this is a lifetime limit. Similarly, the maximum amount which can be raised by a company in any one year has been increased to EUR 5 million. The maximum annual income tax relief for an individual remains at EUR 150,000. Changes have been introduced to ensure that the scheme is fully compliant with EU State Aid rules on risk capital.

**Start-up Exemption**

New companies incorporated after 14 October 2008 and commencing a new trade on 1 January 2009 and before 31 December 2021 will be exempt from corporation tax on income and chargeable gains for the first three years of trading. The relief applies for three years where the total amount of corporation tax payable does not exceed EUR 40,000 in each year. Marginal relief is available where the corporation tax payable exceeds EUR 40,000 but is less than EUR 60,000.

The relief is limited to the amount of employer's PRSI paid by a company in an accounting period subject to a maximum of EUR 5,000 per employee and an overall limit of EUR 40,000. This relief will not apply where an existing trade is acquired. It will also cease to apply where part of a newly established trade is passed to a connected party. Companies carrying on excepted trades and close service companies will not qualify for this exemption.

## C. FOREIGN TAX RELIEF

Irish resident companies can obtain a credit for foreign tax suffered in territories with which Ireland has a double tax treaty. There are currently treaties in place with 74 countries, of which 73 are in effect. The treaties cover direct taxes, which in the case of Ireland are income tax, corporation tax and capital gains tax.

Unilateral relief is also available in respect of overseas tax suffered under certain circumstances. This provides for relief against double tax on certain types of income and gains received from a country that we do not have a double taxation agreement with.



## D. CORPORATE GROUPS

Provided certain conditions are satisfied the transfer of assets between a company and its effective 75% subsidiaries will not be chargeable to capital gains tax. Companies resident in any jurisdiction with which Ireland has a DTA may form part of the capital gains tax group.

Transfers of assets between a company and its 90% subsidiaries or between companies owned by a third company may qualify for stamp duty relief (associated companies' relief). In order to satisfy the 90% shareholding test, one company must have in relation to the other 90% of the beneficial ownership of the shares, 90% beneficial entitlement to the profits and beneficial entitlement to 90% of the assets on wind up.

Where the conditions for corporate tax groups are satisfied, group members can transfer losses and also certain payments which would normally attract withholding tax.

## E. RELATED PARTY TRANSACTIONS

Transfer Pricing regulations were introduced in Ireland and have effect from 2011. The transfer pricing legislation endorses the OECD Transfer Pricing Guidelines and the arm's length principle has been released which brings the Irish tax regime into line with OECD guidelines. Transfer pricing regulations were extended in Finance Act 2019 to apply to certain non-trading transactions, certain larger capital transactions along with trading transactions from 1 January 2020.

Further amendments were made to the transfer pricing rules in the Finance Act 2021 which apply from 1 January 2022. These amendments included a technical amendment to the Ireland-to-Ireland exemption and the attribution of income to a branch of a non-resident company operating in Ireland.

## F. WITHHOLDING TAX

Payments of certain types of royalties and rents to non-residents are subject to withholding tax at 20%. Dividends, interest and royalties paid by Irish companies to residents of EU countries or countries with which Ireland has a double tax treaty are, subject to meeting certain conditions, exempted from withholding tax or liable at a reduced rate. Tax at 20% is deducted from payments made by Government and State Bodies in respect of most professional services.

## G. EXCHANGE CONTROL

There are no exchange controls.

## H. PERSONAL TAX

### INCOME TAX

An individual is Irish tax resident for a year if either of the following two tests is satisfied:

- Present for more than 183 days in Ireland; or,
- Present for more than 280 days in total in that year and the preceding year. Presence in either year for fewer than 30 days is disregarded.

In the year of arrival, an election for residence can be made where there is an intention of continuing to reside in Ireland. At birth, a person acquires a domicile of origin and, subsequently, having acquired the age of majority, a person can acquire a domicile of choice if he/she settles in another country and makes it his/her permanent home. All individuals, resident and domiciled in Ireland must pay income tax on worldwide income and capital gains tax on worldwide gains, regardless of whether or not the income is remitted into the State. An individual loses ordinary residence status after having been non-resident for three consecutive tax years and regains it after being resident for three consecutive tax years.

The following is a summary of the basis of taxation for individuals in Ireland:

| Resident | Ordinarily resident | Domiciled | Liable to Irish income tax on |
|---|---|---|---|
| Yes | Yes/No | Yes | Worldwide income |
| Yes | Yes/No | No | • Irish source income,<br>• Foreign employment income to the extent duties of the employment as performed in Ireland, and<br>• Other foreign income (including UK investment income) to the extent that it is remitted into Ireland |
| No | Yes | Yes | • Worldwide income with the exception of:<br>• income from a trade, profession, employment all the duties of which are exercised outside Ireland, and other foreign income, provided that it does not exceed EUR 3,810 |
| No | Yes | No | • Irish source income and foreign income to the extent it is remitted to Ireland. Income from the following sources is not liable to Irish income tax, even if remitted to Ireland:<br>• income from a trade, profession, employment all the duties of which are exercised outside Ireland, and other foreign income, provided that it does not exceed EUR 3,810 |
| No | No | Yes/No | • Irish source income only |

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**Income Tax Rates and Bands**

The following is a summary of the Income Tax Rates and Bands in the 2019 and 2020 tax years:

| Personal Circumstances | Tax Year 2021 | Tax Year 2022 |
|---|---|---|
| Single / Widowed without dependent children | EUR 35,300 @ 20%<br>Balance @ 40% | EUR 36,800 @ 20%<br>Balance @ 40% |
| Single / Widowed qualifying for One Parent Family Tax Credit | EUR 39,300 @ 20%<br>Balance @ 40% | EUR 40,800 @ 20%<br>Balance @ 40% |
| Married Couple - one spouse with income | EUR 44,300 @ 20%<br>Balance @ 40% | EUR 45,800 @ 20%<br>Balance @ 40% |
| Married Couple - both spouses with income | EUR 70,600 @ 20%<br>Balance @ 40% | EUR 73,600 @ 20%<br>Balance @ 40% |

**Single Person Child Carer Credit**

This tax credit allows one individual, who is the child's principal carer to claim the new single person child carer credit.

**Earned Income Tax Credit**

The Earned Income Tax Credit of EUR 1,500 is available to individuals earning self-employed, trading or professional income. For company directors, the credit will apply to proprietary directors as their earnings are not taken into account for the purposes of the Employee PAYE Tax Credit. Where an individual has earned income, which qualifies for Employee PAYE Tax Credit and Earned Income Tax Credit, the combined value of both tax credits cannot exceed EUR 1,650.

**Foreign Earnings Deduction**

The Foreign Earnings Deduction was introduced to aid companies seeking to expand into emerging markets. The deduction will apply for individuals who spend 30 days a year or more carrying out their duties of their office or employment in developing markets for Ireland. The relief is available until 2022.

The relief applies by reducing the individual's employment income which is based on the number of qualifying days spent in the qualifying countries. The maximum deduction is EUR 35,000 i.e. the maximum income tax relief is EUR 35,000 x 40% = EUR 14,000.

The following countries qualify for the relief:

| | |
|---|---|
| • Algeria | • Mexico |
| • Bahrain | • Nigeria |
| • Brazil | • Oman |
| • Chile | • Pakistan |
| • China | • Qatar |
| • Columbia | • Russia |
| • Democratic Republic of Congo | • Saudi Arabia |
| • Egypt | • Senegal |
| • Ghana | • Singapore |
| • India | • South Africa |
| • Indonesia | • South Korea |
| • Japan | • Tanzania |

| | |
|---|---|
| • Kenya | • Thailand |
| • Kuwait | • UAE |
| • Malaysia | • Vietnam |

**Special Assignment Relief Programme (SARP)**

The SARP programme was introduced with the aim of attracting key talent to Ireland to create more jobs and facilitate the development and expansion of business in Ireland. The relief is available to employees coming to work in Ireland from abroad on the instruction of their employer. The employee must be Irish tax resident in the year of assessment and not resident elsewhere in order to claim the relief.

The employee must perform all of their duties of employment in Ireland with a relevant employer and must also have relevant employment income of greater than EUR 75,000 per year. The relief is available until 2022. The following conditions must be met for relief to apply:

- Have worked with the employer for a minimum period of 6 months before being assigned;
- Not have been tax resident in Ireland for the 5 tax years immediately preceding the tax year in which he or she first arrives in Ireland for the purpose of performing those duties

A relevant employer means a company that is incorporated and tax resident in a country or jurisdiction with which Ireland has a double taxation treaty or a tax information exchange agreement. The relief works by reducing the employee's taxable income for the year of assessment by the specified amount.

The specified amount is calculated using the formula: (A – B) x 30%

A = is the amount of the relevant employee's income, profits or gains from his or her relevant employment in Ireland excluding any amount that is not assessed to tax in Ireland and after deducting any contribution or qualifying pension premium. Also excluded are expenses incurred in relation to the employment and amounts on which the employee is entitled to double tax relief for foreign tax.

B = Lower threshold - EUR 75,000



## UNIVERSAL SOCIAL CHARGE (USC)

The USC is a tax payable on gross income, including notional pay, after any relief for certain capital allowances, but before pension contributions. The following payments are generally exempt from USC:

- Individuals with income of less than EUR 13,000;
- Tax free element of a termination payment;
- Statutory redundancy;
- Social welfare payments;
- Deposit Interest already subject to DIRT.

The USC rates for 2021 and 2022 are as follows:

| 2021 | | 2022 | |
|---|---|---|---|
| **Income Ranges** | **Rate** | **Income Ranges** | **Rate** |
| First EUR 12,012 | 0.5% | First EUR 12,012 | 0.5% |
| EUR 12,013 to EUR 20,484 | 2% | EUR 12,013 to EUR 21,295 | 2% |
| EUR 20,485 to EUR 70,044 | 4.5% | EUR 21,296 to EUR 70,044 | 4.5% |
| EUR 70,045 to EUR 100,000 | 8% | EUR 70,045 to EUR 100,000 | 8% |
| Any PAYE income over EUR 100,000 | 8% | Any PAYE income over EUR 100,000 | 8% |
| Over EUR 100,000 (self- assessed income only) | 11% | Over EUR 100,000 (self- assessed income only) | 11% |

Reduced Rates of USC will apply to the following:

- Individuals over 70 with income less than EUR 60,000;
- Individuals under 70 holding a full medical card, with income less than EUR 60,000.

| 2022 | |
|---|---|
| **Income ranges** | **Rate** |
| First EUR 12,012 | 0.5% |
| Income above EUR 12,012 | 2% |

## PROPERTY SURCHARGE

A property surcharge of 5% is imposed on investors with annual gross income over EUR 100,000. This will apply on the amount of income sheltered by property relief and area-based capital allowances in a given year. If the gross income figure exceeds EUR 100,000, the person is liable to the surcharge. If not, then the surcharge does not apply. Where the gross income exceeds EUR 100,000, the surcharge applies at the rate of 5%. The surcharge will not apply to income sheltered by tax reliefs that are not property reliefs such as film relief or the Employment and Investment Incentive. The various donations reliefs will not be subject to the surcharge.

## CAPITAL GAINS TAX

**Retirement Relief**

A relief known as retirement relief, provides relief from capital gains tax on the gift/sale of chargeable business assets (including leased farmland) subject to certain conditions. The current Retirement Relief provisions are that an individual aged between 55 and 66 years can gift/sell unlimited business assets to a child or to any other person subject to a limit of EUR 750,000. An individual aged 66 years and over can gift/sell business assets to a child subject to a limit of EUR 3,000,000 or to any other person subject to a limit of EUR 500,000.

### Entrepreneur Relief

Entrepreneur relief provides for a reduced rate of capital gains tax on the disposal of chargeable business assets. Where the conditions of the relief are satisfied a reduced capital gains tax rate of 10% from 1 January 2017 will apply to a lifetime limit of EUR 1,000,000 of gains.

## DOMICILE LEVY

The purpose of this levy is to ensure that individuals with substantial ties to Ireland would make a contribution to the Exchequer, irrespective of their residence status. The levy is EUR 200,000 and applies from the tax year 2010 to every 'relevant individual'. In order to be a 'relevant individual' for a tax year the following conditions must be met:

1. The worldwide income of the individual for the tax year is greater than EUR 1 million;
2. The individual is domiciled in Ireland in that tax year;
3. The individual's final Irish income tax liability is less than EUR 200,000; and,
4. The market value of the Irish property owned by the individual on 31 December in the tax year exceeds EUR 5 million.

Irish income tax paid by an individual will be allowed as a credit against the levy. The levy is payable on a self-assessment basis on or before 31 October in the year following the valuation date, i.e. 31 December each year. Anti-avoidance provisions are included in the legislation to prevent transfers of Irish situate property for less than market value to spouses, minor children, discretionary trusts and other entities.



## PENSIONS

### Pension Contributions

There is tax relief available on contributions made by individuals to pensions. This is limited annually to a percentage of an individual's salary depending on age and is also restricted by an overall salary cap. This salary cap currently stands at EUR 115,000. Employers' contributions to employees' PRSAs are treated as a benefit-in-kind for USC purposes.

There is no liability to PRSI on employer contributions into occupational schemes. Tax free pension lump sums are capped at EUR 200,000.

### Maximum Allowable Pension Fund at Retirement

The Standard Fund Threshold in relation to an individual's pensions is EUR 2,000,000. Individuals who have pensions in excess of this can claim a Personal Fund Threshold up to a maximum of EUR 2,300,000.

### Retirement Lump Sums

Tax free ex-gratia termination payments are available to individuals up to an amount calculated with reference to length of service and salary levels. The tax-free amount of these payments is capped at EUR 200,000.

### Approved Retirement Funds

An annual imputed distribution applies to the value of assets in an Approved Retirement Fund (ARF) at 30 November each year. Where the assets of the fund are valued at EUR 2 million or less, the annual imputed distribution is 5% of the value of the assets in the fund at 30 November. ARFs with asset values in excess of EUR 2 million (or, where an individual owns more than one ARF, where the aggregate value of the assets in those ARFs exceeds EUR 2 million) the annual imputed distribution is 6% on the entire fund.

### Personal Retirement Savings Accounts

"Vested" Personal Retirement Savings Accounts are Personal Retirement Savings Accounts (PRSAs) from which retirement benefits have commenced to be taken, usually in the form of the "tax-free" retirement lump sum. The annual imputed distribution provisions also apply to "vested" PRSAs, where the assets are retained in the PRSA rather than being transferred to an ARF.

## CAPITAL ACQUISITIONS TAX

Where a person receives a gift/inheritance and the person making the gift/inheritance is Irish tax resident (or ordinarily resident), the person receiving the gift/inheritance is Irish tax resident or the property is situated in Ireland a charge to Irish CAT may arise. For Irish CAT purposes a non-domiciled individual is not treated as Irish tax resident unless he/she has been Irish tax resident for five consecutive years.

Depending on the relationship between the person making the gift/inheritance and the beneficiary, a certain level of benefits can pass to an individual before a charge to CAT will arise.

The level of benefits is known as a person's "Group Threshold" and is not specific to gifts made from person to person, rather it is utilised where a person receives gifts from a certain class of persons. All gifts or inheritances from each class since 5 December 1991 need to be included in the review.

The following are the Group Thresholds:

| Group | Relationship to disposer | Group threshold |
|---|---|---|
| A | Son/daughter | EUR 335,000 |
| B | Parent*/Brother/Sister/Niece/Nephew/Grandchild | EUR 32,500 |
| C | Relationship other than Group A or B | EUR 16,250 |

*In certain circumstances a parent taking an inheritance from a child can qualify for Group A threshold.

An individual is obliged to submit an Irish CAT return where they have utilised 80% of the threshold. Where a person receives a gift/inheritance in the period from 1 January to 31 August, any capital acquisitions tax payment and return due must be paid on or before 31 October of the same year. Where a person receives a gift/inheritance in the period from 1 September to 31 December, any capital acquisitions tax payment and return must be made to Revenue on or before 31 October of the following year.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Provided that all conditions are met, domestic tax legislation is applicable if more favourable for the taxpayer. In a number of circumstances, tax treaties may provide for particular tax rates mainly dependent on the nature of the instruments and on the profile of the recipients/payers. In such cases, the applicable WHT rate must be verified from an analysis of the relevant tax treaty.

| | Dividends (%) | | Interest[20, 22] (%) | Royalties[20, 21] (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 25 | 0 | 0/20 | 0/20 |
| Individuals | 0/25 | -- | 0/20 | 0/20 |
| **Treaty countries:** | | | | |
| Albania | 10 | 0/5[1] | 7 | 7 |
| Armenia | 15 | 0/5[2] | 0/5/10 | 5 |
| Australia | 0 | 0 | 10 | 10 |
| Austria | 0 | 0 | 0 | 0 |
| Bahrain | 0 | 0 | 0 | 0 |
| Belarus | 10 | 0/5[3] | 5 | 5 |
| Belgium | –/0[4] | –/0[4] | 0/15 | 0 |
| Bosnia and Herzegovina | 0 | 0 | 0 | 0 |
| Botswana | 5 | 0[5]/5 | 7.5 | 5/7.5 |
| Bulgaria | 10 | 5[3] | 5 | 10 |
| Canada | 15 | 5[6] | 0/10 | 0/10 |
| Chile | 15 | 5[7] | 5/15 | 5/10 |
| China | 10 | 5[8] | 10 | 10 |
| Croatia | 10 | 5[9] | 0 | 10 |
| Cyprus | 0 | 0 | 0 | 0 |
| Czech Republic | 15 | 5[8] | 0 | 10 |
| Denmark | 0 | 0 | 0 | 0 |
| Egypt | 10 | 5[3] | 10 | 10 |
| Estonia | 15 | 5[8] | 10 | 0/5/10 |
| Ethiopia | 5 | 5 | 5 | 5 |
| Finland | 0 | 0 | 0 | 0 |
| France | –/0 | –/0[4] | 0 | 0 |
| Georgia | 10 | 0/5[10] | 0 | 0 |
| Germany | 15 | 5[2] | 0 | 0 |
| Greece | 15 | 5[8] | 5 | 5 |
| Hong Kong | 0 | 0 | 0/10 | 3 |
| Hungary | 15 | 5[2] | 0 | 0 |
| Iceland | 15 | 5[3] | 0 | 0/10 |
| India | 10 | 10 | 10 | 10 |
| Israel | 0 | 0 | 5/10 | 10 |
| Italy | 15 | 15 | 10 | 0 |
| Japan | –/0 | –/0[4] | 10 | 10 |
| Kazakhstan | 15 | 0/5[11] | 10 | 10 |
| Korea | 0 | 0 | 0 | 0 |
| Kuwait | 0 | 0 | 0 | 5 |
| Latvia | 15 | 5[8] | 10 | 0/5/10 |
| Lithuania | 15 | 5[8] | 10 | 5/10 |
| Luxembourg | –/0 | –/0[4] | 0 | 0 |
| Malaysia | 10 | 10 | 10 | 8 |
| Malta | 15 | 5[9] | 0 | 5 |
| Mexico | 10 | 5[12] | 5/10 | 10 |

| | Dividends (%) | | Interest[20, 22] (%) | Royalties[20, 21] (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Moldova | 10 | 5[13] | 0/5 | 5 |
| Montenegro | 10 | 5[14] | 10 | 5/10 |
| Morocco | 10 | 6[15] | 0/10 | 10 |
| Netherlands | 15 | 0[16] | 0 | 0 |
| New Zealand | 0 | 0 | 10 | 10 |
| North Macedonia | 10 | 5[9] | 0 | 0 |
| Norway | 15 | 5[2] | 0 | 0 |
| Pakistan | 10 | 5[3] | 10 | 10 |
| Panama | 5 | 5 | 0/5 | 5 |
| Poland | 15 | 0[16] | 0/10 | 0/10 |
| Portugal | 15 | 15 | 0/15 | 10 |
| Qatar | 0 | 0 | 0 | 5 |
| Romania | 3 | 3 | 0/3 | 0/3 |
| Russia | 10 | 10 | 0 | 0 |
| Saudi Arabia | 5 | 0[17] | 0 | 5/8 |
| Serbia | 10 | 5[13] | 0/10 | 5/10 |
| Singapore | 0 | 0 | 5 | 5 |
| Slovak Republic | 10 | 0[16] | 0 | 0/10 |
| Slovenia | 15 | 5[3] | 5 | 5 |
| South Africa | 10 | 5[2] | 0 | 0 |
| Spain | 0 | 0 | 0 | 5/8/10 |
| Sweden | 0 | 0 | 0 | 0 |
| Switzerland | 15 | 0[18] | 0 | 0 |
| Thailand | 10 | 10 | 10/15 | 5/10/15 |
| Turkey | 15 | 5[8] | 10/15 | 10 |
| Ukraine | 15 | 5[3] | 5/10 | 5/10 |
| United Arab Emirates | 0 | 0 | 0 | 0 |
| United Kingdom | 15 | 5[6] | 0 | 0 |
| United States | 15 | 5[12] | 0 | 0 |
| Uzbekistan | 10 | 5[2] | 5 | 5 |
| Vietnam | 10 | 5[19] | 10 | 5/10/15 |
| Zambia | 7.5 | 7.5 | 10 | 8/10 |

Notes:

1. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 25% of the capital of the dividend-paying company. The 0% rate applies to dividends paid to the Albanian Government (Central Bank and statutory bodies).
2. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company. The 0% rate applies if the beneficial owner is a company (other than a partnership) which has held directly at least 25% of the capital of the dividend-paying company for at least 2 years, subject to certain conditions.
3. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company. The 0% rate applies to dividends paid to any organisation, agency or institution wholly or mainly owned by the Belarus Government.
4. No reduction under the treaty, the 20% domestic rate applies, subject however to e.g. the application of the Parent-Subsidiary Directive in the case of Belgium, France and Luxembourg.
5. The 0% rate applies to dividends paid to the Botswana Government.
6. The 5% rate applies if the beneficial owner is a company which controls directly or indirectly 10% or more of the voting power in the dividend-paying company.
7. The 5% rate applies if the beneficial owner is a company that controls directly at least 20% of the voting power in the dividend-paying company.
8. The 5% rate applies if the beneficial owner is a company which holds directly at least 25% of the voting power in the dividend-paying company.
9. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the voting power in the dividend-paying company.
10. The 5% rate applies if the beneficial owner is a company which controls directly or indirectly at least 10% of the voting power in the dividend-paying company and has invested more than 100,000 EUR in the capital of the dividend-paying company. The 0% rate applies if the beneficial owner is a company which controls directly or indirectly at least 50% of the voting power in the dividend-paying company and has invested at least 2 million EUR in the capital of the dividend-paying company.
11. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company. The 0% rate applies to dividends paid to the Kazakh Government (National Bank, Government or a central or local authority thereof, institution wholly owned by the Kazakh government).
12. The 5% rate applies if the beneficial owner is a company which owns at least 10% of the voting stock of the dividend-paying company.

13. The 5% rate applies if the beneficial owner is a company (other than a partnership) which controls directly or indirectly at least 25% of the voting power in the dividend-paying company.
14. The 5% rate applies if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the dividend-paying company.
15. The 6% rate applies if the beneficial owner is a company which owns directly at least 25% of the capital of the dividend-paying company.
16. The 0% rate applies if the recipient holds directly at least 25% of the voting power in the dividend-paying company.
17. The 0% rate applies if the recipient is (i) a company that holds directly at least 25% of the capital of the dividend-paying company (ii) the government of Saudi Arabia, the Saudi Arabia Monetary Agency or any institution, agency or fund wholly owned by the Saudi government.
18. The 0% rate applies if the beneficial owner is (i) a company (other than a partnership) which holds directly at least 10% of the capital in the dividend-paying company (ii) a pension scheme or (iii) the Central Bank.
19. The 5% rate applies if the beneficial owner is a company which holds directly at least 70% of the voting power in the dividend-paying company.
20. The EU Interest and Royalties Directive may provide an exemption from WHT for payments between associated companies.
21. In general, royalties WHT applies only in the case of patent royalties.
22. Under domestic legislation, WHT will not apply if the loans or advances are for a period of less than one year or if the interest is paid in the course of a trade or business to a company resident in an EU or treaty country and that country imposes a tax that generally applies to foreign interest receivable.

# ISLE OF MAN

## MEMBER FIRMS

| City | Name | Contact Information |
|---|---|---|
| Douglas | Shilpa Chheda | +44 203 691 2511<br>schheda@klsa.net |

## BASIC FACTS

| | |
|---|---|
| Full name: | Isle of Man |
| Capital: | Douglas |
| Main languages: | English |
| Population: | 85,867 (2022 estimate) |
| Monetary unit: | British Pound (GBP) |
| Internet domain: | .im |
| Int. dialling code: | +44 |

## KEY TAX POINTS

- Companies resident in the Isle of Man (IoM) are subject to corporate income tax (CIT) on their worldwide income.
- There is no capital gains tax in the IoM and furthermore, gains are not included in ordinary taxable income.
- The VAT rules in the IoM are nearly identical to those applying in the UK. The standard VAT rate is 20% (with the exception of hotel accommodation and certain building works which are taxed at 5%).
- Double tax relief is available for foreign tax paid.
- There are no specific transfer pricing rules.
- There are no specific thin capitalisation or CFC rules.
- Income tax is payable by IoM resident individuals on their worldwide income. A non-resident is generally taxed on their IoM sourced income.
- There are no death duties, estate duties or taxes on gifts although there are potentially significant probate charges.

## A. TAXES PAYABLE

### COMPANY TAX

IoM resident companies are taxed in the Isle of Man on worldwide income. Non-resident companies are required to pay tax on IoM-sourced income only. A company incorporated in the IoM is automatically resident in the IoM. A company that is incorporated outside of the IoM but that is 'managed and controlled' in the IoM will also be considered IoM resident but may need to be 'Foreign Registered'.

There are three CIT rates in the IoM. A 10% rate applies to banking businesses and companies that derive in excess of GBP 500,000 income from retail activities. A 20% rate applies to companies which derive income from IoM situs land and property. A 0% corporate income tax rate applies to most other income. Company tax returns are due one year and one day after the end of the accounting period and any tax liability is due by the same date.

### CAPITAL GAINS TAX

There is no tax on capital gains in the IoM and gains are not included in ordinary taxable income.

### BRANCH PROFITS TAX

IoM companies with foreign branches remain taxable on their worldwide income although relief for foreign tax paid may be available. IoM branches of foreign companies will be subject to IoM income tax on profits attributable to the branch. The rates of tax above apply to all companies, including branches of foreign companies.

## VALUE ADDED TAX (VAT)

Value Added Tax is imposed at a standard rate of 20% (with the exception of hotel accommodation and certain building works which are taxed at 5%). The VAT rules are nearly identical to those applying in the UK. Both the UK and IoM form a common area for the purposes of VAT and Customs Duties and the Isle of Man is in the UK for VAT purposes.

Registration threshold turnover of GBP 85,000 in an accounting year.

## FRINGE BENEFITS TAX

Fringe benefits tax may be payable in certain circumstances.

## FATCA

The IoM signed an agreement with the United States in December 2013 to implement the Foreign Account Tax Compliance Act (FATCA). Information started to be exchanged in 2015. The IoM signed an agreement with the United Kingdom in October 2013 which implements similar reporting requirements as required by the FATCA regulations. Information under this agreement will begin to be exchanged later in 2016. The IoM signed an agreement in October 2014 in Berlin committing to implementing the Common Reporting Standard ("CRS").

## LOCAL TAXES

Local rates are imposed on properties. Local authorities determine the rate.

## OTHER TAXES

The IoM government also imposes customs and excise duties. For these purposes, the IoM is regarded as being part of the Customs Union. The UK and the IoM form a common area for customs duties purposes.

National Insurance contributions ("NIC") are payable by employers in the IoM. NIC rates are similar to those that apply in the UK.



## FOUNDATIONS

Foundation legislation has been introduced to create a new separate legal entity which has the power to manage its own assets, arrange its own funding and can operate and be taxed in a fashion similar to a local company, incurring 0% IoM tax on all sources other than profits derived from IoM situs real estate.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company is calculated by aggregating its taxable income and subtracting allowable expenses. Generally, to be deductible for tax purposes, expenses must be wholly and exclusively incurred for the purpose of a company's trade. Some expenses are specifically not deductible for tax purposes, e.g. depreciation.

## CAPITAL ALLOWANCES

Tax relief is given for the cost of plant and machinery acquired for the purposes of a business in the form of capital allowances. Capital allowances are also available for certain industrial and agricultural buildings and tourist premises. A 100% allowance is available in the first year in which the expenditure is incurred (restricted for some motor vehicles).

## CAPITAL GAINS AND LOSSES

There is no capital gains tax in the IoM.

## DIVIDENDS

Dividends received by IoM resident companies are generally taxable at the 0% rate. Dividends received by IoM resident individuals are generally taxable as part of normal income.

## INTEREST DEDUCTIONS

Interest paid by IoM resident companies to IoM lenders is tax deductible. Interest paid to non-IoM lenders is tax deductible if incurred wholly and exclusively for the purposes of the company's trade. There are no thin capitalisation rules in the IoM. The IoM has anti-avoidance provisions which may be in point where interest is incurred purely to mitigate IoM tax.

## LOSSES

Trading losses can be carried forward indefinitely provided a continuity of business test is satisfied. There are also provisions for loss relief within groups of companies (see below). Losses can be set off against total income in the year of loss or in the previous year.

## FOREIGN SOURCE INCOME

The IoM does not have CFC legislation. The IoM does however have general anti-avoidance legislation which may be enacted, generally, if it is deemed that the main purpose of contrived arrangements is to avoid IoM taxation.

## C. FOREIGN TAX RELIEF

Double tax relief is available for foreign tax paid. A company may offset any foreign tax paid against IoM tax payable to avoid double taxation. Where the income is received from the UK, relief may be available under the UK-IoM Double Tax agreement. There are double taxation agreements, of varying complexity and scope, with the following countries:

| | | |
|---|---|---|
| Australia | Bahrain | Belgium |
| Denmark | Estonia | Faroe Islands |
| Finland | Greenland | Guernsey |
| Iceland | Ireland | Jersey |

| | | |
|---|---|---|
| Luxembourg | Malta | New Zealand |
| Norway | Poland | Qatar |
| Seychelles | Singapore | Slovenia |
| Sweden | UK | |

The IoM also has Tax Information Exchange Agreements (TIEAs) currently in force with the following countries:

| | | |
|---|---|---|
| Argentina | Australia | Botswana |
| British Virgin Islands | Canada | Cayman Islands |
| China | Czech Republic | Denmark |
| Faroe Islands | Finland | France |
| Germany | Greenland | Iceland |
| India | Ireland | Italy |
| Japan | Lesotho | Mexico |
| Netherlands | New Zealand | Norway |
| Poland | Portugal | Romania |
| Slovenia | Sweden | Switzerland |
| Turkey | Turks and Caicos | United Kingdom |
| United States of America | | |



## D. CORPORATE GROUPS

Trading losses in one IoM resident company may be surrendered to another IoM company within the same group. Two companies are members of a group if one is at least a 75% subsidiary of the other or both are at least 75% subsidiaries of a third company. Consolidated tax returns cannot be submitted.

## E. RELATED PARTY TRANSACTIONS

The IoM does not have any specific transfer pricing rules. However, as noted above, where expenditure has not been incurred wholly and exclusively for the purposes of a company's trade, a tax deduction may not be available.

## F. WITHHOLDING TAX

A company may, in certain circumstances, be required to withhold tax from payments it makes to non-resident companies or individuals. An IoM company is generally not required to withhold tax on amounts paid to non-resident companies or individuals. The exceptions to this are where the income payable to a non-resident company or individual represents rent from IoM property, in which case 20% withholding tax is deducted, or if the income relates to certain types of IoM sourced income payable to a non-resident individual, in which case 20% withholding tax is deducted.

## G. EXCHANGE CONTROL

There are no exchange control rules in the IOM.

## H. PERSONAL TAX

IoM resident individuals are subject to income tax on their worldwide income. Non-resident individuals are taxed on their IoM-sourced income, excluding income from approved financial institutions and most sources of income from IoM companies. Generally speaking, an individual is regarded as a resident in the IoM if he spends an aggregate of six months in any tax year in the IoM. In addition, an individual who visits the IoM over four or more consecutive years for an average of three months in each year will also be considered an IoM resident.

Income tax is assessable on income less any allowable deductions. The rules for allowable deductions in respect to individuals engaged in a trade are similar to those for companies. An individual may claim tax deductions, at various tax rates depending on individual circumstances, for certain expenditure subject to relevant caps and tax rate restrictions. Examples include contributions to approved pension schemes, interest paid to an IoM lender, nursing expenses and private medical insurance payments (made by taxpayers aged over 60).

Income tax and NIC are normally deducted at source by an individual's employer under the Income Tax Instalment Payments (ITIP). All individuals are required to complete an income tax return. The tax year for income tax purposes runs from 6 April – 5 April. Any outstanding income tax liability must be settled by 6 January following the end of the tax year. A payment on account may also need to be settled on this date in respect to the following years anticipated tax liability. This might be the case if the majority of an individual's tax liability is not collected under the ITIP system for example if an individual was self-employed.

Spouses are taxed as separate individuals, unless the couple elect to be assessed jointly. If a joint assessment is made then a couple will be assessed on their combined taxable income. Where, immediately prior to 6 April 2006, a couple were jointly assessed, they will be deemed to have made the election to continue to be jointly assessed.

The tax rates are as follows:

| **Taxable income (GBP)** | **Rate (%)** |
|---|---|
| 0 – 6,500 of income over the personal allowance (GBP 13,000 for jointly assessed couples) | 10% (standard rate) |
| Above 6,500 of income over the personal allowance (GBP 13,000 for jointly assessed couples) | 20% (higher rate) |

IoM resident individuals are entitled to a tax free personal allowance. The current personal allowance amount is:

- Single person: GBP 14,250

- Married couple, jointly elected: GBP 28,500

An IoM resident individual is able to make a five year irrevocable election in order to take advantage of the IoM 'tax cap'. If an election is made then an individual's income tax liability will be capped at GBP 200,000 with effect from 5 April 2020. This cap is doubled if a couple is jointly assessed. There is no tax in the IoM on gifts and no inheritance tax liability for the estates of IoM resident individuals.

## BENEFITS

Exempt benefits include:

- General benefits which do not exceed GBP 600;
- Approved Profit Sharing or Savings Related Share Options Schemes;
- Car Parking space at or near place of work;
- Medical/dental insurance;
- Christmas party expenses up to GBP 100 per head;
- Provision of a personal computer for use at home up to benefit value of GBP 1,000;
- Nursery or crèche facility expenses necessary for employees to attend work.
- Bicycle and related safety equipment provided under a cycle to work scheme up to an annual maximum value of GBP 1,000;

## TAXATION OF NON-RESIDENT INDIVIDUALS

Non-residents are subject to IoM income tax on IoM sourced income. Non-residents are not entitled to a personal allowance.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES



| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 0 | 0 | 0 | 0 |
| Individuals | 0 | -- | 0/20 | 20 |
| **Treaty countries:** | | | | |
| Bahrain | 0 | 0 | 0 | 0 |
| Estonia | 0 | 0 | 0 | 0 |
| Guernsey | 0 | 0 | 0 | 0 |
| Jersey | 0 | 0 | 0 | 0 |
| Luxembourg | 15 | 5[1] | 0 | 0 |
| Malta | 0 | 0 | 0 | 0 |
| Qatar | 0 | 0 | 0 | 5 |
| Seychelles | 0 | 0 | 0 | 5 |
| Singapore | 0 | 0 | 12 | 8 |

Notes:

1. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends.

### Isle of Man Substance Requirements

The Income Tax (Substance Requirements) Order 2018 have amended the Income Tax Act 1970 to impose requirements on Isle of Man companies receiving income from certain so called "geographically mobile business sectors" to demonstrate that they have 'substance' in the Isle of Man.

Three tests which all must be met trigger the substance requirements. These requirements are:

- Is the Company IOM Tax Resident?
- Does it receive income?
- Is it from a relevant sector such as the following?
  - i. Banking;
  - ii. Insurance;
  - iii. Fund management – not fund vehicles themselves – so this is also quite a narrow category;
  - iv. Shipping – This means commercial shipping business – and it excludes super yachts, fishing boats and anything smaller than 24m;
  - v. Headquarters – where strategy/coordination type services are provided to other group entities;
  - vi. Distribution and Services Centres – where goods are purchased from a group company and re-sold for a percentage of profit or where services are provided to group companies;
  - vii. Financing and leasing;
  - viii. Holding companies (not investment companies, i.e. must hold more than 50% interest);
  - ix. IP Companies.

If the substance requirements are met then the Company must:

a) be directed and managed in the Island;

b) have an adequate number of qualified employees in the Island (whether or not employed by it or another person and whether on temporary or long-term contracts);
c) have adequate expenditure proportionate to the level of activity carried on in the Island;
d) have an adequate physical presence in the Island; and
e) conduct core income-generating activity in the Island.

**Grant Schemes / Relocation**

The Island government is trying to actively attract new business to the Island and numerous grant schemes are available for setting up the business in the Island and relocating staff.

Work permit requirements are also relaxed for certain key staff members and workers from certain sectors when relocating a business to the Island.

**National Insurance Holiday Scheme:**

From 6 April 2019 certain new residents and returning students are able to apply for a refund of the Class 1 NIC's paid as employees during the first 12 months of their employment in the Island.

# ISRAEL

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Givatayim | Haim Halfon | +972 361 239 39<br>haim@ahcpa.co.il |

## BASIC FACTS

| | |
|---|---|
| Full name: | State of Israel |
| Capital: | Jerusalem |
| Main languages: | Hebrew, Arabic |
| Population: | 8.9 million (2022 estimate) |
| Monetary unit: | Israeli New Shekel (ILS) |
| Internet domain: | .il |
| Int. dialling code: | +972 |

## KEY TAX POINTS

- Israeli resident companies are liable to Israeli taxes on their worldwide income and capital gains. A non-resident company is only liable to Israeli tax on income sourced in Israel.
- VAT is charged at a rate of 17% on the supply of goods and services by Israeli business entities.
- Withholding taxes are deducted from payments of interest, dividends and royalties made to non-residents, subject to double tax treaty arrangements.
- Income tax is payable by Israeli-resident individuals on income derived from all sources, including passive income and all income derived or paid from overseas sources.

## A. TAXES PAYABLE

### COMPANY TAX - ORDINARY INCOME

Israeli resident companies are liable to Israeli taxes on their worldwide income and capital gains. A non-resident company is only liable to Israeli tax on income sourced in Israel. A company resident in Israel is one that is incorporated in Israel or managed and controlled in Israel. The corporate tax rate in Israel is 23%.

The financial year runs from 1 January to 31 December. A company must normally submit tax returns within six months of the end of its accounting period. This period may be extended for up to 14 months. Companies must make monthly advance tax payments of company tax, based on the previous year's tax liability. In addition, monthly payments must be made within 15 days of the month's end at the rate of 45% in respect of certain expenses, which are not allowable for tax purposes, such as excessive travel and entertaining costs. Where the company has taxable income, such payments are treated as advanced payments.

### CAPITAL GAINS TAX

Capital gains are divided into two elements. That part of the gain which is inflationary by nature is taxable at the rate of 10% in respect of the inflationary gain which was earned up to 31 December 1993 and at a 0% rate thereafter. The real gain is taxable at the corporate tax rate. Non-resident companies are liable to Israeli tax on capital gains derived in Israel. Foreign residents have the option of having the real gain calculated by reference to changes in the exchange rate of the foreign currency as related to the Israeli currency.

### BRANCH PROFIT TAX

There is no branch profit tax in Israel i.e. profits of an Israeli branch of a foreign company can be distributed to the foreign country (after paying Israeli tax on the profit itself) free of withholding tax on the distribution.

## VALUE ADDED TAX (VAT)

VAT is charged at a rate of 17% on the supply of goods and services by Israeli business entities. The export of goods and certain services from Israel is zero-rated.

## FRINGE BENEFITS TAX (FBT)

There is no separate fringe benefits tax in Israel. Fringe benefits are included in the employee's gross income and are taxed as salary.

## LOCAL AND OTHER TAXES:

## PURCHASE TAX

Purchase tax is payable on the purchase of real estate at 6%. A purchase tax ranging from 0% to 10% is payable if the building is a residential apartment.

## NATIONAL INSURANCE (SOCIAL SECURITY)

Employers are required to pay a National Insurance premium as well as payments in respect of health insurance. These payments amount to 19.60% of salaries. Of this amount, 12% is recoverable from employees. The monthly ceiling up to which salary payments are levied on is five times the average salary (ILS 45,075) effective from 1 January 2022 and relates to both employees and the self-employed. Dividend income is exempt from social security payments.

## MUNICIPAL RATES

Municipal rates are levied by local authorities. The government decides the maximum rate of increase. The local councils set their own rates accordingly based on square meters of occupied real estate.

## LAND BETTERMENT TAX

Tax on land betterment accrued until 7 November 2001 is set at the marginal rates of up to 46% for individuals and up to 25% for companies. Tax on land betterment accrued after 7 November 2001 till 31 December 2011 is set at the rates of 20% for individuals and 25% for companies.

Tax on land betterment accrued after 1 January 2012 till 31 December 2013 is set at the rates of 25% for individuals and 25% for companies. Tax on land betterment accrued after 1 January 2014 is set at the rates of 25% for individuals and 26.5% for companies. Tax on land betterment accrued after 1 January 2015 is set at the rates of 25% for individuals and 25% for companies. Tax on land betterment accrued after 1 January 2017 is set at the rates of 25% for individuals and 24% for companies. Tax on land betterment accrued after 1 January 2018 is set at the rates of 25% for individuals and 23% for companies. Those rates are calculated in proportion to the period from the date of acquisition of the asset to the date of disposal.

The sale of residential real estate by individuals is exempt from this tax if certain conditions are met.

## ESTATE TAX

At present there is no estate tax in Israel.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is generally based on income reported in the financial statements subject to adjustments as indicated in the tax law. Special regulations apply in respect of the matters referred to below.

## DEPRECIATION

Deduction for the depreciation of assets that are used by a company are inflation-adjusted and calculated normally on the straight-line basis at the following annual rates:

| Nature of Asset | Rate (%) |
|---|---|
| Plant and machinery of an industrial company | 20 – 40 |
| Other plant and machinery | 7 – 10 |
| Electronic equipment | 15 |
| Furniture and office equipment | 6 – 7 |
| Furniture and office equipment (restaurants and hotels) | 9 – 12 |
| Computers and software | 25 – 33 |
| Trucks and commercial vehicles | 20 |
| Cars | 15 |
| Patents and know how | 12.5 |
| Research and development expenditure | 33 – 100 |

Accelerated depreciation up to 200% can be claimed on equipment used in production activities, if certain conditions are met.

## INVENTORY

Inventory is valued using the FIFO or weighted average methods (LIFO is not a permissible alternative).

## DIVIDENDS

Dividends received by an Israeli company from another Israeli company are exempt from company tax, except where the income (out of which the dividend is paid) is from a foreign source. Dividends received from an approved enterprise (see 'Incentives' below) are subject to 15% company tax. Dividends received from non-resident companies are fully liable to company tax at the rate of 25%. Dividends paid to a non-resident shareholder are subject to withholding tax of 25% unless a lower rate is provided for within the framework of a double tax treaty.

Dividends paid after 1 January 2012 to Israeli or foreign individuals and foreign companies are subject to withholding tax at 25%. However, dividends paid after 1 January 2012 to major shareholders (holdings of 10% and above) are subject to withholding tax at 30%. These rates may be reduced subject to the application of a double tax treaty. With effect from 1 January 2003, taxes paid on foreign income, including both company tax and dividend withholding tax can be set off against taxes payable in Israel in specific cases.

## INTEREST DEDUCTIONS

Interest is normally deductible on an accrual basis. However, interest payable to a non-resident is effectively deductible only when payment is effected since a deduction may only be taken if tax has been withheld at source from the interest payment within three months of the end of the company's accounting period. There is no curtailment of deductible interest by reference to debt/equity ratios.

## LOSSES

Trading losses may be set off against all categories of income and capital gains in the same accounting period. Unutilised losses may be carried forward indefinitely against future income and capital gains which result from the business from any trade or business carried on by the company but not against income or gains from any other source. Generally, carry forward of losses may be denied where there has been a change in the control of the company and one of the purposes of the change is tax avoidance. Losses may not be carried back. Losses incurred abroad are allowed as a deduction from Israeli income (conditions apply).

## FOREIGN SOURCED INCOME – CFC TAX

For entities controlled by Israeli residents, CFC tax is payable in Israel at the rate of 23% subject to the following conditions:

1) The source of income of the foreign corporation is passive (interest, dividends, royalties, rentals, etc.);
2) The foreign corporation has paid tax in a 'low tax territory' (less than 15%);
3) Israeli residents control more than 50% (in certain circumstances more than 40%) of the shares in the foreign corporation or have the right to influence certain management decisions.

## PARTICIPATION EXEMPTION

In Israel, in most cases, there is no participation exemption. However, an Israeli holding company, subject to specific conditions, is exempt from tax on dividends received from foreign subsidiaries; from capital gains tax on the sale of such subsidiaries; and from interest on deposits made in Israel by the subsidiaries. Foreign shareholders benefit from a reduced withholding tax of 5% on dividends distributed by the holding company. An Israeli shareholder will pay between 25% to 30% withholding tax on dividends distributed.

## OTHER INCENTIVES

There are various other incentives available such as employment incentives; international trading company incentives; the construction of dwellings for rental; research and development (R&D) where bi-national funds have been established to promote joint ventures; tourism industry schemes; and incentive training programs with the granting of loans for the encouragement of small businesses.

The Law for the Encouragement of Capital Investment established a management body to grant benefits for tourist attractions and the creation of a tourist investment board. There are also benefits in the field of renewable energy. The Israeli government has signed research and development co-operation agreements with the United States, Canada, the European Union and some countries in Asia. A government Seed Fund has been established to encourage investment in start-up companies by matching the capital of investors. Special 'Free Trade Zones' have been established with major tax benefits including exemption from VAT, lower tax rates and exemption from property tax.

## INCENTIVES

In order to encourage both local and foreign investment, Israel grants a number of significant tax incentives which have the effect of eliminating or substantially reducing the tax rate for companies. These incentives are known as incentives for "approved enterprises". These incentives are included in the Encouragement of Capital Investments Law. In 2011 new amendments were published regarding the Encouragement of Capital Investments Law. The amended law is effective as of 1 January 2011.

1) According to the amended law the incentives will be given by two geographical zones:
   (i) Zone A (as defined in the "zone map" which is in force until the end of 2012, generally defined as periphery regions that are distant from the centre of Israel. The "zone map" for 2013 and onwards is yet to be determined);
   (ii) The rest of the country;
2) An "Industrial Enterprise" that meets the requirements of section 18A of the Law is entitled to a reduced corporate income tax rate, in respect of income generated from 2011 onwards, although a minimum of 25% of the company's total turnover must be generated from exports;
3) The tax benefits are not time limited, meaning that any industrial company which exports 25% of its total turnover is eligible for the reduced tax rates for as long as it meets the above criteria. However there are no benefits guaranteed for the years to come and it could be altered by new legislation;
4) The tax benefits are applicable in relation to the enterprise's total turnover. The reduced corporate income tax rates are 7.5% for companies in Zone A and 16% for the rest of Israel;
5) An Industrial Enterprise, only if located in zone A, is entitled to a grant when filing a comprehensive investment plan, which fulfils the legislative intent. A qualified investment may include investments in human capital and other investments which meet the legislative intent of the amended law;

6) The grant is expected to be set at 20% of the company's investment, with an option for an additional 4% of administrative grant. A company defined by the Israeli Investment Centre (IIC) as a "Big Company" will be entitled to a grant no larger than ILS 20 million (20% of an ILS 100 million investment plan), while others will be entitled to a grant no larger than ILS 6 million (20% of an ILS 30 million investment plan);
7) A company is able to enjoy both the grants track and the tax benefits track, under the condition of being located in zone A;
8) Dividends distributed to Israeli and non-Israeli residents (companies and individuals) would be subject to a 15% withholding tax or to a reduced tax rate according to the relevant tax treaty's provisions;
9) There are transitional provisions for companies with plans under the previous law provisions.

## RESEARCH AND DEVELOPMENT (R&D) INCENTIVES

The Office of the Chief Scientist at the ministry of industry, trade and labour is responsible for implementing the government's policy of encouraging and supporting industrial research and development in Israel. This office provides a variety of support programs which have helped to make Israel a major centre of hi-tech entrepreneurship. The R&D Fund offers grants of between 20% and 50% for approved projects. If the project is commercially successful, the company is under an obligation to repay the grant through royalty payments. Grants of up to 90% of the costs are available for biotechnology research and up to 85% for technological incubators.

## C. FOREIGN TAX RELIEF

Foreign tax credits are given to Israeli-resident companies in respect of foreign taxes borne on overseas-sourced income and capital gains. There is no system of 'global' foreign tax credits. Each foreign source is treated as separate for the purpose of the consideration of credits. With effect from 1 January 2003, an Israeli company is allowed to deduct the tax paid on foreign company profits and also the withholding tax paid on dividends from taxes payable, provided it holds directly at least 25% (or at least 50% indirectly) of the shares in the foreign company.

## D. CORPORATE GROUPS

In general, there is no consolidation of profits and losses of a group of Israeli companies for tax purposes. However, consolidated tax returns may be filed for a group of industrial companies meeting certain criteria.

## E. RELATED PARTY

The tax assessing officer has powers to impose at arm's length prices on arrangements between related parties. Market value can be determined by a prior ruling from the tax authorities. In November 2006, new legislation was introduced relating to 'transfer pricing' for multi-national groups with effect from the 2007 tax year.

## F. WITHHOLDING TAX

Withholding taxes are deducted from payments of interest, dividends and royalties made to non-residents, subject to the application of double tax treaties. See section 'I' below for treaty and non-treaty rates.

## G. EXCHANGE CONTROL

There are no exchange controls in Israel and foreign currency can be freely transferred in and out of the country.

## H. PERSONAL TAX

Income tax is payable by Israeli-resident individuals on income derived from all sources, including passive income and all income derived or paid from overseas sources. Non-resident individuals are only liable to income tax on Israeli-sourced income. Factors determining residence include the situation of family, business and social activities. For information regarding the tax rates see below.

Rental income is taxed in the hands of an individual at rates of 10% or 15%, with no allowance for the deduction of expenses, depending on whether the property is situated in or out of Israel (This does not include commercial rentals). Individuals can choose to pay normal taxes on rental income and then can claim deductions (financial expenses, maintenance and other expenses relating to the property) against the rental income. The tax rate on the net income will be the marginal rate of the individual.

Rental income of residential apartments in the hands of an individual is exempt up to ILS 5,196 per month. Interest income is taxed in the hands of an individual at rates between 15% to individual marginal rate depending on circumstances. Exemptions are provided for low income earners. Capital gains are taxed in the hands of an individual at rates of 25%.

## TAX RELIEF FOR NEW AND RETURNING RESIDENTS

A major tax reform for new and returning residents has been retroactively in force from January 2007.

There has been a change in the definition of "foreign resident". Individuals who leave Israel will only lose their Israeli residency status if they are outside of Israel for at least 183 days each year during two consecutive tax years and their primary residence is outside of Israel for a further two years. A senior returning resident is defined as an individual who returns to Israel to reside after being a foreign resident for at least five consecutive years if they return to Israel in the tax years 2007 through 2009, or at least 10 consecutive years if they return to Israel after 2009.

## SUMMARY OF BENEFITS

| Details | Benefit for new resident and senior returning resident |
|---|---|
| Passive income-exemption from foreign assets purchased before becoming Israeli resident | 10 years exemption |
| Exemptions from foreign business income and foreign salary | 10 years exemption |
| Foreign companies that are managed and controlled from Israel, CFC, or foreign professional company | Those companies will be considered as foreign for 10 years |

| Details | Benefit for new resident and senior returning resident |
|---|---|
| Foreign allowances and pensions | 10 years exemption |
| Capital gain exemption | 10 years |
| Tax return | No need to submit a tax return on the exempt income. |

## OTHER

No tax is payable on income arising outside of Israel and received by non-residents who are in the country temporarily, who do not intend to establish a place of residence and who have not resided in Israel for periods totalling six months in the tax year. 'Approved specialists' are foreign experts whose status is granted by the Investment Centre where no Israeli resident could perform the job or possess the necessary skills to do so. Approved specialists are liable to a maximum tax rate of 25% on their income for a period of three tax years, with a possible extension for a further five years. The rates of tax on monthly taxable income of individuals as of January 2021 are:

| Monthly Income (ILS) | Rate (%) |
|---|---|
| 0 - 6,450 | 10 |
| 6,451 - 9,240 | 14 |
| 9,241 - 14,840 | 20 |
| 14,841 - 20,620 | 31 |
| 20,621 - 42,910 | 35 |
| 42,911 - 55,270 | 47 |
| 55,271 and over | 50 |

The above rates relate to income from employment, trading or profession.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest[1] (%) | Royalties (%) |
|---|---|---|---|
| Non-treaty countries | 4/20/25/30[11] | 0/23 | 23 |
| **Treaty countries:** | | | |
| Armenia | 0/5/15 | 5 | 5/10 |
| Australia | 0/5/15 | 5/10 | 0 |
| Austria | 0/10/15 | 5 | 0[2] |
| Azerbaijan | 15 | 0/10 | 5/10 |
| Belarus | 10 | 5/10[3] | 5/10 |
| Belgium | 15 | 15 | 0/10 |
| Brazil | 10/15 | 15 | 10/15[4] |
| Bulgaria | 7.5/12.5 | 5/10 | 7.5/12.5 |
| Canada | 15 | 15 | 0/15 |
| China | 10 | 7/10 | 10 |
| Croatia | 5/10/15 | 5/10 | 5 |
| Czech Republic | 5/15 | 10 | 5 |
| Denmark | 0/10 | 5 | 0 |
| Estonia | 0/510 | 5 | 0 |
| Ethiopia | 5/10/15 | 5/10 | 5 |
| Finland | 5/15 | 10 | 10 |
| France | 5/10/15 | 5/10 | 0/10 |
| Georgia | 0/5 | 5 | 0 |
| Germany | 25 | 15 | 0/5 |
| Greece | Domestic[5] | 10 | 10 |
| Hungary | 5/15 | 0 | 0 |
| India | 10 | 10 | 10 |
| Ireland | 10 | 5/10 | 10 |
| Italy | 10/15 | 10 | 0/10 |
| Jamaica | 15/22.5 | 15 | 10 |
| Japan | 5/15 | 10 | 10 |
| Korea | 5/10/15 | 7.5/10 | 2/5 |

| | Dividends (%) | Interest[1] (%) | Royalties (%) |
|---|---|---|---|
| Latvia | 5/10/15 | 5/10 | 5 |
| Lithuania | 5/10/15 | 10 | 5/10[6] |
| Luxembourg | 5/10/15 | 5/10 | 5 |
| Malta | 0/15 | 0/5 | 0 |
| Mexico | 5/10 | 10 | 10 |
| Moldova | 5/10 | 5 | 5 |
| Netherlands | 5/10/15 | 10/15 | 5/10 |
| North Macedonia | 5/15 | 10 | 5 |
| Norway | 25 | 25 | 10 |
| Panama | 5/15/20 | 0/15 | 15 |
| Philippines | 10/15 | 10 | 15 |
| Poland | 5/10 | 5 | 5/10 |
| Portugal | 5/10/15 | 10 | 10 |
| Romania | 15 | 5/10 | 10 |
| Russia | 10 | 10 | 10 |
| Serbia | 0/5/15 | 0 | 5/10 |
| Singapore | 5/10 | 7 | 0 |
| Slovak Republic | 5/10 | 2/5/10 | 5 |
| Slovenia | 5/10/15 | 0/5 | 5 |
| South Africa | 25 | 25 | 0/15 |
| Spain | 10 | 5/10 | 5/7 |
| Sweden | 0 | 25 | 07 |
| Switzerland | 5/10/15 | 5/10 | 5 |
| Taiwan | 10 | 7/10 | 10 |
| Thailand | 10/15 | 10/15 | 5/15 |
| Turkey | 10 | 10 | 10 |
| Ukraine | 5/10/15 | 5/10 | 10 |
| United Kingdom | 15 | 15 | 0/15 |
| United States | 12.5/25 | 10/17.5 | 10/15[8] |
| Uzbekistan | 10 | 10 | 5/10[9] |
| Vietnam | 10 | 10 | 5/15 |

NOTES:

1. Many treaties provide for an exemption of certain types of interest, e.g. interest paid to public bodies and institutions. Such exemptions are not considered in this column.
2. No withholding tax in Israel. Only subject to tax in Austria.
3. The lower rate applies to interest payable to a bank or a financial institution.
4. The higher rate applies to royalties from trademarks.
5. The domestic withholding tax rate applies.
6. The lower rate applies to royalties for industrial or scientific equipment.
7. Film and natural resource royalties are not exempt; however, no specific rate is provided under the treaty.
8. The lower rate applies to copyright and film royalties.
9. The lower rate applies to copyright royalties (excluding film royalties).
10. The rate applies if (i) the Estonian company owns directly at least 10% of the capital in the Israeli company, or (ii) dividends are paid to the government of the other state, a local authority or the central bank, or to a pension fund or other similar institution providing pension schemes in which individuals may participate, subject to further conditions.
11. Gross dividends paid to non-residents are subject to withholding tax at the following rates: (i) 25% if the shareholding is less than 10% (ii) 30% if the shareholding is equal to or less than 10% (iii) 25% if the payer is an Israeli resident company whose shares are listed and traded on a stock exchange. Dividends distributed by qualified Preferred Enterprises are subject to a 20% reduced withholding tax rate. Dividends distributed out of technological preferred income are subject to a 4% reduced withholding tax rate if more than 90% of the company's shares are held by non-residents (20% in other cases).

# ITALY

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
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| Rome/Genoa | Fabrizio Moscatelli | +39 06 863 58612<br>f.moscatelli@pkf-tclsquare.it |

## BASIC FACTS

| | |
|---|---|
| Full name: | Italian Republic |
| Capital: | Rome |
| Main languages: | Italian |
| Population: | 60.3 million (2022 estimate) |
| Monetary unit: | 1 Euro (EUR) = 100 cents |
| Internet domain: | .it |
| Int. dialling code: | +39 |

## KEY TAX POINTS

- All resident companies are subject to corporate income tax (IRES) on income from any source, whether earned in Italy or abroad. Non-resident companies are subject to IRES only on income earned in Italy. Both resident and non-resident companies are subject to regional income tax (IRAP) on income arising in Italy.
- Capital gains realised by a company are generally taxable as normal business income subject to IRES and IRAP, albeit certain reliefs may apply as per next paragraph description.
- Italian tax law includes a comprehensive set of rules on controlled foreign companies (CFC).
- VAT is levied on transfers of goods and services by enterprises, in the course of their business or professions within Italy, and on all imports into Italy.
- Foreign taxes may generally be credited against the Italian IRES tax liability, provided an equivalent clause exists in the territory from which the income derives.
- Transactions with foreign affiliated companies are closely scrutinised in order to determine whether transfer prices are at arm's length.
- Domestic companies making certain types of payments (e.g. interests, royalties, professional fees etc.) are required to withhold taxes at various rates.
- Resident individuals are subject to a personal income tax (IRPEF) on their worldwide income. Individuals carrying on a business or profession and/or partnerships are liable to IRAP which is not deductible from IRPEF. Non-resident individuals are subject to tax only on their Italian-sourced income.
- There is wealth tax in Italy applied on the cadastral value of real estate (ranging from 0.86% to 1.14%): IMU. It is not applied to real estate used as a main residence. Gift and inheritance tax applies at rates dependent on the relationship that the person receiving the gift or inheritance has with the donor/testator.

## A. TAXES PAYABLE

### NEW KINDS OF INCORPORATIONS PROVIDED BY LAW – LIMITED LIABILITY COMPANIES

The so-called "limited liability companies with reduced equity", introduced in 2012, have been abolished. Those previously incorporated were automatically converted into "simplified limited liability companies". The maximum age limit of 35, previously established for shareholders of a simplified limited liability company, was eliminated: therefore, individuals of any age may now have a participation in the share capital of an SLLC.

Furthermore:

- The directors do not necessarily have to be shareholders;
- The share capital must be between EUR 1 and EUR 9,999 and can only consist of cash which has to be paid in full to the Directors at the Incorporation Deed.

The Articles of Association must be drafted in accordance with a template approved by the Ministry of Justice, whose clauses cannot be amended.

As far as "ordinary" limited liability companies are concerned, 25% of the share capital contribution must be paid in cash to the directors, instead of to the bank as previously foreseen. The share capital can be less than EUR 10,000 but at least EUR 1. Furthermore, a sum equal to one fifth of the net profits resulting from the financial statements for each financial year must be assigned to the legal reserve until the company's equity reaches EUR 10,000. The reserve can only be used to increase the share capital or to cover any losses and it must be reinstated if, for any reason, it has been reduced. The Articles of Association do not need to be drafted according to the abovementioned template that is only required for simplified limited liability companies.

### INNOVATIVE START-UP COMPANIES

Some (but not all) requirements to be met by new and existing (by no longer than 5 years, as modified by Law Decree 24/2015) companies to be considered "innovative start-up companies" are the following:

- Their shares must have been owned by individuals for at least 3 years;
- The registered office is in Italy;
- The purpose of the Company is the development, production and sale of goods and/or services with high level technology.

The benefits of being such a company include:

- Exemption from the payment of both stamp and annual duties to the Companies House.
- Particular tax concessions concerning employment contracts and in terms of corporate laws.
- Tax deduction of 30% of investments (50% for 2020 up to EUR 100.000 currently) for investors.

### FEDERAL TAXES AND LEVIES: COMPANY TAX

As a rule, corporate income tax is payable by all resident companies on income from any source, whether earned in Italy or abroad. Non-resident companies are subject to corporate income tax (IRES) only on income earned in Italy. Starting from 1 January 2017, IRES is charged at 24% (reduced from the former 27.5%) and 27.5% for banks and financial institutions. Companies are also subject to a regional tax on productive activities (IRAP) at the rate of 3.9% but interest expenses are not deductible for IRAP purposes. The rate of IRAP is fixed at 3.9% for ordinary companies, 4.65% for banks and 5.9% for insurance companies.

Company tax returns, which cover both IRES and IRAP, must be filed electronically within nine months of the statutory year-end. An advance tax payment is due by the 30th day of the sixth month of the accounting period equal to 50% of the previous year's income tax liability. A second advance payment of 50% is due by the end of the eleventh month of the company's financial year (in some specific cases the advance payments are equal to 40% and 60%).

Any remaining amount would be due by the 30th day of the sixth month after the end of the period. For income tax purposes the company can choose either a calendar or a fiscal year. For VAT and withholding tax purposes, the calendar year always applies.

### BRANCH PROFITS TAX

Italian branch profits of foreign companies are fully liable to IRES and IRAP. Starting from 2016, Italian companies having a branch in a foreign country may opt for a branch exemption regime instead of the general "tax credit" regime. The branch exemption regime allows to tax the branch's profit only in the foreign country where the PE is established and according of its tax rules. The option is irrevocable and must be applied to all the branches of the Italian company.

There is no branch remittance tax in Italy.

### FISCALLY TRANSPARENT COMPANIES

Italian limited liability and joint stock companies may opt for this regime and be treated as fiscally transparent companies. In order to qualify for this treatment, joint stock companies must hold between 10% and 50% of the voting rights in another Italian company for a continuous 12-month period, whereas Italian limited liability companies must have a total gross income not exceeding EUR 7.5 million and be owned by a maximum of 10 private shareholders. Non-resident companies (regardless of their legal form) may also opt for such a regime only if entitled to apply the EU Parent-Subsidiary Directive to the dividends paid by the Italian controlled company.

Under the above regime, the 'transparent' company is not taxed on its own income for corporate income tax purposes. Income produced by its subsidiaries is directly allocated to the parent company according to its percentage of ownership, whether or not these profits have been remitted to it by way of dividend. The election is irrevocable for three years and must be communicated to the Tax Authorities.

### CONTROLLED FOREIGN COMPANIES

Italian tax law includes a comprehensive set of rules on controlled foreign companies (CFC). These rules are aimed at avoiding hiving off income from foreign subsidiaries located in certain low tax jurisdictions. On 28 December 2018 the Legislative Decree implementing ATAD directives established that a controlled company is a CFC if:

i. Its effective tax rate is lower than 50% of the tax rate that would apply if it were resident in Italy; and
ii. More than 1/3 of its income is passive income (i.e. interest, royalties, dividends).

The profits earned by a CFC located in a tax haven country have to be imputed to the Italian resident parent company/individual regardless of any dividend distribution.

Even if the non-resident entity meets the CFC test, the CFC regime does not apply if the CFC carries on a substantive economic activity supported by staff, equipment, assets and premises.

## CAPITAL GAINS

Capital gains realised by the company are generally taxable as ordinary business income subject to IRES and IRAP and capital losses are generally deductible. Tax on gains realised on disposal of fixed assets may be spread over five years if owned for more than three years. Capital gains on assets owned for less than three years are taxed in the year in which they are realised. Capital gains arising from stock transfers are 95% exempt, under specific conditions, where they relate to financial assets owned for an uninterrupted period of at least 12 months (participation exemption rule).

## FRINGE BENEFITS

Fringe benefits are included in the taxpayer's total aggregated income.

## MINIMUM TAXABLE INCOME

Until FY 2017, companies with an annual turnover lower than EUR 7.5 million were subject to an automatic evaluation in accordance with the so-called Sector Studies ('Studi di Settore'). This was to determine whether the company's income was higher than that stated in the tax return but it was not sufficient for assessing a higher taxable base. Any amended assessment must be based on concrete evidence. For income related to 2011 onwards, any taxpayer (individual, partnership or company) not consistent and not congruent with Sector Studies, is liable to a new and more stringent tax investigation procedure, carried out by the tax authorities. Starting from FY 2017, Sector Studies have been abolished and replaced by certain Compliance Indicators in order to determine a sort of reliability degree of the taxpayer. In some specific cases Compliance Indicators do not apply.

## NON-OPERATING OR DORMANT COMPANIES

Such companies are subject to a minimum tax charge as far as IRES and IRAP are concerned. The company must declare an income for the tax period which cannot be lower than the amounts calculated by multiplying percentages to certain balance sheet items (estimated figure). If this amount is higher than the taxable income declared, then the company is taxed on this higher amount. Furthermore, a VAT receivable is not refunded if these non-operating circumstances persist for five years as recently modified by law 23/2014. A company is considered dormant also if:

a) It has made a loss for five consecutive fiscal periods; or
b) It has made a loss for four fiscal periods and, in the next one , has a lower than estimated taxable income.

Moreover, any company considered dormant is subject to an additional 10.5% tax (which gives an overall corporate taxation of 34.5%).

## VALUE ADDED TAX (VAT)

VAT is levied on transfers of goods and services by enterprises or professionals in the course of their business within Italy and on all imports. Items exported or destined for export are not subject to VAT. Since October 2013, the standard VAT rate increased to 22%. Other rates currently applied are 4%, 5% and 10%. A specific VAT regime applies to real estate transactions. The standard rate might increase again, depending on whether or not the Government will be adopting certain specific laws concerning the Public Budget. Certain goods used to combat Covid-19 are VAT exempted (in 2021, however, the rate was set at 5%).

As an alternative to the appointment of a VAT representative (which remains the only procedure allowed by extra-EU companies), non-resident EU companies can apply for a "Direct VAT Identification", which is a VAT registration that leads to getting an Italian VAT number. This enables the non-resident to settle any VAT payment directly in Italy or claim back any VAT credit. The direct VAT identification procedure is intended to facilitate the payment of Italian VAT liabilities by the non-resident. This procedure was discontinued with effect from 25 September 2009 in cases where a non-resident EU company has a permanent establishment in Italy. Post-Brexit UK companies are still able to get VAT registered as EU companies.

The basic "place of supply" rule for supplies of services to "VAT registered persons" is that such supplies are deemed to be made where the customer is established and the related VAT is due in accordance with the so-called "reverse charge" procedure. Services subject to reverse charges also have to be included on Intrastat forms, subject to some exceptions. Periodic returns must be filed on a monthly or quarterly basis, depending on the company's turnover. A yearly return must be filed by 30 April of the following year. Starting from 2017, a group of companies, under certain conditions, may apply for a VAT Group in order to be considered as a unique taxpayer for VAT purposes.

## TAX CLAIMS

The taxpayer has the right to seek recourse against assessments and undue payment demands, etc. by appealing to the tax courts through three levels of justice. The tax assessment can be settled by paying a lower penalty before appealing to the Tax Court.

## IVIE (TAX ON REAL ESTATE OUTSIDE ITALY)

Starting from fiscal year 2012 Italian and non-Italian citizens who are tax residents in Italy and own property located outside of Italy will be subject to IVIE. This tax is calculated by applying:

- A rate of 0.76% to:
  (a) The cadastral value as normally calculated in the country where the real estate is situated;
  (b) The cost of the real estate, as indicated in the Purchase Deed or in the contract(s); or
  (c) The fair value that can be assigned to the property in the Country where the real estate is situated.

- A rate of 0.40% to:
  (a) Properties located abroad that are utilised as a main residence where a lump-sum deduction of EUR 200 is applicable to the tax burden calculated by applying the 0.40% rate.

The value mentioned at a) above can only be used for taxation purposes for estates located in EEA member states. The tax is calculated proportionally to the effective month and percentage of possession. It is only due for payment if the tax burden is higher than EUR 200. Any property tax paid in the country where the real estate is located can be offset against IVIE. Taxpayers may also deduct the income tax payable on properties located in EEA member states.

The Italian Tax Agency has published the Circular 28/2012 listing and distinguishing which Country applies the above mentioned letter a) and letter b). The deadline for paying this tax coincides with the Income Tax payment deadline.

## IVAFE (TAX ON FOREIGN FINANCIAL INSTRUMENTS, BANK ACCOUNTS)

IVAFE is a tax introduced in 2011 on foreign financial assets on the possession of financial products, bank accounts and passbooks owned abroad by Italian resident taxpayers. It is applied on the assets' value at a rate of 0.1% for 2011 and 2012, which increased to 0.15% at the beginning of 2013 and to 0.2% starting from 2014. To avoid double taxation, a deduction is allowed for any "wealth" tax paid abroad on the same assets.

## LOCAL TAXES

## REAL ESTATE TAX (IMU), TASI AND TARI

The 2020 Budget Law reviewed the law provision regarding taxes levied on the ownership of real estate. In particular, it has been provided that, starting from the year 2020, the tax on indivisible services (i.e. the above-mentioned TASI) is repealed so that only one form of real estate tax is levied, the rules of which ultimately are consistent with those existing under the IMU.

Real estate tax (IMU) is payable annually in two instalments (June and December) on the value of real estate property owned by companies as well as individuals. It has a variable rate ranging from around 0.86% to around 1.14% on the property value, depending on each county council's assessment. IMU is no longer charged on the principal place of abode owned by any taxpayer, unless it is classified as being luxurious for fiscal purposes within special cadastral categories. Moreover, IMU could also be charged on rural buildings considered instrumental upon decision of Municipalities. The maximum tax rate applicable is 0,1%.

As from 2022, both self-employed VAT registered individuals and companies are allowed to fully deduct (100%) the IMU paid during the fiscal year 2022 on instrumental premises. This deduction is only applicable to the computation of corporate tax but not when calculating the IRAP burden for the year.

TARI is due for waste collection. Both self-employed VAT registered individuals and companies are allowed to deduct 100% of TARI paid during the fiscal year.

## OTHER TAXES

From 2008 onwards stamp duty on the transfer of shares, bonds and similar securities has been repealed under the name of Tobin Tax. Register tax is levied on the registration of any written contract or deed. The percentage varies according to the type of deed. One of the higher rates applied to contributions or transfers of real estate is 9%. Registration tax is not applicable if the transaction is subject to VAT, except for real estate rental contracts whereby VAT and a 1% registration tax are both applicable.

## PAYMENTS DUE BY VAT REGISTERED ENTITIES

VAT registered persons are required to make all tax and social security payments electronically, whether or not an intermediary is involved by means of a standard form (F24).

Starting from tax year 2020, it is mandatory to channel the filing of the F24 form through the tax authority's system (so-called '*Entratel*') in case of offsetting tax liabilities with other tax credits.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company is based on the result of its business profits, which consists of the net income determined during a financial period, adjusted as required by the Tax Act. Non-resident companies are taxed in Italy on certain types of income earned from sources in Italy.

## CAPITAL ALLOWANCES

Depreciation of tangible assets is permitted on a straight-line basis calculated by applying the coefficient established by the Ministry of Finance to the cost price, reduced by half for the first tax year. Tangible property with an acquisition cost of less than EUR 516.46 may be written off in the year of purchase. For new assets, subject to certain requirements - until 2019 – the depreciation rate was increased to 30% or 150% in case of high technology assets. Starting from financial year 2020 a tax credit was introduced. For financial year 2022, it is calculated applying 6% and 40% (high-tech assets) to the cost of new tangible and certain intangible assets. Different percentages have already been foreseen for the following financial years.

## STOCK / INVENTORY

Inventory is valued at cost of purchase. Companies may apply any acceptable method of inventory pricing, i.e. FIFO, average, continuous average, etc. If the cost of purchase is lower than the market value as of the previous month, the stock can be valued using this method.

## DIVIDENDS

a) Companies are taxed at 5% on dividends received regardless of where the company paying the dividend is a resident (except for black-listed countries).
b) Budget Law 2018 has amended the tax treatment applicable (with effect from 1 January 2018) to dividends derived by individuals outside a business capacity providing for a flat tax rate at 26% (either for substantial and non-substantial participations). However, dividends from substantial participations) accrued up to 31 December 2017, whose distribution is

approved by 31 December 2022, will still be subject to the old rules (i.e. 49.72% or 58.14% of the dividends will be included in the individual's taxable income for IRPEF purposes).

50% of dividends distributed by a foreign black-listed entity will be excluded from the taxable income of the resident shareholder, if it can prove that as its core business, the foreign company paying the dividends actually trades on the market of the state or territory in which it is located (first CFC safe-harbour rule or 'business test').

## INTEREST DEDUCTIONS

Interest expenses, including interest on leasing costs but excluding capitalised and non-deductible interest and net of the interest income accounted in the same tax period, are not deductible if they exceed 30% of the company's gross operating margin relevant for tax purposes (before 2019 reference had to be made to gross operating margin as reported in the Financial Statements).

Net interest expense in excess of the yearly limitation is carried forward to the following 5 fiscal years (before 2019 indefinitely). Hence, net interest expense not deducted in previous years can be deducted in the subsequent 5 fiscal years as long as total interest in that year does not exceed 30% of gross operating margin. If net interest expense is lower than the annual limit (i.e. 30% of gross operating margin), this difference can be carried over to increase the company's interest deduction capacity in the subsequent 5 years. Starting from 2019, interest income exceeding interest expenses can be carried forward to be offset against future interest expenses in any following FYs.

## DEVALUATION OF RECEIVABLES

It is allowed to deduct the devaluation if the transaction complies with National Accounting Principles and if its intent is not elusive.

## LOSSES

Net operating losses incurred in tax year 2012 and onwards may be carried forward without a time limitation from the year in which they originated. However, they can only be used to offset up to 80% of the income arising in later years. The losses realised in the first three years of business can be used for the entire amount. Net losses incurred before 2011 can be carried forward for up to five years with no offset limitations. These rules only apply for corporation tax (IRES) and not for IRAP purposes.



As a result of the pandemic, companies have been allowed to postpone decisions on how to cover losses accrued during 2020 until 2025 and during 2021 until 2026 (five financial years).

## FOREIGN SOURCE INCOME

Only 5% of the value of dividends received from controlled foreign companies is liable to IRES. This 95% exemption is not available if the source of the dividends is a company resident under a 'privileged tax regime' outside the EU. A full exemption is applicable to the dividends paid by a CFC taxed under the transparency method.

## INCENTIVES

Italian law provides for various forms of incentives to support economic investment in the south of Italy, other depressed areas in the centre/north, and in those areas struck by catastrophes such as earthquakes or floods.

Many of those incentives have been introduced after the emergence of Covid-19. In addition to some already discussed in other paragraphs, the following are also worth mentioning:

- A "super deduction", which corresponds to a 110% cost increase, of research and development costs incurred in relation to software protected by copyright, industrial patents, trademarks, designs and models, as well as processes, formulas and information relating to legally protectable industrial, commercial or scientific experience (for a duration of five tax periods).
- The law on the revaluation of business assets (Decree-Law No. 34/2020) has been renewed, allowing business assets and shareholdings to be 'revalued' by paying a substitute tax on their value and thus recognising this new value for tax purposes. For the purposes of the tax recognition of the higher values, the rate is 3% (there is also the option to attribute exclusively accounting value to the higher values).
- A general extension of the possibility to suspend depreciation of tangible and intangible assets, already provided for the tax year 2020 only, has also been granted for the year 2021.
- The measure was introduced by Decree-Law 104/2020 only in favour of those companies that do not adopt international accounting standards.
- The benefit consists in the right to suspend up to 100% of the annual amortisation of tangible and intangible assets, maintaining their book value, as resulting from the latest regularly approved financial statements. The portion of depreciation not carried out is charged to the profit and loss account of the following year and the subsequent portions are deferred using the same criterion, thus extending the original depreciation plan.
- The tax credit for research and development. All companies resident in the territory of the State, including permanent establishments of non-residents, regardless of their legal status, economic sector, size, accounting system and income determination system for tax purposes, that carry out fundamental research, industrial research and experimental development in the field of science and technology, are entitled to a tax credit, until the tax period ending on 31 December 2022, equal to 20% of the relevant calculation basis, (net of other subsidies or contributions of any kind received for the same eligible expenses) up to a maximum annual limit of EUR 4 million. From the tax period following the one in progress as of 31 December 2022 until the one in progress as of 31 December 2031, the tax credit is recognised at the rate of 10%, up to a maximum annual limit of EUR 5 million.
- Another tax credit is recognised for technological innovation activities aimed at producing new or substantially improved products or production processes. The tax credit is recognised until the tax period in progress until 31 December 2023, at an amount equal to 10% of the relevant calculation basis, taken net of other subsidies or contributions for any reason received on the same eligible expenses, up to a maximum annual limit of EUR 2 million. From the tax period following the one in progress as of 31 December 2023 until the tax period in progress as of 31 December 2025, the tax credit is recognised at the rate of 5%, up to a maximum annual limit of EUR 2 million.

## BLACKLIST COUNTRIES

Starting from 2017 all transactions with subjects residing in black-listed countries are no longer to be communicated to the Tax Authorities. Until FY 2016 the deduction of the cost incurred with black-list subjects was subject to specific conditions or to preceding ruling procedures.

## EXIT TAX

As a general rule, Italian companies that decide to transfer their tax residence abroad are deemed to have realised their assets at "fair value" unless they maintain a permanent establishment in Italy. However, where the tax residence is transferred to another state within the European Union or to a state included within a specific "white list", companies may choose to pay in instalments or to have the resulting tax charge suspended until the assets of the transferred business are disposed of.

## ACE (ALLOWANCE FOR CAPITAL EXPENDITURE) AND "SUPER" ACE

The Budget Law 2020 has re-introduced the Ace deduction (a sort of Notional Interest Deduction on equity increases).

Corporations and permanent establishments of non-resident companies (as well as individuals and partnerships), are allowed to deduct a lump-sum amount from their own taxable income. The deduction (applicable from the year ended 31 December 2011 onwards) is calculated by applying a rate of 1.3% starting from 2020.

Examples of increases in shareholders' equity are:

- Cash injections into a company (share capital increase, write off of payables previously due to shareholders, offsetting of receivables to increase the share capital);
- Earnings not distributed to shareholders but retained and allocated to reserves.

Examples of decreases in shareholders' equity are:

- Distribution of earning reserves to shareholders;
- Decrease in capital and in reserves of capital.

The distribution of the current year profits as well as losses affecting share capital were not considered to be a decrease in the shareholder's equity.

For tax year 2021 only, the so-called "Super Ace" has been provided for the following: the increases recorded in the year 2021 (calculated as above) can benefit from a rate of 15%, instead of the ordinary 1.30%, with a limit of EUR 5 million of eligible increases.

The amount calculated in this way is transformed from a facilitation into a tax credit.



## DIGITAL TAX

The 2019 finance bill introduced a 3% web tax on gross revenues from the supply of certain digital services at the level of taxpayers (residents and non-residents) that meet the following conditions:

- Worldwide income at least equal to EUR 750 million;
- Income for digital transactions in Italy at least equal to EUR 5.5 million.

More specifically, supply of digital services includes online advertising, the use of digital platforms allowing the direct supply of goods and services and the transmission of data collected from digital interface users. The tax applies if the user is located in Italy.

Digital Tax is payable on a calendar year basis and is due by 16 February of the following year, based on a return to be filed by 31 March.

## C. FOREIGN TAX RELIEF

Foreign taxes may generally be credited against the tax liability suffered in Italy on the same income. Any excess foreign credits can be carried forward or backwards for eight years. The tax credit must be claimed in the tax return for the year in which the foreign tax is paid. If not, the right to the tax credit is forfeited.

## D. CORPORATE GROUPS

Provisions for the consolidation of resident and non-resident company results were introduced in 2004. These provisions allow for the consolidation of income between group companies at both domestic and international level, resulting in a single tax liability for the parent company. The option is irrevocable for a three-year period where only Italian resident companies are involved and for a five-year period for a worldwide consolidation (or three years if subsequently renewed). The companies participating in the group consolidation are jointly liable for taxes, penalties and interest assessed on the aggregate income. The consolidated income is taxed at the parent company level.

## E. RELATED PARTY TRANSACTIONS

Transactions with foreign affiliated companies are closely scrutinised in order to determine whether transfer prices are at arm's length. There are ministerial guidelines which suggest various limits on payments between affiliates. A set of documentation, consistent with OECD standards, is required from those companies that make cross-border operations with controlled foreign companies (CFC). The documentation must contain detailed information and data about the transactions as well as their compliance with the "arm's length principle". Although this documentation is not mandatory, it would provide penalty protection to companies should they communicate to the Tax Authorities that they have this documentation on hand for consultation.

Furthermore, they must also communicate to the Tax Authorities as to whether they have this documentation available for previous tax periods that are still subject to assessment. From tax year 2017, a country-by-country report showing certain financial information and economic indicators has been made compulsory for certain multinational entities. The rules on transfer pricing are also applicable for IRAP purposes, having retroactive effects from the tax periods subsequent to 31 December 2007. A sentence dated November 2015 declared lawful IRAP application only starting from fiscal year 2014.

## F. WITHHOLDING TAX

Domestic companies making certain types of payments (e.g. interests, royalties, professional fees, etc.) are required to withhold taxes at various rates. In general, dividends distributed to non-residents are subject to a final 26% withholding tax. For dividends paid to residents of EU countries and those included on the "white list", a special withholding tax rate of 1.20% applies. This rule applies only to profits earned starting from fiscal year 2008. Any dividends paid that represent profits from previous fiscal years will be subject to previous years' rules. However, Italian legislation has transposed the EU Directive 2003/49/CE (the 'Parent-Subsidiary Directive'). No withholding tax is levied on dividends paid to a parent company in another EU Member State if both the parent and the subsidiary are 'qualifying' companies under the Directive and the parent has held at least 10% of the capital of the subsidiary continuously for at least one year.

The EU Interest and Royalties Directive has also been incorporated into domestic law. Outbound interests and royalties are exempt from any Italian tax provided that the recipient is an associated company of the paying company and is resident in another EU Member State or such a company's permanent establishment is situated in another Member State. Two companies are "associated companies" if:

a) One of them holds directly at least 25% of the voting rights of the other; or,

b) A third EU company holds directly at least 25% of the voting rights of the two companies.

The relevant companies must have a legal form listed in the Annex to the Directive and be subject to a corporate income tax. A one-year holding period is required.

## G. EXCHANGE CONTROL / ANTL-MONEY LAUNDERING

There are no exchange controls in Italy. However, banks and financial institutions are required to monitor any deposit/withdrawal of over EUR 15,000 for anti-money laundering purposes. This duty was extended to audit firms, professionals, etc. Cash payments of over EUR 2,000 are not permitted. This limit is applicable to all categories. Penalties range from 1% to 40% of the amount transferred with a minimum penalty of EUR 3,000 (and EUR 15,000 when cash payments exceed EUR 50,000).



## H. PERSONAL TAX

Resident individuals are subject to a personal income tax called IRPEF on their worldwide income.

Individuals carrying on a business or profession are liable to IRAP which is not deductible from IRPEF. Non-resident individuals are subject to tax only on their Italian-sourced income.

Individuals are considered resident for fiscal purposes in Italy if they are registered at the official Register of Population; their principal place of business and interests is located in Italy; or if they remain in Italy for more than six months in any calendar year. Progressive rates for IRPEF are as follows:

| INCOME (EUR) | IRPEF RATE 2022 |
|---|---|
| Up to 15,000 | 23% |
| Between 15,000 and 28,000 | 25% |
| Between 28,000 and 50,000 | 35% |
| Over 50,000 | 43% |

In addition to the above progressive rates, a regional surcharge (variable rate from 0.9% to 1.4%) is due and an additional municipal tax could be charged and set locally.

The tax period in Italy is the calendar year and tax is due over two advance payments made during the tax year with the balance due by 30th June of the following year. IRPEF is withheld at source from employee salaries and wages. The payment of taxes on account and settlement functions are done under a similar system as for companies. There is no wealth tax in Italy (only IMU as described). Gift and inheritance tax has come back into force with a range of tax rates and exemptions.

## TAX INCENTIVES FOR ATTRACTING HUMAN CAPITAL TO ITALY

A favourable tax regime has come into force starting 1 January 2020, with the aim to attract human capital to Italy. In particular, workers who have transferred their tax residence to Italy starting from 30 April 2019 are subject to a 70% reduction (90% if the tax residence is moved to certain regions of Southern Italy) of taxable income, if they meet certain conditions:

- Employees or self-employed workers who have not been tax resident in Italy in the previous two years.
- EU citizens and citizens of non-EU countries with a DTT (or exchange of information agreement) with Italy: (i) bachelor/master graduated, who have work experience on a continuous basis outside of Italy in the previous 24 months before moving to Italy, (ii) or individuals who, in the last 24 months or more, were studying on a continuous basis abroad and accomplished a bachelor's degree or a master's degree.

Moreover, in order to benefit from the special tax regime, workers must be committed to stay tax resident in Italy for at least two years and they must perform their working activity mainly in Italy.

The tax exemption lasts for five tax years. A 5-year extension can be granted to workers who meet some specific requirements (e.g. having children or having purchased a resident property in Italy).

Another advantageous flat tax regime, interesting for high-income individuals, is provided for those who transfer their tax residence to Italy (after having had it abroad for at least 9 out of the last 10 tax periods).

This regime provides that these individuals can benefit from a substitute tax on income generated abroad. The option provides for the payment of a flat tax of EUR 100,000 for each tax period for which it is exercised for all income produced abroad (not in Italy).

The flat-rate scheme may also be extended to one or more family members, in which case the substitute tax is equal to EUR 25,000 for each of them.

The option is tacitly renewed from year to year and lasts for fifteen years from the first tax period of validity.

The payment of the substitute tax, in the amount of EUR 100,000, must be made in a single instalment, for each tax period in which the scheme is effective, within the date set for the payment of the balance of income tax.

## FLAT TAX ('CEDOLARE SECCA')

Since 2011, individuals whose income is derived from renting their own properties to tenants who, in turn, use them as dwellings, can be taxed at a flat 21% rate on the agreed fees (the rate is equal to 10% for certain particular "agreed upon" local contracts.)

In order to qualify for this scheme, the lessor should choose this option when the rental agreement is registered at the local tax office, or within his or her tax return. The tenant(s) must be informed of such a choice through a registered letter with return receipt. This scheme only applies to individuals renting buildings used as dwellings. It does not apply where the building is to be used for a business purpose.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends[1] | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 0/1.2/26[36] | 0/1.2/26[36] | 0/12.5/26 | 0/22.5 |
| Individuals | 26 | n/a | 0/12.5/26 | 22.5 |
| **Treaty countries:** | | | | |
| Albania | 10 | 10 | 0/5 | 5 |
| Algeria | 15 | 15 | 0/15 | 5/15 |
| Argentina | 15 | 15 | 0/20 | 10/18 |
| Armenia | 10 | 5[2] | 0/10 | 7 |
| Australia | 15 | 15 | 10 | 10 |
| Austria | 15 | 15 | 0/10 | 0/10 |
| Azerbaijan | 10 | 10 | 0/10 | 5/15 |
| Bangladesh | 15 | 10[3] | 0/10/15 | 10 |
| Barbados | 15 | 5[4] | 0/5 | 5 |
| Belarus | 15 | 5[5] | 0/8 | 6 |
| Belgium | 15 | 15 | 15 | 5 |
| Bosnia and Herzegovina | 10 | 10 | 10 | 10 |
| Brazil | 15 | 15 | 15 | 15/25 |
| Bulgaria | 10 | 10 | 0 | 5 |
| Canada | 15 | 5[6] | 0/10 | 0/5/10 |
| Chile | 10 | 5[7] | 5/15 | 5/10 |
| China | 10 | 10 | 10 | 10 |
| Colombia[8] | 15 | 5[9] | 0/5/10 | 10 |
| Congo (Rep.) | 15 | 8[10] | 0 | 10 |
| Croatia | 15 | 15 | 0/10 | 5 |
| Cyprus | 15 | 15 | 10 | 0 |
| Czech Republic | 15 | 15 | 0/5 | 0/5 |
| Denmark | 15 | 0[11] | 0/10 | 0/5 |
| Ecuador | 15 | 15 | 0/10 | 5 |
| Egypt | –[12] | –[12] | 0/25 | 15 |
| Estonia | 15 | 5[10] | 0/10 | 5/10 |
| Ethiopia | 10 | 10 | 0/10 | 20 |
| Finland | 15 | 10[13] | 0/15 | –/5 |
| France | 15 | 5[14] | 0/10 | 0/5 |
| Georgia | 10 | 5[15] | 0 | 0 |
| Germany | 15 | 10[7] | 0/10 | 0/5 |
| Ghana | 15 | 5[10] | 10 | 10 |
| Greece | 15 | 15 | 0/10 | 0/5 |
| Hong Kong | 10 | 10 | 12.5 | 15 |
| Hungary | 10 | 10 | 0 | 0 |
| Iceland | 15 | 5[16] | 0 | 5 |
| India | 25 | 15[17] | 0/15 | 20 |
| Indonesia | 15 | 10[5] | 0/10 | 10/15 |
| Ireland | 15 | 15 | 10 | 0 |
| Israel | 15 | 10[5] | 10 | 0/10 |
| Ivory Coast | 15 | 15 | 0/15 | 10 |

| | Dividends[1] | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Japan | 15 | 10[18] | 10 | 10 |
| Jordan | 10 | 10 | 0/10 | 10 |
| Kazakhstan | 15 | 5[3] | 0/10 | 10 |
| Korea (South) | 15 | 10[5] | 0/10 | 10 |
| Kuwait | --[12] | 5[19] | 0 | 10 |
| Kyrgyzstan | 15 | 15 | 0 | 0 |
| Latvia | 15 | 5[10] | 10 | 5/10 |
| Lebanon | 15 | 5[20] | 0 | 0 |
| Lithuania | 15 | 5[10] | 0/10 | 5/10 |
| Luxembourg | 15 | 15 | 0/10 | 10 |
| Malaysia | 10 | 10 | 0/15 | 15 |
| Malta | 15 | 15 | 0/10 | 0/10 |
| Mauritius | 15 | 5[5] | 0/– | 15 |
| Mexico | 15 | 15 | 0/15 | 0/15 |
| Moldova | 15 | 5[15] | 5 | 5 |
| Montenegro | 10 | 10 | 10 | 10 |
| Morocco | 15 | 10[5] | 0/10 | 5/10 |
| Mozambique | 15 | 15 | 0/10 | 10 |
| Netherlands | 15 | 5/10[21] | 0/10 | 5 |
| New Zealand | 15 | 15 | 0/10 | 10 |
| North Macedonia | 15 | 5[5] | 0/10 | 0 |
| Norway | 15 | 15 | 0/15 | 5 |
| Oman | 10 | 5[22] | 0/5 | 10 |
| Pakistan | 25 | 15[23] | 30 | 30 |
| Panama | 10 | 5[5] | 0/5/10 | 10 |
| Philippines | 15 | 15 | 0/10/15 | 25 |
| Poland | 10 | 10 | 0/10 | 10 |
| Portugal | 15 | 15 | 0/15 | 12 |
| Qatar | 15 | 5[24] | 0/5 | 5 |
| Romania | 5 | 0[25] | 0/5 | 5 |
| Russia | 10 | 5[26] | 10 | 0 |
| San Marino | 15 | 0[27] | 0/13 | 0/10 |
| Saudi Arabia | 10 | 5[24] | 0/5 | 10 |
| Senegal | 15 | 15 | 0/15 | 15 |
| Serbia | 10 | 10 | 10 | 10 |
| Singapore | 10 | 10 | 12.5 | 15/20 |
| Slovak Republic | 15 | 15 | 0 | 0/5 |
| Slovenia | 15 | 5[5] | 0/10 | 10 |
| South Africa | 15 | 5[28] | 0/10 | 6 |
| Spain | 15 | 15 | 0/12 | 4/8 |
| Sri Lanka | 15 | 15 | 0/10 | 10/15 |
| Sweden | 15 | 10[29] | 0/15 | 5 |
| Switzerland | 15 | 15 | 12.5 | 5 |
| Syria | 10 | 5[30] | 0/10 | 18 |
| Taiwan | 10 | 10 | 10 | 10 |
| Tajikistan | 15 | 15 | 0 | 0 |
| Tanzania | 10 | 10 | 15 | 15 |
| Thailand | 20 | 15[31] | 0/10/– | 5/15 |
| Trinidad and Tobago | 20 | 10[5] | 10 | 0/5 |
| Tunisia | 15 | 15 | 0/12 | 5/12/16 |
| Turkey | 15 | 15 | 15 | 10 |

| | Dividends[1] | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Turkmenistan | 15 | 15 | 15 | 10 |
| Uganda | 15 | 15 | 0/15 | 10 |
| Ukraine | 15 | 5[32] | 0/10 | 7 |
| United Arab Emirates | 15 | 5[33] | 0 | 10 |
| United Kingdom | 15 | 5[6] | 0/10 | 8 |
| United States | 15 | 5[34] | 0/10 | 0/5/8 |
| Uzbekistan | 10 | 10 | 0/5 | 5 |
| Venezuela | 10 | 10 | 0/10 | 7/10 |
| Vietnam | 15 | 5/10[35] | 0/10 | 7.5/10 |
| Zambia | 15 | 5[5] | 0/10 | 10 |

Notes:

1. In the case of relations between EU Member States, dividend payments from subsidiaries to parent companies may be exempt if the conditions of the Parent Subsidiary Directive 2011/96/EU are met.
2. The 5% reduced rate applies if the beneficial owner is a company which has owned directly at least 10% of the capital of the dividend-paying company (this share should be at least USD 100,000 or its equivalent in other currency) for a period of at least 12 months preceding the date the dividends were declared.
3. The reduced rate applies if the beneficial owner is a company which holds directly or indirectly at least 10% the capital of the dividend-paying company.
4. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company.
5. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
6. The 5% reduced rate applies if the beneficial owner is a company that controls directly or indirectly at least 10% of the voting power in the dividend-paying company.
7. The 5% reduced rate applies if the beneficial owner is a company that holds directly at least 25% of the capital of the dividend-paying company.
8. Effective date: 1 January 2022.
9. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company.
10. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
11. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds and has held directly at least 25% of the capital of the dividend-paying company for a twelve month-period prior to the date the dividends are declared.
12. There is no reduction under the treaty. The domestic rate therefore applies.
13. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 50% of the capital of the dividend-paying company.
14. The 5% reduced rate applies if the beneficial owner is a company subject to the corporation tax which holds directly or indirectly, for a period of at least 12 months preceding the date the dividends were declared, at least 10% of the capital of the dividend-paying company.
15. The 5% reduced rate applies if the beneficial owner is a company which has owned at least 25% of the capital of the dividend-paying company.
16. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which has owned directly or indirectly at least 10% of the capital of the dividend-paying company for a period of at least 12 months preceding the date the dividends were declared.
17. The 15% reduced rate applies if the beneficial owner is a company which owns at least 10% of the shares of the dividend-paying company.
18. The 10% reduced rate applies if the recipient is a company which owns at least 25% of the voting shares of the company paying such dividends during the period of six months immediately before the end of the accounting period for which the distribution of profits takes place.
19. The 5% reduced rate applies if the beneficial owner holds, directly or indirectly, 75% or more of the capital of the dividend-paying company.
20. The 5% reduced rate applies if the beneficial owner is a company which has owned at least 10% of the capital of the dividend-paying company for a period of at least 12 months preceding the date the dividends were declared.
21. The 5% reduced rate applies if the beneficial owner is a company which has held more than 50% of the voting shares of the dividend-paying company for a period of twelve months preceding the date the dividends were declared. The 10% reduced rate applies if the beneficial owner is a company which is not entitled to the 5% rate but which has held at least 10% of the voting shares of the dividend-paying company for a period of twelve months preceding the date the dividends were declared.
22. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 15% of the capital of the dividend-paying company.
23. The 15% reduced rate applies if the recipient company holds directly at least 25% of the capital of the dividend-paying company and the latter company is engaged in an industrial undertaking.
24. The 5% reduced rate applies if the beneficial owner is a company (other a partnership) which has owned directly or indirectly at least 25% of the capital of the dividend-paying company for a period of at least 12 months preceding the date the dividends were declared.
25. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company on the date the dividends are paid and has done so or will have done so for an uninterrupted period of two years in which that date falls.
26. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company (this share should be at least USD 100,000 or its equivalent in other currency).
27. The 0% rate applies if the beneficial owner is a company (other than a partnership) which has held directly at least 10% of the capital of the dividend-paying company for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends.
28. The 5% reduced rate applies if the beneficial owner is a company which has owned at least 25% of the capital of the dividend-paying company for a 12 month period ending on the date the dividend is declared.

29. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 51% of the capital of the dividend-paying company.
30. The 5% reduced rate applies if the beneficial owner is a company which has owned at least 25% of the capital of the dividend-paying company.
31. The 15% reduced rate applies if the recipient of the dividends is a company which is a resident of Thailand owning at least 25% of the voting shares of the dividend-paying company.
32. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 20% of the capital of the dividend-paying company.
33. The 5% reduced rate applies if the beneficial owner holds directly or indirectly at least 25% of the capital of the dividend-paying company.
34. The 5% reduced rate applies if the beneficial owner is a company which has owned at least 25% of the voting stock of the dividend-paying company for a 12 month period ending on the date the dividend is declared.
35. The 5% reduced rate applies if the recipient is a company (excluding partnerships) which owns directly at least 70% of the capital of the dividend-paying company. The 10% reduced rate applies if the recipient is a company (excluding partnerships) which owns directly at least 25% up to 70% of the capital of the dividend-paying company.
36. In general, dividends distributed to non-residents are subject to a final withholding tax of 26%. A reduced rate of 1.2% applies to distributions of profits, provided that the beneficial owner of the dividends is a company or an entity (i) subject to corporate income tax and (ii) resident in an EEA country that allows an adequate exchange of information with Italy. Where the 26% withholding tax rate applies, and it is proved that tax has been paid on the same dividends in the recipient's state of residence, a refund of up to 11/26 of the withholding tax may be claimed. See also footnote 1 for the 0% rate.

# IVORY COAST

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Abidjan | Antoine Lawson | +225 21 32 05 85<br>antoine.lawson@pkf-fwa.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Côte d'Ivoire |
| Capital: | Yamoussoukro |
| Main languages: | French |
| Population: | 27.66 million (2022 estimate) |
| Monetary unit: | West African CFA Franc (XOF) |
| Internet domain: | .ci |
| Int. dialling code: | +225 |

## KEY TAX POINTS

- The standard corporate tax rate is 25% while a 30% rate applies to companies operating in the telecom, information technology and communication sector.
- VAT is levied only in respect of business activities that are carried on Ivory Coast territory at a standard rate of 18%.
- Withholding tax on dividends paid to non-resident companies is levied at 10% at the level of listed companies. The rate is 15% for dividends derived from profits which are exempt from CIT and any other distributions.
- The standard withholding tax rate on interest paid to non-resident companies is 18%.
- Royalties, technical assistance fees and management fees paid to non-resident companies are subject to the tax on non-commercial profits by way of a final withholding tax at the rate of 25% of 80% of the gross amount of the royalties, resulting in an effective tax rate of 20%.

## A. TAXES PAYABLE

## COMPANY TAX

An entity incorporated in Ivory Coast is considered a resident for tax purposes and subject to tax on income from movable capital on a worldwide basis. Permanent establishments of non-resident entities are subject to tax in the same way as resident companies.

The standard corporate tax rate is 25% while a 30% rate applies to telecom companies.

In case of losses, an alternative minimum tax of 0.5% is levied based on total turnover, with a minimum tax of XOF 3 million and a maximum tax of XOF 35 million. The minimum tax is due for a financial year when the amount of tax on profits for that financial year is lower. The alternative minimum tax was suspended from 1 January until 31 December 2020 (2020 Finance Law).

New businesses are exempt from the alternative minimum tax for their first accounting period.

**Summary table of the new regimes as of 8 January 2021 from the General Tax Directorate**

- Entrepreneur's regime (ER): companies (individuals or legal entities) with a turnover between 0 and 50,000,000 FCFA;
- Microenterprise regime (RME): companies (individuals or legal entities) with a turnover between 50,000,001 and 200,000,000 FCFA;
- Simplified Real Tax System (RSI): companies (individuals or legal entities) whose turnover is between 200,000,001 and 500,000,000 FCFA;
- Normal Income Tax regime (RNI): companies (individuals or legal entities) whose turnover is between 500,000,001 and 1,000,000,000 FCFA.

## CAPITAL GAINS TAX

Capital gains are included in ordinary income and subject to corporate income tax at the standard rate.

## BRANCH PROFITS TAX

Branches of foreign companies are subject to the same tax rate as domestic companies. Additionally, fifty percent of branch profits are deemed to be remitted and taxed at 15% giving rise to a 7.5% effective branch remittance tax, regardless of whether there is an actual remittance of funds.

## VALUE ADDED TAX (VAT)

Value added tax (VAT) is levied on transactions carried out in Ivory Coast by individuals or companies who, either regularly or occasionally, purchase goods for resale or render services, other than as employees or farming workers.

VAT is levied only in respect of business activities that are carried on Ivory Coast territory at a standard rate of 18%. This rate is reduced to 9% for certain products like milk, pasta made from 100% durum wheat semolina, solar energy production equipment and petroleum products.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income comprises the company's business profits, including capital gains realised on the transfer of business assets, but excluding exempt income.

For business accounting purposes, Ivory Coast has, like other OHADA member states, adopted since January 2001 the OHADA accounting system provided for by the OHADA Uniform Act Relating to Accounting *(Acte uniforme relatif au droit comptable et à l'information financière)*. Under this act, companies operating in Ivory Coast are obliged to keep their local accounts and to prepare their domestic corporate income tax returns according to the OHADA accounting system.

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## DISALLOWED EXPENSES

As a general rule, expenses not directly connected to the taxable business activities carried on in Ivory Coast are not deductible for the purpose of computing taxable income.

## DEPRECIATION

Depreciation for tax purposes is calculated based on the normal useful life of the asset and three depreciation methods are allowed: the straight-line method, the declining-balance method and the accelerated depreciation method.

Land and goodwill may not be depreciated.

The straight-line method of depreciation is the most commonly used method.

| Asset | Rate (%) |
|---|---|
| Buildings for use for commercial, agricultural and handicraft activities | 5 |
| Lightweight constructions | 10 |
| Plant and machinery | 20 |
| Computer hardware and software | 50 |
| Office furniture and equipment | 10 |
| Transport equipment | 33.33 |
| Other vehicles and special vehicles | 20 to 25 |
| Set-up costs | 50 |

## INTEREST DEDUCTIONS

There is no specific thin capitalisation rule. However, interest paid by a company to its shareholders is deductible only when the following conditions are met:

- The total amount of money made available to the company by all of the shareholders or partners must not exceed the total amount of the company's share capital;
- The loan is to be reimbursed within 5 years;
- The company is not under a liquidation procedure during the same period;
- The amount of interest paid must not exceed 30% of the company's profits before deduction of tax, interest, amortisation on fixed assets and provisions; and
- The interest rate does not exceed the Central Bank of West African States (BCEAO) interest rate by more than 2 percentage points.

## LOSSES

Losses may generally be carried forward for up to 5 years. Loss carry-back is not allowed.

## C. FOREIGN TAX RELIEF

There is no foreign tax credit available, unless an applicable double tax treaty provides otherwise.

## D. CORPORATE GROUPS

Every company of a group is taxed separately. Tax consolidation is not allowed, except in the limited case of certain mergers involving holding companies.

Transfer of losses within a group is subject to prior approval of the Director General of Taxes.

## E. PERSONAL TAX

Resident individuals are taxed on income from sources from Ivory Coast and foreign sources. Non-residents are taxable only on income from sources in Ivory Coast.

IGR *(impôt general sur le revenue*/general income tax*)* applies according to the graduated scale rates below.

| Taxable income (XOF) | Tax rate (%) |
|---|---|
| 1,000 – 2,200,000 | 2 |
| 2,200,001 – 3,600,000 | 10 |
| 3,600,001 – 5,200,000 | 15 |
| 5,200,001 – 7,200,000 | 20 |
| 7,200,001 – 9,600,000 | 24 |
| 9,600,001 – 12,600,00 | 26 |
| 12,600,001 – 20,000,000 | 29 |
| 20,000,001 – 30,000,000 | 32 |
| 30,000,001 – 40,000,000 | 34 |
| 40,000,001 – 50,000,000 | 35 |
| Over 50,000,000 | 36 |

## F. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-treaty countries** | | | |
| Companies | 10/15 | 1/2/5/8.25/10/16.5/18[3] | 20 |
| Individuals | 10/15 | 0/1/2/5/10/13.5/18[4] | 20 |
| **Treaty countries:** | | | |
| Belgium | 15/18[1] | 16 | 10 |
| Canada | 15/18[1] | 15 | 10 |
| France | 15/18[1] | 15 | 10 |
| Germany | 15 | 15 | 10 |
| Italy | 15/18[1] | 15 | 10 |
| Morocco | 10 | 10 | 10 |
| Norway | 15 | 16 | 10 |
| Portugal | 10 | 10 | 5 |
| Switzerland | 15 | 15 | 10 |
| Tunisia | 10 | 10 | 10 |
| United Kingdom | 15/18[1] | 15 | 10 |
| WAEMU[2] | 10 | 15 | 15 |

Notes:

1. An 18% rate applies to dividends paid by a company resident in Ivory Coast, which is exempt from tax on profits or which is not subject to tax under general law.
2. West African Economic and Monetary Union (French acronym: UEMOA): member countries of the WEAMU are Benin, Burkina Faso, Guinea-Bissau, Ivory Coast, Mali, Niger, Senegal and Togo.
3. Gross interest derived by non-resident companies is subject to a final withholding tax at varying rates from 1% to 18%, depending on the nature of the interest: 5% and 10% for interest on Treasury bonds; 2% for bonds and ancillary income with a maturity period equal to or over 5 years; 1%, 5%, 10% and 16,5% for interest on insurance contracts; 16.5% for interest paid on current bank accounts; 8.25% on interest paid to foreign financial institutions on loans (the minimum maturity of which is 3 years) intended to finance the acquisition of equipment and by holding companies to foreign financial institutions on loans intended to finance the acquisition of participations; 18% for other interest.
4. Gross interest derived by non-resident individuals is subject to a final withholding tax at varying rates from 0% to 18%, depending on the nature of the interest.

# JAMAICA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Kingston | Aulous F. Madden | +1 876 922 1074<br>aulous.madden@afmpkf.com |
| Kingston | Charmaine A. Madden | +1 876 922 1074<br>charmaine.madden@afmpkf.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Jamaica |
| Capital: | Kingston |
| Main languages: | English, Jamaica Patois |
| Population: | 2.98 million (2022 estimate) |
| Monetary unit: | Jamaican Dollar (JMD) |
| Internet domain: | .jm |
| Int. dialling code: | +1 876 |

## KEY TAX POINTS

- Jamaican resident companies are liable for income tax on all sources of non-exempt income wherever arising.
- A non-resident company is taxed on income of a branch carrying on a trade or business in Jamaica, i.e. the income arises in Jamaica.
- The tax year of 'year of assessment' is a period of twelve months commencing on 1st January in each year.
- There is no income tax on capital gains secured on the disposal of capital assets. However, there is a transfer tax of 2% of gross consideration or market value when title passes. This 2% rate of transfer tax is effective from 1st April 2019.
- Branches of non-resident corporations or companies doing business in Jamaica are taxed on the profits arising in Jamaica. The income tax rate is 25% for an unregulated entity and 331/3% for a regulated entity.
- General Consumption Tax (GCT) is generally imposed at the standard rate on the supply of goods or services in Jamaica by a 'registered taxpayer' and on the importation of goods or services by any person for consumption in Jamaica. The standard rate of GCT was reduced from 16.5% to 15% effective 1st April 2020.
- The chargeable income of a company is determined by deducting all non-capital disbursement and expenses wholly and exclusively incurred in acquiring the income from all taxable income brought into charge. Domestic and private expenses are not allowable deductions.
- There are no exchange controls in Jamaica at this time.
- Personal Tax: An individual who is resident, ordinarily resident and domiciled in Jamaica is subject to income tax on his worldwide income as it arises. Non-residents are subject to tax on income arising from Jamaica. Income is taxed at a zero rate for the first threshold of JMD 1,500,096 (as from 1 April 2017) and then income above the threshold but below JMD 6,000,000 is taxed at 25% and income in excess of JMD 6,000,000 is taxed at 30%.

## A. TAXES PAYABLE

### COMPANY TAX

Jamaican resident companies are liable for income tax on all sources of non-exempt income wherever arising. A company is regarded as resident in Jamaica if its central management and control is located and exercised in Jamaica. A non-resident company is taxed on income of a branch carrying on a trade or business in Jamaica, i.e. the income that arises in Jamaica.

The tax year or 'year of assessment' is a period of twelve (12) months commencing on 1st January in each year. Companies are assessed to income tax on their income which arises in the basis period and this normally coincides with the year of assessment. Where the company usually makes up its accounts for a period other than the calendar year, the Commissioner General, Tax Administration Jamaica, will allow this period to be substituted for the calendar year, once an application has been submitted for approval of said change in accounting date.

The company is required to submit its Annual Return of Income and Tax Payable by 15th March of the year following the year of assessment for which the tax return is being prepared and to pay any balance of tax due by that date. The company is also required to submit an Annual Declaration of Estimated Income and Tax Payable for the current year by 15th March of the current year, based on the results of the preceding year. Payment of estimated tax is due in four (4) equal instalments on 15th March, 15th June, 15th September and 15th December of the current year.

An amendment to Corporate Income Tax became effective 1 January 2013. The corporate income tax rate structure was modified as follows:

a) Tax charge for regulated companies is 33 1/3%,
b) Tax charge for unregulated companies is 25%;
c) Building Societies special rate is 30%;
d) Life Insurance Companies is 15%.

The regulated companies include those companies regulated by:

- Financial Services Commission (FSC);
- Office of Utilities Regulations (OUR);
- Bank of Jamaica (BOJ) and
- Ministry of Finance and Planning (MOFP).

### ASSET TAX

Specified Regulated Entities which are limited deposit-taking institutions regulated by the Bank of Jamaica (BOJ) and Securities Dealers and insurance companies regulated by the Financial Services Commission are the only entities required to file and pay Assets Tax with effect from March 2019.

For year of assessment 2021, the assets tax payable by financial institutions, namely banks and insurance companies will be reduced by 50% from 0.25% to 0.125%

The filing date for the Annual Declaration of Assets for a company is 15th March of the same year based on the assets in the Financial Statements for the previous accounting year.

Effective from the year of assessment 2013, Asset Tax is not an allowable deduction under the Income Tax Act.

## CAPITAL GAINS TAX TRANSFER TAX AND STAMP DUTY

There is no capital gains tax on capital gains secured on the disposal of capital assets.

However, there is a transfer tax at the rate of 2% of gross consideration or market value when title passes. Transfer Tax is computed on the market value of certain property at the rate of Transfer Tax in effect at the date of the document.

Effective 1 April 2019, the transfer tax or estate tax payable at death was simplified and the rate reduced as follows:

(i) The first JMD 10 million value of the estate – no transfer tax or estate tax payable.

(ii) The transfer tax payable is 1.5% of the remaining value of the estate over JMD 10 million including real property and shares, less deductions and expenses incurred.

(iii) Beneficiaries will be able to utilise the equity in inherited property to leverage economic opportunities.

Stamp duty was also reformed from 1 April 2019. Ad valorem stamp duty at a flat rate of JMD 100 and JMD 5,000 respectively per document/parcel related to transactions valued below JMD 500,000 and above JMD 500,000 or more respectively will be payable.

The proposed changes are expected to provide tax certainty and allow for further simplification of the tax structure.

## BRANCH PROFITS TAX

Branches of non-resident corporations or companies doing business in Jamaica are taxed on the profits arising in Jamaica. Branch income is taxed at the same rate as that of local corporations and on a similar basis (at 25% for unregulated entities and at 33 1/3% for regulated entities). The transfer of profits to the head office is subject to a 33 1/3% withholding tax (branch remittance tax) or to a lower treaty rate, where applicable.

## GENERAL CONSUMPTION TAX (GCT)

General Consumption Tax (GCT), which is a value added tax, is generally imposed at the standard rate on the supply in Jamaica of goods or services by a ‘registered taxpayer’ and on the importation of goods or services by any person for consumption in Jamaica. A large number of goods and services are zero rated, which means that the supplier does not charge GCT on the supply but may credit GCT on incoming supplies against the tax chargeable on non-zero-rated supplies he makes. A number of goods and services are GCT exempt which means no GCT is chargeable thereon. Certain goods are subject to special consumption tax (SCT) and not GCT. This is levied on the manufacture for sale in Jamaica and the import into Jamaica of prescribed goods such as petroleum products, cigarettes, spirits and beer.

The standard rate of GCT was reduced from 16.5% to 15% effective 1st April 2020.

The GCT threshold which is the level of income required for registration as a Registered Taxpayer for GCT purposes was increased from JMD 3 million to JMD 10 million effective 1 April 2019. However, businesses with income less than JMD 10 Million may opt for voluntary registration and re-register as a Registered Taxpayer.

## LOCAL PAYROLL TAXES:

## NATIONAL INSURANCE (NIS)

Effective 1 April 2022, the National Insurance (NIS) contribution rate will remain at 6% but the salary ceiling will almost double from JMD 3,000,000 to JMD 5,000,000 annually. This equates to a maximum NIS contribution of JMD 270,000 for 2022 for the employee and employer. This is contributed as follows for 2022:

- Contribution by employee – January to March 2022 – 3.00% - JMD 37,500;
- Contribution by employee – April to December 2022 – 3.00% - JMD 112,500;
- Contribution by employee for the year JMD 150,000;
- Contribution by employer for the year JMD 150,000.

The maximum monthly and weekly contributions from 1 April 2022 are JMD 12,500 and JMD 2,884.62 respectively by employees and this is matched by the employer.

Self-employed persons are required to contribute 6.0% of their taxable income for income tax purposes, restricted to a maximum income of JMD 4,500,000 for 2022, which equates to a maximum annual NIS contribution of JMD 270,000.

This compulsory deduction is made both by the employee and employer and goes towards the provision of a pension at age 65 for women and men who have retired. However, if still employed, women and men are required to contribute to NIS up to age 70.

## NATIONAL HOUSING TRUST (NHT)

National Housing Trust (NHT) is payable by the employee at a rate of 2% and by the employer at a rate of 3% of taxable emoluments. The contributions together with any accrued bonus or interest are refundable to the contributor on an annual basis after seven years and fully on retirement. Note that the expatriate employee is refunded the full sum whenever he/she leaves the island. Self-employed persons contribute NHT at a rate of 3% of chargeable income. NHT contributions cease when persons attain 65 years of age.

## EDUCATION TAX

Education Tax is payable by the employee at a rate of 2.25% and by the employer at a rate of 3.50% of taxable emoluments. Contributions continue until age 65 years (men and women). Education Tax contributions are not refundable. Self-employed persons pay education tax at a rate of 2.25% of chargeable income. There is no age limit for self-employed persons. Education tax is not payable on interest, dividends and pension income.

## PAYE AS YOU EARN (PAYE)

Effective 1 April 2017, emoluments are taxed at a zero rate for the first threshold of JMD 1,500,096 and then income above the threshold but below JMD 6,000,000 is taxed at 25% and income in excess of JMD 6,000,000 is taxed at 30%.

## EMPLOYMENT TAX CREDIT

Where a company or self-employed person has employees and pays the monthly statutory deductions by the due date, the company or self-employed person is able to claim Employment Tax Credit (ETC), thereby reducing their income tax liability. All of the five statutory deductions namely PAYE, Education Tax, National Housing Trust, National Insurance and HEART must be filed and paid on time in order to claim this credit. However, the PAYE deduction is to be excluded when computing the ETC that is claimable. The ETC claimable is the lower of 30% of the computed tax charge (in respect of the trade income) or the total statutory deductions paid. This could result in an effective tax rate of 17.5%. In addition, the self-employed person must have also paid his/her estimated income tax and statutory deductions for the tax year in which the ETC is to be claimed on time, in order to be eligible to claim the ETC.

## MSME TAX CREDIT

The Micro, Small and Medium-sized Entities (MSME) tax credit is a non-refundable corporate tax credit (CTC) in the amount of JMD 375,000, available to companies both regulated and unregulated, with annual gross sales/revenues of JMD 500 million or less, who file their income tax returns. This is effective from year of assessment 2020 irrespective of the start of the accounting period used by the company.

Taxpayers who are eligible for the corporate income tax credit will also be able to benefit from the Employment Tax Credit (ETC) provided that the conditions for claiming ETC are met. However, the CTC should be claimed before the ETC.

The following companies are not eligible to benefit from the Corporate Tax Credit:

- Building Societies and Societies registered under the Industrial and Provident Societies Act;
- A body corporate which has been declared by order of the Minister under section 4 or 7 of the Urban Renewal (Tax Relief) Act to be an approved developer or an approved organisation;
- A body corporate who is a developer or occupant who is entitled to benefit from the tax incentives and reliefs in the First Schedule to the Special Economic Zones Act;
- A body corporate that has been declared by order of the Minister under section 2 of the Bauxite and Alumina Industries (Encouragement) Act to be a recognised bauxite producer or recognised alumina producer or both as the case may be;
- A company listed on the Junior Stock Exchange and benefiting from the incentives in the Seventh Schedule of the Income Tax Act.

It is important to note that:

i. Any amount of Corporate Tax Credit that is not utilised in any year of assessment may not be credited against tax payable in any other year of assessment and cannot be the subject of a refund;

ii. A body corporate shall not defer trading income which ought to be accounted for to another year of assessment which effectively reduces the gross income to an amount of JMD 500 million or less;

iii. A body corporate shall not transfer sales revenue to a connected party which ought to be accounted for by the first body corporate where the effect of such transactions is to reduce the gross income to an amount which meets the prescribed threshold to be eligible for the corporate tax credit;

iv. Where the Commissioner General of Tax Administration Jamaica (TAJ) makes such a determination with regards to the transactions in (ii) and (iii) above, such deferred or transferred revenue will be deemed to be the revenue of the first body corporate in the year of transfer or deferral;

v. Where a body corporate is entitled to claim both the ETC and Corporate Tax Credit in any year of assessment, the Corporate Tax Credit is to be applied against the income tax liability before the ETC.

## OTHER TAXES

Custom fees and excise and stamp duties are imposed on imported goods.

Property tax is payable on the unimproved value basis of property. Property tax rates were revised on 1 April 2017 and start at JMD 1,000 for unimproved values up to JMD 400,000 for values determined by different rates applicable to values in bands of increasing values.

The Construction Industry and Tillage are subject to a contractor's levy of 2% of the contract price, and it is withheld from payments to contractors and paid to the Revenue Authority. The levy is treated as payment on account of income tax liability of the contractor. However, if the contractor has no final income tax liability or a lesser income tax liability, the excess of the levy over the income tax liability is not refundable nor can it be used to offset against any tax liability. It is treated as an additional tax liability.

## B. DETERMINATION OF TAXABLE INCOME

The chargeable income of taxpayers is determined by deducting all non-capital disbursements and expenses wholly and exclusively incurred in acquiring the income from all taxable income brought into charge. Domestic and private expenses are not allowable. Special deductions may include capital allowances.

## NEW CAPITAL ALLOWANCES REGIME (1 JANUARY 2014)

As a part of the income tax reform, the capital allowances regime has been standardised and streamlined. This will include:

- The discontinuance of the various incentives embedded therein e.g. investment allowances and accelerated tax depreciation to agriculture and manufacturing sectors;
- Providing allowances to certain categories of capital expenditure not currently covered;
- Providing greater alignment between the useful economic life of various categories of assets and their write-off periods for tax purposes;

- Allowing capital expenditure to be written-off using the straight-line method;
- Standardising the application of the regime across sectors and facilitating enhanced administration of the same.

**General Rule:**

Capital expenditure (on specified assets) incurred on or after January 1, 2014 will be written-off in accordance with the new capital allowance regime as outlined below. All capital expenditure incurred on or after January 1, 2014 will be written-off using the straight line method. Capital expenditure incurred prior to January 1, 2014 will continue to be written-off for income tax purposes in accordance with the rules existing prior to January 1, 2014, as if there were no changes.

Capital allowances are granted for depreciation of equipment, plant and machinery and other assets used in the business at the following rates using the straight-line method:

- Plant, machinery and equipment:
  a) First year allowance (initial allowance) – 25% for machinery directly used in the production of primary products or in the manufacture of goods or automated packaging of primary products or goods;
  b) Annual allowance – 12.5%.
- Automatic Data Processing Equipment:
  a) First year allowance – 25%;
  b) Annual Allowance – 20%.
- Telecommunication Equipment:
  a) First year allowance – nil;
  b) Annual Allowance – 20%.
- Other plant, machinery and equipment:
  a) First year allowance – nil;
  b) Annual Allowance – 12.5%.
- Private motor vehicles:
  a) First year allowance – nil;
  b) Annual allowance – 12.5% (restricted on a cap of USD 35,000).
- Trade vehicles:
  a) First year allowance – nil;
  b) Annual allowance – 20% of cost (straight-line).
- Industrial buildings:
  a) First year allowance – 20% of cost; this allowance will be allowed only if the building is brought into use as an industrial building during the first four (4) years of assessment.
  b) Annual allowance – 4%, 10%, or 12.5% dependent on type of construction and whether housing machinery.
- Other commercial buildings:
  a) First year allowance – nil;
  b) Annual allowance – 4%, 10%, or 12.5% dependent on type of construction and whether housing machinery.

## CAPITAL GAINS AND LOSSES

See discussion above.

## DIVIDENDS

In addition to the income tax on the company's profits, any distribution or dividends are taxable.

As of 1 July 2009, dividends payable by resident unlisted companies to non-resident shareholders (individual and companies) are subject to tax at rates appropriate to them and the companies making such distributions are required to deduct tax due and account for it to Tax Administration Jamaica. The rate of tax payable on preference dividends is at the rate of tax applicable to the recipient preference shareholder as at the date of the receipt of said income. As of 1 April 2013, the rate of tax payable on dividends to Jamaican resident individuals and companies by Jamaican resident companies is 15%. This withholding tax is a final tax except for an approved superannuation fund or retirement scheme, registered charitable organizations, pensioners or persons over sixty five (65) years of age. The rate of withholding tax is modified if distributions are made to residents of double tax treaty countries. The negotiated rates provided in the relevant articles are applicable.

Dividends and distributions paid out of profits which are relieved or exempt from tax by virtue of incentive legislation, would not be subject to tax unless they are in fact taxable in the country of the taxpayer's residence.

Capital distribution or capital dividends are not subject to income tax but are, however, subject to transfer tax at a rate of 2% with effect from 1st April 2019.

## INTEREST DEDUCTIONS

Interest paid upon any money borrowed on capital employed in acquiring the income is tax deductible. There are no thin capitalization provisions in Jamaica.

## TRADE LOSS RELIEF

There are changes in loss relief and the way a trade loss can be utilised. The position is as follows:

a) Tax losses can be carried forward for any number of years, however
b) Effective from the year of assessment 2014, tax losses carried forward will be restricted for relief against current year taxable profits of up to 50% of taxable profit (excluding the loss).

This 50% limit will not apply:

a) For the first five (5) years after a business commences trading. The Commissioner General of Tax Administration Jamaica (TAJ) will determine when it is a business commences trading and the relief available.

b) Where the taxpayer's gross revenue from all sources for the year is equal to or less than JMD 10 million.

## FOREIGN SOURCE INCOME

Where the company is resident in Jamaica, i.e. its central management and control is situated in Jamaica, the income of such company wherever it arises is subject to tax in Jamaica. This includes:

a) Branch or agency profits from businesses earned outside Jamaica;

b) Dividend, interest, royalties and rents earned outside Jamaica.

## C. FOREIGN TAX RELIEF

Unilateral relief by the credit method is granted to residents and non-residents against income tax payable in Jamaica on any income which is also subject to Commonwealth income tax. For residents of Jamaica, the maximum credit is one-half of the Jamaican income tax rate, i.e. 12.5% in the case of corporations and individuals.

If the Commonwealth income tax rate on the income concerned does not exceed half the Jamaican rate (12.5%), full relief is granted for the Commonwealth tax. Jamaican residents who are liable to pay Jamaican tax on income in respect of which United Kingdom tax is also payable are entitled to relief equal to the amount by which Jamaica tax exceeds half the rate of United Kingdom tax payable. If the Jamaican rate exceeds the United Kingdom rate, the relief is equal to half of the United Kingdom rate.

Unilateral relief is generally provided by way of deduction for taxes payable in other overseas territories.

Where a claim for double taxation relief is made under a treaty, the Jamaican income tax is reduced by the appropriate amount of the credit for foreign tax. The credit may not exceed tax at the Jamaican rate on the income concerned computed under Jamaican income tax principles, before any allowance of credit.

## D. CORPORATE GROUPS

Tax liability in a group basis is not permissible. The liability of each company within the group is determined separately.

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## E. RELATED PARTY TRANSACTIONS

**Transfer pricing**

With effect from 1 January 2016, transfer pricing (TP) rules are applicable in Jamaica. The applicable TP methods closely follow the OECD guidelines on TP. Related party transactions which are carried out for considerations not at arm's length, intended to secure a benefit or tax advantage or to reduce the tax payable, are counteracted by the Commissioner General of TAJ, taking appropriate actions to negate this advantage.

When filing an income tax return, the taxpayer must certify whether to his knowledge the information and accounts on which the return is based contains particulars of any connected party transactions, and must fully disclose those particulars, if any. Failure to provide this certification on the return or to fully disclose the required particulars may result in prosecutions with a maximum JMD 2 million fine or twelve (12) months imprisonment. This will apply to income tax returns as from assessment year 2016.

There are TP documentation regulations which only apply to companies with gross annual turnover of JMD 500 million or more in the previous year of assessment. These companies are required to keep exhaustive TP documentation and to present them to the Commissioner General, upon request. The documentation comprises: an overview of the company's business operations and an organizational chart, details of all connected party transactions performed, along with an analysis of the factors used in identifying comparable independent transactions, justification of choice of a particular TP method, a description of tests done and the process used to identify the comparable independent transactions relied upon, details of any industry or economic analysis done by the company to arrive at the TP, and a conclusion as to whether the conditions of the connected party transactions were consistent with an arm's length consideration, along with details of any adjustments that were required to guarantee compliance.

The taxpayer may also enter into an Advanced Pricing Agreement (APA) with the revenue authorities.

**Controlled Foreign Companies (CFC)**

There are no CFC regulations in Jamaica.

## F. WITHHOLDING TAX

**Withholding tax on Specified Services became effective 1 September 2015**

The Tax Administration Jamaica and the Ministry of Finance introduced a 3% Withholding Tax on specified services on 1 September, 2015. At its implementation, the tax will be withheld from Specified Services by Tax Withholding Agents (TWA). The Specified Services include: • Accounting; • Auditing; • Catering; • Consultancy; • Decorating; • Engineering (Architectural, electrical, mechanical and structural); • Entertainment; • Information technology; • Janitorial; • Laundry; • Landscaping; • Legal; • Management; • Repairs and maintenance; • The rental or leasing of motor vehicles or equipment; • Transportation, haulage or tours; and • Any other services specified by the Minister by order published in the Gazette.

The TWAs who are required to withhold the tax when making payments to service providers are:

- All Ministries of Government.
- An Executive Agency, an agency or a department of Government.
- All Statutory Bodies or Authorities.
- Financial institutions regulated by the Bank of Jamaica (BOJ) and the Financial Services Commission (FSC).
- Tourism operators.
- Utility companies that have annual gross revenue of JMD 500,000,000 and over.

- Cable companies that have annual gross revenue of JMD 500,000,000 and over.
- The Council of the Kingston and St. Andrew Corporation.
- Any person with annual gross revenue exceeding five hundred million dollars (JMD 500,000,000), including any entity with such revenue that is exempt from the payment of income tax.

The service provider is eligible for a credit or refund in respect of the tax withheld. The service provider can claim a credit or refund against their quarterly estimated obligations or final annual return as is applicable.

**Payments to non-residents**

Dividends, interest, royalties, management, technical and consultancy fees are subject to withholding tax at the rate of 33 1/3% for corporations or 25% for individuals. Income comprising insurance premiums that are not paid to an insurance company, broker or agent resident in Jamaica and registered with the Financial Services Commission is subject to withholding tax at the rate of 15%. Effective 1st January 2013, all other payments are subject to withholding tax at the rate of 25%.

## G. EXCHANGE CONTROL

There are no exchange controls in Jamaica at this time.

## H. PERSONAL TAX

An individual who is resident, ordinarily resident and domiciled in Jamaica is subject to income tax on his worldwide income as it arises. Non-residents are subject to income tax on income arising from Jamaica.

Residence is determined by physical presence in Jamaica for period of 183 days or six (6) months. Regular visits of substantial periods may make such visitor a resident, even though the stay is less than six (6) months.

Broadly, an individual is domiciled in the country or state which he regards as his permanent home. He acquires a domicile of origin at birth, normally that of his father and retains it until he acquires a new domicile of choice. To acquire a domicile of choice, a person must sever his ties with his domicile of origin and settle in another country with the clear intention of making it his permanent home. A commonwealth citizen not ordinarily resident in Jamaica or any resident not domiciled in Jamaica is taxed on unearned income only to the extent that is remitted to Jamaica.



The Pay-As-You-Earn (PAYE) system of collection is in operation. The employers, who act as agents for the Commissioner General, Tax Administration Jamaica, deduct income tax from salaries, wages and other emoluments of employees and account for the tax so deducted by the 14th day of the month following the month for which the deduction was made. Failure to do so will result in the employer being charged interest at a rate of 17% per annum and penalty at a rate of 50% from the day after the due date to the date of payment on the sum payable.

Self-employed individuals pay their taxes in advance by four quarterly instalments based either on the chargeable income of the previous year or their estimated chargeable income of the current year. The instalments are due on 15th March, 15th June, 15th September and 15th December. Any balance of tax is payable on filing of the final returns on the following 15th March after the year of assessment for which the return is due. Individuals who are suffering from a disabling permanent physical handicap or a disabling permanent mental handicap but are capable of being gainfully employed may apply to TAJ for an exemption of emoluments.

As of 1 January 2013, there is also a pension exemption of JMD 80,000 for pension received from either a statutory pension scheme or an approved retirement scheme. Further, there is an age exemption of JMD 80,000 for an individual who attained the age of 65 at any time during the year of assessment for which the return is being made.

Personal income tax shall be levied and paid for each year of assessment at the following rates:

- For the first JMD 1,500,096 (as from 1 April 2017) = Nil;
- Between JMD 1,500,096 and JMD 6,000,000 = 25%;
- Exceeding JMD 6,000,000 = 30%.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-treaty countries** | | | |
| Companies | 33 1/3 | 33 1/3 | 33 1/3 |
| Individuals | 25 | 25 | 25 |
| **Treaty countries** | | | |
| Canada | 22.5/15[3] | 15 | 10 |
| CARICOM[1] | Nil | 15 | 15 |
| China | 5 | 7.5 | 10 |
| Denmark | 15/10[4] | 12.5 | 10 |
| France | 15/10[5] | 10 | 10 |
| Germany | 15/10[6] | 10[12]/12.5 | 10 |
| Israel | 22.5/15[5] | 15 | 10 |
| Japan[2] | 10/5[7] | 10 | 2/10[13] |
| Mexico | 10/5[8] | 10 | 10 |
| Norway | 15 | 12.5 | 10 |
| Spain | 10/5[8] | 10 | 10 |

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Sweden | 22.5/10[9] | 12.5 | 10 |
| Switzerland | 15/105 | 10 | 10 |
| United Kingdom | 15/22.5[10] | 12.5 | 10 |
| United States | 15/10[11] | 12.5 | 10 |

Notes:

1. Treaty negotiated with CARICOM countries but only Trinidad and Tobago, Belize, Jamaica, St Lucia, Barbados, Dominica, Grenada, St. Kitts & Nevis and Guyana have ratified. Benefits apply only to these countries.
2. Effective date: 1 January 2021.
3. The 22.5% rate applies if the beneficial owner is (i) a company which is a resident of Canada which controls directly or indirectly at least 10% of the voting power of the dividend-paying company or (ii) a company which is a resident of Canada provided that the dividend-paying company qualifies under the tax law of Canada as a foreign affiliate thereof. The 15% rate applies in all other cases.
4. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 25% of the capital or of the voting power, as the case may be, of the dividend-paying company.
5. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 10% of the voting power of the dividend-paying company.
6. The 10% reduced rate applies if the recipient is a company (other than a partnership) which owns directly at least 25% of the shares of the dividend-paying company.
7. The 5% reduced rate applies if the beneficial owner is a company which has owned directly or indirectly, throughout a 365-day period that includes the date on which entitlement to the dividends is determined (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that is the beneficial owner of the dividends or that pays the dividends), at least 20% of, in the case where the company paying the dividends is a resident of Jamaica, the capital or voting power of that company.
8. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 25% of the capital of the dividend-paying company.
9. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 25% of the voting power of the dividend-paying company.
10. The 22.5% rate applies if the beneficial owner is a company and it controls directly or indirectly at least 10% of the voting power of the dividend-paying company. The 15% rate applies in all other cases.
11. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which owns, directly or indirectly, at least 10% of the voting stock of the dividend-paying company.
12. The 10% reduced rate applies if the interest is received by a bank, recognised as a banking institution under the laws of Germany.
13. The 2% reduced rate applies to royalties for the use of, or the right to use, industrial, commercial or scientific equipment.



## JAPAN

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Osaka (Audit-Assurance) | Hiroki Kitagawa | +81 6 6229 0387<br>kitagawa-hiroki@pkf-hibiki-audit.com |
| Tokyo (Corporate Tax-Payroll) | Akinari Tsuchiya<br>Jun Kurozumi | +81 3 6228 5505<br>jun.kurozumi@pkfsp.com |

### BASIC FACTS

| | |
|---|---|
| Full name: | Japan |
| Capital: | Tokyo |
| Main languages: | Japanese |
| Population: | 125.78 million (2022 estimate) |
| Monetary unit: | Japanese Yen (JPY) |
| Internet domain: | .jp |
| Int. dialling code: | +81 |

### KEY TAX POINTS

- Domestic corporations, whose head or main office is located in Japan are subject to tax on their worldwide income.
- Foreign corporations are subject to either corporation tax or final withholding tax on Japanese source income depending on the type of income and the extent of the foreign corporation's activities in Japan.
- Vendors are liable for a consumption tax (value added tax) at a rate of 10% on sales (8% on sales of certain foods/beverages and newspapers), including imports of goods and services.
- Relief of double taxation is available for foreign taxes on certain foreign-sourced income.

- Under the group tax relief regime, which replaces the consolidated tax regime and is introduced from fiscal years starting on or after 1 April 2022, an affiliated group of companies (‘Group Corporations’) can calculate corporate income tax as if they are consolidated.
- All transactions between related companies are required to be conducted on an arm’s length basis.
- Domestic corporations are subject to withholding tax on dividends, interest and certain other income. Foreign corporations are subject to withholding tax on dividends, interest, royalties, income from immovable property, rentals from industrial or commercial equipment, and certain other income.
- Non-resident individual taxpayers are taxed on their Japanese source income only. Non-permanent resident individual taxpayers are taxed on income other than foreign-sourced income defined under Japanese income tax law plus the part of foreign-sourced income that is paid in and/or remitted to Japan. Permanent resident individual taxpayers are taxed on their worldwide income.

## A. TAXES PAYABLE

### COMPANY TAX

Domestic corporations are those whose head or main office is located in Japan. Companies incorporated in Japan under the Corporate Law or under other special laws are required to locate their head office in Japan. Such domestic corporations are subject to tax on their worldwide income. Foreign corporations are all corporations which are not domestic corporations. A corporation having its head or main office outside Japan is a foreign corporation even if its business operations are conducted in Japan. Foreign corporations are subject to either corporation tax or final withholding tax on Japanese source income, depending on the type of income and the extent of the foreign corporation’s activities in Japan.

The rate of national tax for Japanese corporations is 23.2%. If the paid-in capital of the corporation is JPY 100 million or less, the first JPY 8 million of income is only taxed at 15% unless the Japanese corporation is a subsidiary of a large scale company. In addition, ‘local corporate tax’ at a rate of 10.3% of the corporation tax is imposed as a national tax. Tax is imposed on a current year basis. The tax year adopted is generally the one specified in a company’s constituent documents with a standard year being a calendar year. However, it should be noted that other periods are also allowed, including periods of 12 months or less. Japanese branches of foreign corporations are required to adopt the accounting period used by their foreign head office. Final tax is payable when lodging the final corporation tax return, usually required within two months of the end of the accounting period. Extensions of time to lodge can be sought although interest is payable on any tax liability which is not settled by the original submission due date.

Interim tax returns and payments are required if a corporation has a fiscal period longer than six months. Ordinarily, provisional taxes are computed as one half of the tax liability of the previous year but a reduction is available where the interim tax returns are filed to reflect bi-annual results of operations for the current year.

### BLUE RETURN FILERS

Preferential tax treatment is given to companies that file ‘Blue Returns’. A company that commits to maintain specified bookkeeping records and documentation and gains approval from the Director of the District Tax Office to file a Blue Return, has the following major associated benefits.

- Tax losses may be carried forward for ten years (however, for large scale companies the use of the losses is generally restricted to 50% of taxable income) or carried back to the previous year. However, carry-back of tax loss is generally suspended except for companies with paid-in capital of JPY 100 million or less (except for a subsidiary of a large scale company).
- The national tax authorities cannot seek to adjust taxable income without a physical review of the books and records of the company and must state the reason for such an adjustment.
- Allowance of reserves, special depreciation and tax credits as stipulated in the Special Taxation Measures Law.

Importantly, a new company must seek registration for Blue Form returns within the earlier of three months from incorporation or the end of the initial accounting period.

### CONSUMPTION TAX (JCT)

Vendors are liable for a consumption tax (JCT) at a rate of 10% on sales (8% on sales of certain foods/beverages and newspapers), including imports of goods and services. Exemptions apply to leases of land, education and medical treatment etc. Exports and certain specific services invoiced to non-residents are zero rated.

### LOCAL TAXES

### INHABITANT TAX

Inhabitants Taxes are local prefectural and municipal taxes. These taxes are computed as a percentage of the corporation tax before tax credits. Each prefecture and municipality may determine an Inhabitant Tax rate within the range shown below:

| | Rates |
|---|---|
| Prefecture | 1% to 2% |
| Municipality | 6% to 8.4% |
| Tokyo Metropolitan (combined) | 7% to 10.4% |

In addition to the above, local governments charge a per capita levy on inhabitant tax with standard rates that vary from JPY 70,000 to JPY 3,800,000 depending upon the amount of the paid-in capital and the number of employees.

### ENTERPRISE TAX

Prefectures also levy an Enterprise Tax. The tax base is generally based on the taxable income as computed for national corporation tax purposes, with certain adjustments such as the exclusion of income from a business carried on in a foreign country.

Enterprise Tax paid over the year is deductible in computing taxable income for national corporation and Enterprise Tax purposes.

Size-based taxation is applied to large corporations with paid-in capital of more than JPY 100 million. For such large corporations, Enterprise Tax consists of the traditional Enterprise Tax levied based on the taxable income as well as Enterprise Tax levied based on the capital etc. (i.e. paid-in capital and capital surplus), and Enterprise Tax levied based on value added (i.e. wages, net interest and net rental expenses etc.). Tax rates vary depending on whether the corporation is a large corporation with paid-in capital of more than JPY 100 million (i.e. whether it is subject to size-based taxation) and depending on the prefecture.

A Special Enterprise Tax, which is moved to the national tax regime from Enterprise Tax, is also levied.

Below is a summary of Enterprise Tax rate in case of the standard rate and Tokyo.

| | | | Standard (%) | Tokyo (%) | Special Enterprise Tax |
|---|---|---|---|---|---|
| (1) | Company whose paid-in capital is JPY100 million or less | | | | |
| | Taxable Income: | | | | |
| | | First JPY 4,000,000 per annum | 3.5 | 3.75 | (Taxable Income x Standard Tax Rate) x 37% |
| | | Next JPY 4,000,000 to JPY 8,000,000 per annum | 5.3 | 5.665 | |
| | | Above JPY 8,000,000 per annum | 7.0 | 7.48 | |
| (2) | Company whose paid-in capital is more than JPY 100 million | | | | |
| | (a) | Income base (taxable income): | | | |
| | | First JPY 4,000,000 per annum | 0.4 | 0.495 | (Taxable Income x Standard Tax Rate) x 260% |
| | | Next JPY 4,000,000 to JPY 8,000,000 per annum | 0.7 | 0.835 | |
| | | Above JPY 8,000,000 per annum | 1.0 | 1.18 | |
| | (b) | Added value base: | | | |
| | | The sum of wages, net interest expense and net rental expense | 1.26 | 1.26 | |
| | © | Capital base: | | | |
| | | The sum of paid-in capital and capital surplus | 0.525 | 0.525 | |

## OTHER TAXES

### FAMILY HOLDING COMPANY SURTAX

Family holding companies are liable for surtax on earnings not distributed in excess of specified limits at the following rates:

| Excess Income | Rates |
|---|---|
| First JPY 30,000,000 per annum | 10% |
| Next JPY 70,000,000 per annum | 15% |
| Over JPY 100,000,000 per annum | 20% |

A Japanese company in which more than 50% of the shares are held by the first shareholder's group is a family holding company and is subject to the surtax, subject to certain other conditions. A family holding company with paid-in capital of JPY 100 million or less (when its 100% parent company's stated capital is JPY 500 million or more, or when the company is a member of the Group Corporations including member companies with paid-in capital of more than JPY 100 million, the company is excluded) or whose net equity for tax purposes is less than a certain threshold is not subject to this special corporate surtax.

### BUSINESS OFFICE TAX

Companies whose business premises exceed 1,000 square meters and/or employ in excess of 100 employees in designated cities are subject to a tax on business activity based on space or gross payroll respectively. It is within the discretion of the city authorities whether or not to charge the tax. Additions can be made to the list of designated cities for the purpose of this tax but the city must have a population of at least 300,000. The tax is imposed on ongoing businesses etc.

The rate of tax is JPY 600 per square meter of floor space in business use plus 0.25% of the total remuneration paid to employees.

### FIXED ASSETS TAX

Real property and tangible depreciable fixed assets are subject to a fixed assets tax at the standard rate of 1.4% (1.7% for real property in specified large cities).

### TOTAL EFFECTIVE TAX RATE

By way of example of how the major taxes interrelate and accumulate, set out below is a sample effective tax rate for a Japanese or foreign corporation in Tokyo:

- Where paid-in capital is JPY 100 million or less: 34.59%
- Where paid-in capital is more than JPY 100 million: 30.62%

Note: Enterprise Tax is deductible for corporation tax purposes for the period in which it is paid. Also, Enterprise tax capital base and value added base will be separately imposed where paid-in capital is more than JPY 100 million.

## B. DETERMINATION OF TAXABLE INCOME

Income is ordinarily determined in accordance with generally accepted accounting principles, with certain adjustments made to comply with tax law. Income and expenses are recorded on an accrual basis, with deductions from gross income for all reasonable expenses, costs and losses. Several restrictions under tax law may apply to the deduction of losses or expenses (e.g. entertainment expenses).

### DEPRECIATION

Depreciation is allowed in respect of all tangible assets, other than land and specified intangible assets. Depreciation on tangible assets is calculated using the straight-line or declining-balance method at the option of the taxpayer. However, for buildings, equipment attached to buildings, and structures, only the straight-line method should be used. Intangible assets are generally amortised on a straight-line basis.

Legislation specifies the period over which assets are to be depreciated and the rates for both the straight-line and declining-balance methods. Minor assets that cost less than JPY 100,000 are deductible as an expense during the year. In addition to ordinary depreciation, special depreciation in the form of increased initial depreciation and accelerated depreciation is available in certain cases.

### STOCK / INVENTORY

Inventory valuation methods acceptable for tax include an item's individual cost, FIFO, moving or straight average, most recent purchase, retail and lower of cost or market. Importantly, the tax treatment should replicate the one adopted for the statutory accounts.

### LOSSES

Corporations filing a 'Blue Return' are eligible for loss carry-forward treatment. In general, losses may be carried forward for up to ten years (however, for large scale companies, the use of losses is generally restricted to 50% of taxable income) or carried back to the previous year. However, carry-back of tax losses is generally suspended except for companies with paid-in capital of JPY 100 million or less (except for a subsidiary of a large scale company).



### FOREIGN SOURCE INCOME

Japanese corporations are taxable on their worldwide income as and when earned. However, corporations are generally entitled to claim tax credits against corporation and Inhabitants Tax for foreign income taxes paid (direct credit). Regarding subsidiaries located in low or zero-tax countries or jurisdictions etc., their profits might be taxed at the level of the Japanese parent company on an accruals basis by application of Japanese Controlled Foreign Company (CFC) rules, with any associated foreign tax credits being available.

### TAX CREDIT INCENTIVES – CAPITAL INVESTMENT

Corporate tax credits of 7% of the acquisition cost are available on specific designated fixed assets acquired by certain small to medium-sized corporations with paid-in capital of JPY 30 million or less that can file Blue Returns. However, the total credit available is limited to 20% of corporate tax.

Several tax credits to encourage investment, R&D or salary increases etc. are available under tax law.

To claim these tax credits, taxpayers need to meet certain conditions which are set for the respective credits.

## C. FOREIGN TAX RELIEF

Relief for double taxation could be available for foreign taxes imposed on certain foreign-sourced income. Where a tax treaty exists, the foreign tax might be reduced or exempted depending on the nature of the foreign-sourced income. Also, domestic tax legislation allows for a foreign tax credit or its deduction from taxable income.

Notwithstanding the above, 95% of dividend income from certain subsidiaries outside of Japan is excluded from the recipient's taxable income subject to certain adjustments to the investment value of shares held in a subsidiary in certain cases, instead of a tax credit being applied.

A foreign tax credit or exclusion of a dividend distributed by a foreign subsidiary at the level of the Japanese recipient's income can be applied irrespective of whether there is a double tax treaty between Japan and the jurisdiction where the foreign-sourced income arose, subject to certain conditions under domestic tax law.

## D. CORPORATE GROUPS

The group tax relief regime will be applicable for fiscal years of corporations starting on or after 1 April 2022 as a replacement of the Japanese consolidated tax regime.

Under the previous consolidated tax regime, an affiliated group of companies could report and pay national corporate income tax as one unit. However, under the group tax relief regime, the parent corporation and each subsidiary ('Group Corporations') need to file their own corporate tax returns while Group Corporations can calculate their own taxable income as if they are consolidated by allocating current losses of the member corporations to the group corporations on a pro-rated basis.

For these purposes, 'Group Corporations' means a Japanese parent company and its 100% directly or indirectly owned Japanese subsidiaries. An application for group tax relief regime is at the taxpayer's choice but, if made, must include all of the parent company's eligible subsidiaries. Once initiated, group tax relief regime should in principle continue indefinitely, unless a specific event (such as dissolution of the parent company) triggers the qualifying conditions for the group tax relief regime to stop applying, or an application to discontinue is approved by the Commissioner of National Tax Agency.

The group's national corporate income tax liability will basically be computed on a consolidated basis by allocating current losses of the member corporations to the group corporations on a pro-rated basis etc.

The group tax relief regime provides for certain benefits such as the allocation of current losses of member companies to other member companies with current income (generally for national corporate income tax purposes only). On the other hand, some features of the group tax relief regime may result in an unpredictable tax burden further to the introduction of group tax relief or when a company joins the Group Corporations in the future, thus putting some restrictions on future M&A (mergers and acquisitions) activity by the group.

## E. RELATED PARTY TRANSACTIONS

All transactions between related companies are required to be conducted on an arm's-length basis with the meaning of 'arm's-length price' depending upon the transaction. Any difference arising between the price of the actual transaction and the one regarded as the arm's-length price should generally be taxable or non-deductible as applicable. The transactions covered by the provisions include the purchase and sale of inventory, the provision of services and financial facilities such as the making of loans and guarantee facilities.

## F. WITHHOLDING TAX

Domestic corporations are generally subject to withholding tax on dividends and interest and certain other income. This tax may generally be taken as a credit against the ultimate tax liability of the recipient.

Foreign corporations are subject to withholding tax (generally at the rate of 20.42%) on dividends, interest, royalties, income from immovable property, rentals from industrial or commercial equipment and certain other income. This tax may generally be taken as a credit against the ultimate tax liability of the recipient if the foreign corporation is also required to file corporate tax returns. It should be noted that where the foreign corporation has a permanent establishment in Japan, certain types of income (for example, rent and royalties) are exempt from withholding tax if taxed in aggregate with income from Japanese business activities and the foreign corporation obtains certain certificates from the Japanese tax authorities.

## G. PERSONAL TAX

While similarities between the taxation of companies and individuals do exist in Japan to some extent, the above refers to companies. Accordingly, outlined below are the basic rules and rates applicable to individuals. Given the complexity of this area, it is necessary to stress the need to seek professional advice. Non-resident taxpayers are taxed only on their Japanese source income. Non-permanent resident taxpayers are taxed on income other than foreign-sourced income plus the part of foreign-sourced income that is paid in and/or remitted to Japan. Permanent resident taxpayers are taxed on their worldwide income.

An individual who does not have the Japanese nationality is generally classified on the following basis:

| Status / Period of Residence | Classification |
|---|---|
| Does not have domicile in Japan | Non-resident |
| Has domicile and lived in Japan 5 years or less in the last 10 years | Non-permanent resident |
| Has domicile and lived in Japan more than 5 years in the last 10 years | Permanent resident |

National individual tax:

| Taxable income (JPY) | Rate | Deduction (JPY) |
|---|---|---|
| 0 – 1,950,000 | 5% | --- |
| 1,950,000 – 3,300,000 | 10% | 97,500 |
| 3,300,000 – 6,950,000 | 20% | 427,500 |
| 6,950,000 – 9,000,000 | 23% | 636,000 |
| 9,000,000 – 18,000,000 | 33% | 1,536,000 |
| 18,000,000 - 40,000,000 | 40% | 2,796,000 |
| Above 40,000,000 | 45% | 4,796,000 |

Calculation: Taxable income × tax rate – deduction = national tax.

A surcharge of 2.1% of the national personal tax liability has been added to the national personal tax rate for 25 years as from January 2013. Retirement income, interest, certain dividends, capital gains arising from sales of certain assets etc., are generally each taxed separately from other income.

In addition to the national tax, inhabitant local tax at 10% should also be imposed on the income if the individual resides in Japan.

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 15/20[32] | 15/20[32] | 0/15/20 | 20 |
| Individuals | 15/20 | -- | 0/15/20 | 20 |
| **Treaty countries:** | | | | |
| Australia | 10 | 0/5[1] | 0/10 | 5 |
| Austria | 10 | 0[2] | 0 | 0 |
| Bangladesh | 15 | 10[3] | 10 | 10 |
| Belgium | 10 | 0[4] | 0/10 | 0 |
| Brazil | 12.5 | 12.5 | 12.5 | 12.5/15/25 |
| Brunei Darussalam | 10 | 5[5] | 10 | 10 |
| Bulgaria | 15 | 10[3] | 10 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Canada | 15 | 5[6] | 10 | 10 |
| Chile | 15 | 0/5[7] | 4/10 | 2/10 |
| China | 10 | 10 | 10 | 10 |
| Croatia | 5 | 0[8] | 0/5 | 5 |
| Czech Republic | 15 | 10[9] | 10 | 0/10 |
| Denmark | 15 | 0[10] | 0 | 0 |
| Ecuador | 5 | 5 | 0/10 | 10 |
| Egypt | 15 | 15 | –[30] | 15 |
| Estonia | 10 | 0[2] | 0/10 | 5 |
| Fiji | –[30] | –[30] | –[30] | 10 |
| Finland | 15 | 10[3] | 10 | 10 |
| France | 10 | 0/5[12] | 0/10 | 0 |
| Georgia | 5 | 5 | 0/5 | 0 |
| Germany | 15 | 0/5[13] | 0 | 0 |
| Hong Kong | 10 | 5[5] | 10 | 5 |
| Hungary | 10 | 10 | 10 | 0/10 |
| Iceland | 15 | 0/5[14] | 0 | 0 |
| India | 10 | 10 | 10 | 10 |
| Indonesia | 15 | 10[11] | 10 | 10 |
| Ireland | 15 | 10[9] | 10 | 10 |
| Israel | 15 | 5[6] | 10 | 10 |
| Italy | 15 | 10[3] | 10 | 10 |
| Jamaica | 10 | 5[33] | 10 | 2/10 |
| Kazakhstan | 15 | 5[5] | 10 | 5 |
| Korea | 15 | 5[6] | 10 | 10 |
| Kuwait | 10 | 5[5] | 10 | 10 |
| Latvia | 0/10[15] | 0 | 0/10 | 0 |
| Lithuania | 0/10[15] | 0 | 0/10 | 0 |
| Luxembourg | 15 | 5[6] | 10 | 10 |
| Malaysia | 15 | 5[6] | 10 | 10 |
| Mexico | 15 | 0/5[16] | 10/15 | 10 |
| Netherlands | 10 | 0/5[17] | 0/10 | 0 |
| New Zealand | 15 | 0[18] | 0/10 | 5 |
| Norway | 15 | 5[6] | 10 | 10 |
| Oman | 10 | 5[5] | 0/10 | 10 |
| Pakistan | 10 | 5/7.5[19] | 10 | 10 |
| Peru | 10 | 10 | 10 | 15 |
| Philippines | 15 | 10[20] | 10 | 10/15 |
| Poland | 10 | 10 | 10 | 0/10 |
| Portugal | 10 | 5[21] | 5/10 | 5 |
| Qatar | 10 | 5[22] | 0/10 | 5 |
| Romania | 10 | 10 | 10 | 10/15 |
| Russia | 10 | 0/5/15[23] | 0 | 0 |
| Saudi Arabia | 10 | 5[24] | 0/10 | 5/10 |
| Serbia[36] | 10 | 5[35] | 10 | 5/10 |
| Singapore | 15 | 5[6] | 0/10 | 10 |
| Slovak Republic | 15 | 10[4] | 10 | 0/10 |
| Slovenia | 5 | 5 | 0/5 | 5 |
| South Africa | 15 | 5[6] | 10 | 10 |
| Spain[37] | 5 | 0[25] | 0 | 0 |
| Sri Lanka | 20 | 20 | –[30] | 0/10 |
| Sweden | 10 | 0[26] | 0 | 0 |
| Switzerland | 10 | 0/5[17] | 0/10 | 0 |
| Taiwan | 10 | 10 | 10 | 10 |
| Thailand | –[30] | 15/20[27] | 10/25 | 15 |
| Turkey | 15 | 10[3] | 10/15 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| United Arab Emirates | 10 | 5[5] | 10 | 10 |
| United Kingdom | 10 | 0[28] | 0 | 0 |
| United States | 10 | 0/5[29] | 0 | 0 |
| Uruguay | 10 | 5[38] | 0/10 | 10 |
| USSR[31] | 15 | 15 | 10 | 0/10 |
| Uzbekistan | 10 | 5[34] | 5 | 0/5 |
| Vietnam | 10 | 10 | 10 | 10 |
| Zambia | 0 | 0 | 10 | 10 |

NOTES:

1. The 5% rate applies if the beneficial owner is a company which owns directly shares representing at least 10% of the voting power of the paying company. The 0% rate applies to dividends paid to a company that has owned directly shares representing at least 80% of the voting power of the company paying the dividends for the 12 month period ending on the date on which entitlement to the dividends is determined and the company that is the beneficial owner of the dividends (i) is a qualified publicly traded company or (ii) at least 50% of the aggregate vote and value of its shares is owned directly or indirectly by five or fewer such qualified publicly traded companies or (iii) has received a determination of entitlement to the treaty benefits.
2. The 0% rate applies if the beneficial owner is a company which has owned directly or indirectly, for the period of 6 months ending on the date on which entitlement to the dividends is determined, at least 10% of the voting power of the dividend-paying company or if the beneficial owner is a pension fund.
3. The 10% rate applies if the beneficial owner is a company which owns at least 25% of the voting shares of the paying company during the period of 6 months immediately before the end of the accounting period for which the distribution of profits takes place.
4. The 0% rate applies if the beneficial owner is a company which has owned, directly or indirectly, at least 10% of the voting power of the dividend-paying company for the period of 6 months ending on the date on which entitlement to the dividends is determined or if the beneficial owner is a pension fund.
5. The 5% rate applies if the beneficial owner is a company that has owned directly or indirectly, for the period of 6 months ending on the date on which entitlement to the dividends is determined, at least 10% of the voting shares of the paying company.
6. The 5% rate applies if the beneficial owner is a company which owns at least 25% of the voting shares of the paying company throughout the period of 6 months immediately before the end of the accounting period for which the distribution of profits takes place.
7. The 5% rate applies if the beneficial owner is a company that has owned directly, for the period of 6 months ending on the date on which entitlement to the dividends is determined, at least 25% of the voting power in the paying company. The 0% rate applies if the beneficial owner is a pension fund provided that the dividends are not derived from the carrying on of a business by such pension fund or through an associated enterprise.
8. The 0% rate applies if the beneficial owner is a company which has owned directly at least 25% of the voting power of the dividend-paying company throughout a 365 day period that includes the date on which entitlement to the dividends is determined.
9. The 10% rate applies if the recipient is a company which owns at least 25% of the voting shares of the dividend-paying company during the period of 6 months immediately preceding the date of payment of the dividends.
10. The 0% rate applies if the beneficial owner is a company which has owned directly, for the period of 6 months ending on the date on which entitlement to the dividends is determined, at least 10% of: (i) in the case where the dividend-paying company is a resident of Japan, the voting power of that company; or (ii) in the case where the paying company is a resident of Denmark, the capital of that company; or if the beneficial owner is a pension fund.
11. The 10% rate applies if the beneficial owner is a company which owns at least 25% of the voting shares of the paying company during the period of 12 months immediately before the end of the accounting period for which the distribution of profits takes place.
12. The 5% rate applies if the beneficial owner is a company which holds during the period of 6 months immediately before the end of the accounting period for which the distribution takes place directly at least 15% of the voting rights in the paying company. The 0% rate applies if the beneficial owner is a company which is a French qualified resident and which has held during the period of 6 months immediately before the end of the accounting period with respect to which the profits distribution takes place directly at least 15% of the voting rights in the paying company. The term qualified resident refers to (i) a company quoted on the French Stock Exchange or (ii) more than 50% of the capital of the company is held directly or indirectly by, among others, the French State, its local authorities or public legal persons.
13. The 5% rate applies if the beneficial owner is a company (other than a partnership) that has owned directly, for the period of 6 months ending on the date on which entitlement to the dividends is determined, at least 10% of the voting shares of the paying company. The 0% rate applies if the beneficial owner is a company (other than a partnership) that has owned directly, for the period of 18 months ending on the date on which entitlement to the dividends is determined, at least 25% of the voting shares of the paying company.
14. The 0% rate applies if the beneficial owner is a company which has owned directly or indirectly, for the period of 6 months ending on the date on which entitlement to the dividends is determined, at least 25% of: (i) in the case where the paying company is a resident of Iceland, the capital of that company; or (ii) in the case where the paying company is a resident of Japan, the voting power of that company; or if the beneficial owner is a pension fund. The 5% rate applies if the beneficial owner is a company which has owned directly or indirectly, for the period of 6 months ending on the date which entitlement to the dividends is determined, at least 10 % of: (i) in the case where the paying company is a resident of Iceland, the capital of that company; or (ii) in the case where the paying company is a resident of Japan, the voting power of that company.
15. The 0% rate applies if the beneficial owner is a person other than an individual.
16. The 5% rate applies if the beneficial owner is a company which owns at least 25% of the voting shares issued by the paying company during the period of 6 months immediately before the end of the accounting period for which the profits distribution takes place. The 0% rate applies if the recipient is a company which holds at least 25% of the voting shares issued by the paying company during the period of 6 months immediately before the end of the accounting period for which the profits distribution takes place and satisfies on the date of payment the following conditions: (i) the recipient's shares are traded on the Mexican Stock Exchange and (ii) more than 50% of the total shares is owned by, among others, the Mexican Government, its political subdivisions or local authorities.
17. The 5% rate applies if the beneficial owner is a company that has owned, directly or indirectly, shares representing at least 10% of the voting power of the paying company for the period of 6 months ending on the date on which entitlement to the dividends is determined. The 0% rate applies if the beneficial owner is (i) a company that has owned, directly or indirectly, shares representing at least 50% of the voting power of the paying company for the period of 6 months ending on the date on which entitlement to the dividends is determined or (ii) a pension fund,

provided that the dividends are not derived from the carrying on of a business, directly or indirectly, by such pension fund.

18. The 0% rate applies if the beneficial owner is a company that has owned directly or indirectly, for the period of 6 months ending on the date on which entitlement to the dividends is determined, at least 10% of the voting power of the paying company and the beneficial owner of the dividends (i) is a qualified publicly traded company or (ii) at least 50% of the aggregate voting power is owned directly or indirectly by five or fewer such qualified publicly traded companies or (iii) is granted benefits to the dividends.
19. The 5% rate applies if the beneficial owner is a company that has owned directly, for the period of 6 months ending on the date on which entitlement to the dividends is determined, at least 50% of the voting shares of the paying company. The 7.5% rate applies if the beneficial owner is a company that has owned directly, for the period of 6 months ending on the date on which entitlement to the dividends is determined, at least 25% of the voting shares of the paying company.
20. The 10% rate applies if the beneficial owner is a company which holds directly at least 10% either of the voting shares of the paying company or of the total shares issued by that company during the period of 6 months immediately preceding the date of payment of the dividends.
21. The 5% rate applies if the beneficial owner is a company (other than a partnership) that has owned directly for the period of 12 months ending on the date on which entitlement to the dividends is determined, at least 10% of the voting shares of the paying company.
22. The 5% rate applies if the beneficial owner is a company that has owned directly or indirectly, for the period of 6 months ending on the date on which entitlement to the dividends is determined, at least 10% of the voting power or of the total issued shares of the paying company.
23. The 0% rate applies if the beneficial owner is a pension fund. The 5% rate applies if the beneficial owner is a company which has owned directly at least 15% of the voting power of the dividend-paying company for the period of 365 days ending on the date on which entitlement to the dividends is determined. The 15% rate applies to the shares of companies that derive at least 50% of their value directly or indirectly from immovable property.
24. The 5% rate applies if the beneficial owner is a company which holds directly or indirectly, during the period of 183 days ending on the date on which entitlement to the dividends is determined, at least 10% of the voting shares or of the total issued shares of the paying company.
25. The 0% rate applies if the beneficial owner is (i) a company which has owned directly or indirectly at least 10% of the voting power of the dividend-paying company throughout a twelve month period that includes the date on which entitlement to the dividends is determined (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that is the beneficial owner of the dividends or that pays the dividends) (ii) a recognised pension fund, provided that such dividends are derived from the activities referred to in clause (i) or (ii) of subparagraph (l) of paragraph 1 of Article 3 of the Japan-Spain treaty.
26. The 0% rate applies if the beneficial owner is a company (other than a partnership) that has held, directly or indirectly, at least 10% of the voting power of the paying company for the period of 6 months ending on the date on which entitlement to the dividends is determined.
27. No reduction under the tax treaty, the domestic rate applies.
28. The 15% rate applies in case the dividends are paid by a company engaged in an industrial undertaking and if the beneficial owner is a company which owns at least 25% of the voting shares of the paying company during the period of 6 months immediately before the end of the accounting period for which the profits distribution takes place. The 20% rate applies in all other cases.
29. The 0% rate applies if the beneficial owner is a company that has owned, directly or indirectly, shares representing at least 10% of the voting power of the paying company for the period of 6 months ending on the date on which entitlement to the dividends is determined or is a pension fund or pension scheme, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension fund or pension scheme.
30. The 5% rate applies if the beneficial owner is a company that owns directly or indirectly, on the date on which entitlement to the dividends is determined, at least 10% of the voting stock of the paying company. The 0% rate applies if the beneficial owner of the dividends is either (i) a company that has owned, directly or indirectly through one or more residents of either state, more than 50% of the voting stock of the paying company for the period of 12 months ending on the date on which entitlement to the dividends is determined, and that satisfies various requirements on the ownership of its shares, or has received a determination of entitlement to the treaty benefits or (ii) a pension fund, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension fund.
31. Japan continues to apply the treaty with the former USSR in its relations with Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.
32. Dividends paid by resident companies to non-resident companies are subject to a 20% withholding tax. A reduced 15% rate applies to dividends from certain listed shares.
33. The 5% rate applies if the beneficial owner is a company which has owned directly, throughout a 365 day period that includes the date on which entitlement to the dividends is determined, at least 20% of: (i) in the case where the company paying the dividends is a resident of Jamaica, the capital or voting power of that company; or (ii) in the case where the company paying the dividends is a resident of Japan, the voting power of that company.
34. The 5% rate applies if the beneficial owner is a company which has owned directly at least 25% of the voting power of the company paying the dividends throughout a 365 day period that includes the date on which entitlement to the dividends is determined.
35. The 5% reduced rate applies if the beneficial owner is a company which holds directly, throughout a 365 day period that includes the date on which entitlement to the dividends is determined (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares of the company paying the dividends or that pays the dividends), at least 25% of, in the case where the company paying the dividends is a resident of Japan, the voting power of that company.
36. Effective date: 1 January 2022.
37. New treaty with Spain. Effective date: 1 January 2022.
38. The 5% reduced rate applies if the beneficial owner is a company which has owned directly, throughout a 183 day period that includes the date on which entitlement to the dividends is determined (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that is the beneficial owner of the dividends or that pays the dividends), at least 10% of, in the case where the company paying the dividends is a resident of Japan, the voting power of that company.

# JERSEY

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| St. Helier | Garry Bell | +44 1534 883000 |
| | | garryb@pkfbba.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Bailiwick of Jersey |
| Capital: | Saint Helier |
| Main languages: | English |
| Population: | 174,829 (January 2022) |
| Monetary unit: | Pound Sterling (GBP) |
| Internet domain: | .je |
| Int. dialling code: | +44 1534 |

## KEY TAX POINTS

- There are no capital taxes, capital gains, inheritance, gift or wealth taxes.
- Residents are subject to Jersey income tax on their worldwide income as it arises. The standard rate of Income Tax is 20%. There are special rates of income tax for incoming high net worth individuals, the first GBP 725,000 of income is liable to tax at 20% and income in excess of this amount at 1%.
- Non-residents are normally only subject to income tax on employment income (other than directors fees) arising in Jersey.
- Goods and Services tax (GST) is charged on the supply of goods and services in Jersey by a Jersey business at a rate 5%.
- Double taxation relief is available in accordance with various treaties.
- A company tax resident in Jersey is chargeable to tax at 0%, 10% or 20% depending upon the nature of its income. Generally trading companies and investment holding companies are taxed at 0%. Financial service entities are liable to tax at the 10% corporate rate. Utility companies and companies with Jersey rental income and Jersey property development companies are taxed at 20%. Large “retail” businesses carried on in Jersey, where the company has turnover exceeding GBP 2,000,000, are taxed at 20%.
- Non-resident companies are not liable to Jersey tax unless managed and controlled in Jersey and therefore Jersey tax resident.

## A. TAXES PAYABLE

### COMPANY TAX

All companies incorporated in Jersey or managed and controlled in Jersey are treated as tax resident and, therefore chargeable to Jersey income tax. A Jersey resident company is liable to tax at 0%, 10% or 20%. Financial services entities are subject to a 10% rate and are defined as:

- All entities carrying out banking business through a permanent establishment in Jersey, whether through a Jersey company, a branch or some other structure.
- All entities carrying on the business of a trust business through a permanent establishment.
- All entities carrying on investment business, independent financial advice and similar activities through a permanent establishment.
- All entities carrying on the business of funds administration or funds custody services through a permanent establishment.

It should be noted that clerical functions such as invoicing operations, management and administration services and entering into contracts in respect of a company’s international business do not amount to the carrying on of a business through a permanent establishment in the Island.

Public utility companies such as those providing electricity, water, gas, telecommunications and postal services are taxed at 20%. Jersey rental income and profits from property development in Jersey are taxed at the rate of 20%. Most other companies are liable at the standard rate of 0%. See large retail businesses above.

The tax year runs from 1 January to 31 December, although companies may adopt an accounting year end of their choice. Income is assessable on a current year basis. Assessments are notified to the company in the year following the year of assessment.

Corporate income tax returns need to be submitted by 31 December.

Tax is paid by instalments, the first instalment of tax (50% of an estimate of the final liability, estimated by the Company not the Tax Authorities) is due on 31 May and then the balance is due 30 November. There will be different dates for large corporates i.e. if their tax liability is greater than £500,000 in the preceding two tax years.

Jersey has economic substance legislation for Jersey resident companies.

### CAPITAL GAINS TAX

There is no capital gains tax in Jersey. Capital gains are not included in ordinary taxable income.

### BRANCH PROFITS TAX

There is currently no branch profits tax in Jersey.

## SALES TAX / VALUE ADDED TAX (VAT)

A Goods and Services Tax (GST) which is a form of sales tax on the domestic consumption of imported and locally produced goods and services is in place. There is a standard rate of 5% which will be collected from customers by registered businesses when they make supplies of those goods and services which are specified by Law as taxable at the standard rate.

There are three categories of supplies:

- Standard-rated supplies - e.g. the sale of new and used goods including those under a hire purchase agreement, renting and hiring out of goods, business stock used for private purposes, the provision of services (e.g. hairdressing or hotel accommodation), charging admission for access onto premises, and imported goods.
- Exempt supplies – e.g. financial services, insurance, postal services, medical and pharmaceutical supplies made by registered professionals or institutions and supplies to charities.
- Zero-rated supplies – e.g. exports, the supply of a dwelling, supplies made on medical prescription and international services.

GST registration is compulsory for businesses established in Jersey making annual taxable supplies exceeding GBP 300,000, although voluntary registration is available for business trading below this level. Certain businesses do not have to register for GST in Jersey, and these can apply to be an International Service Entity (ISE). These are businesses, often financial service businesses, which mainly serve non-residents of Jersey and are exempted from GST but are subject to other charges.

## LOCAL TAXES

Taxes are levied at a state level only.

## OTHER TAXES

Social Security contributions are charged on employees at a rate of 6% on gross earnings of up to GBP 4,764 per month. The employer then pays 6.5% of gross earnings up to GBP 4,764 per month and 2.5% over that amount up to GBP 21,724.

The maximum rate for self-employed individuals is GBP 1,019.50 per month (there is a reduced rate in certain circumstances).

On moving to the Island an individual must register with the Social Security department.



## FRINGE BENEFITS TAX (KNOWN AS BENEFITS IN KIND IN JERSEY)

Taxable benefits include, amongst other things, the private use of a company motor vehicle, rent-free accommodation and free board and lodging. Employees are responsible for payment of tax on benefits.

## LAND TRANSACTIONS TAX

There is a Land Transactions Tax to collect which is a form of stamp duty on share transfer transactions involving immovable property in Jersey. The charge takes the form of a Tax rather than Stamp Duty. A legal obligation is placed on the purchaser of a residential property by share transfer to pay a tax exactly equal to the amount of Stamp Duty which would have been paid on the purchase if it had been freehold property. This only applies to certain companies whose Articles of Association expressly provide for the shareholders to occupy the property.

There are lower rates for first time buyers, charities, the transfer of matrimonial property from joint to sole ownership (or vice versa), and transfers from a deceased person's estate. Non-resident purchasers of shares are not exempt from the tax. The standard charge is GBP 80 plus an amount calculated per the standard land transaction tax rate bands:

| Bands (GBP) | Rate |
|---|---|
| 0 to 50,000 | 0.5% (subject to a minimum of £10) |
| 50,000 to 300,000 | 1.5% |
| 300,000 to 500,000 | 2% |
| 500,000 to 700,000 | 3% |
| 700,000 to 1,000,000 | 3.5% |
| 1,000,000 to 1,500,000 | 4.5% |
| 1,500,000 to 2,000,000 | 5.5% |
| 2,000,000 to 3,000,000 | 7% |
| 3,000,000 to 6,000,000 | 9.5% |
| over 6,000,000 | 10.5% |

## B. DETERMINATION OF TAXABLE INCOME

For a company or business, taxable trading profits are calculated by ascertaining assessable income and subtracting allowable deductions. Generally, to be deductible, expenditure must be wholly and exclusively incurred for the purposes of the trade and be revenue in nature rather than capital.

## CAPITAL ALLOWANCES AND DEPRECIATION

No deduction is permitted in respect of depreciation on capital items. However, annual allowances, calculated using the reducing-balance method, are allowed as follows:

- Plant and machinery – 25%; glasshouses – 10%;
- Motor vehicles – 25% (cost reduced to £22,000 for expensive cars).

If, in any year, there are insufficient profits to cover balancing allowances, which are treated as a deduction from profits, any unrelieved amount is carried forward and treated as an allowance for the following year. This surplus capital allowance and balancing allowances may be carried forward indefinitely, if necessary.

## STOCK / INVENTORY

UK principles are followed such that the value of the stock is normally the lower of cost and market value. Acceptable methods of valuing inventory include FIFO and average cost but not LIFO.

## CAPITAL GAINS AND LOSSES

There is no capital gains tax in Jersey. Capital losses are not allowable.

## DIVIDENDS

Dividends paid are not deductible in calculating the profits of a company but are paid out of after-tax profits. Dividends paid out of a Jersey company's profits carry a tax credit in relation to the tax paid by the company at either the 0%, 10% or 20% rates.

No unilateral relief is available to resident companies on receipt of foreign dividends and, thus, the net dividend is taxable (in other words, relief is given for foreign tax suffered by way of deduction). However, relief may be granted by concession on foreign dividend income if the absence of it would prevent bona fide commercial transactions (e.g. because dividends paid to a holding company by an overseas subsidiary would be subject to double taxation). This income is liable to Jersey tax at the standard corporate tax rate of 0% when received by a Jersey company. All distributions to a Jersey resident shareholder who owns more than 2% of the company are subject to tax at their personal tax rates.

## SHAREHOLDER LOANS

A loan made to a Jersey resident shareholder or a member of the shareholder's family or a related party is liable to income tax unless it is made at a commercial rate of interest. The shareholder is entitled to a credit when the loan is repaid, equal to the amount of tax paid on the loan.

## INTEREST DEDUCTIONS

Interest is deductible to the extent that it relates to monies borrowed for the purpose of the business.

## LOSSES

Losses can be carried forward indefinitely provided there is a continuity of trade. There is a limited right to carry back losses. Losses can also be group relieved in the same year if the same basis periods exist. There are limitations on loss claims.

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## C. FOREIGN TAX RELIEF

Double taxation relief is available on income taxed at source. Jersey has entered into a new agreement with the UK, which came into effect for Jersey on 1 January 2019. Associated with its negotiations in relation to Tax Information Exchange Agreements, Jersey has entered into limited double taxation arrangements relating to income and mutual agreement procedures with:

| | | |
|---|---|---|
| Australia | Denmark | Faroe Islands |
| Finland | France | Germany |
| Greenland | Iceland | New Zealand |
| Norway | Poland | Sweden |

Tax Information Exchange Agreements (TIEAs) have been signed with:

| | | |
|---|---|---|
| Argentina | Australia | Austria |
| Belgium | Brazil | Canada |
| Chile | China | Czech Republic |
| Denmark | Faroe Islands | Finland |
| France | Germany | Greenland |
| Hungary | Iceland | India |
| Indonesia | Ireland | Italy |
| Japan | Korea | Latvia |
| Mexico | Netherlands | New Zealand |
| Norway | Poland | Portugal |
| Romania | Slovenia | South Africa |
| Sweden | Switzerland | Turkey |
| United Kingdom | United States of America | |

## D. CORPORATE GROUPS

The tax provisions relating to groups of qualifying companies allow losses of a group company to be offset against the profits or gains of another company in the same group. A claim for relief must be made within one year following the year of assessment in which the loss period ended.

Companies will be treated as being in the same group where one holds directly or indirectly more than 50% of the ordinary share capital of the other company, or where one company (company A) owns directly or indirectly more than 50% of the ordinary share capital of the two other companies (company B and company C).

## E. RELATED PARTY TRANSACTIONS

There is no transfer pricing or related party legislation in Jersey.

## F. WITHHOLDING TAX

There are no withholding taxes in Jersey.

## G. EXCHANGE CONTROL

There are no exchange control rules in Jersey.

## H. PERSONAL TAX

Income tax is charged on Jersey resident individuals on their worldwide income and profits regardless of whether such profits or income are remitted to Jersey. There is, however, a statutory relief for individuals who are resident, but not ordinarily resident in Jersey, so that foreign income not remitted escapes taxation. The tax year is the calendar year i.e. to 31 December. There is currently no statutory definition of residence or ordinary residence in Jersey. Generally, individuals are treated as resident in a year if they are present in Jersey for more than six months or if they are present for three months or more, on average, over a period of four consecutive years.

If an individual maintains a place of abode in Jersey or has available accommodation, they are regarded as resident in any year that they stay in that abode or accommodation, even if for only one night. They are also regarded as ordinarily resident if his visits are habitual (after four years) unless his centre of life is abroad, e.g. has a home, business or professional activities abroad and is spending less than three months a year in Jersey. Income from offices and employment is assessable on an arising basis. Income tax is levied on the assessable income of the individual, less personal allowances and deductions, at a rate of 20%.

Earned income arising outside the island is assessed on the net amount arising after the deduction of any foreign tax charged and any necessary expenses. The maximum amount of tax paid on total income is 20%, but there are two methods of calculating tax, the standard rate calculation, i.e. 20% of total income and the marginal relief calculation where allowances and reliefs are deducted. Income is exempt if it does not exceed GBP 16,550 for a single person (GBP 16,550 for those aged 65 and over) or GBP 26,550 for a married person (GBP 26,100 for those aged 65 and over). Marginal relief is available where income exceeds the exemption limit on small incomes, and the tax charged is not to exceed 26% of the excess.

Where income is chargeable to tax, personal allowances are available as follows:

- Single person GBP 16,550 (over 65 GBP 16,550)
- Married/civil partnership person GBP 26,550 (over 65 GBP 26,550)
- Spouse/civil partner working allowance GBP 6,550

The Enhanced Child Allowance for a parent whose child is in full time higher education is GBP 6,273. There is an Additional Personal Allowance for single parents of GBP 4,590. There is also relief for childcare costs for a registered child carer up to GBP 6,273 or GBP 16,320 (dependent on type of childcare).

There is interest tax relief in certain circumstances. Mortgage interest relief is deductible but only on loans up to GBP 300,000 on an individual's principal private residence if the individual is taxed at the marginal rate of 26%. The relief is restricted to GBP 6,000. There is tax relief for pension contributions, with the maximum relief being the lower of GBP 50,000 or relevant earnings and the relief is restricted if the individual's income is more than GBP 150,000. The only other deduction is for employment expenses.

Some reliefs are restricted and have conditions attached to them which need to be satisfied. A long-term care fund has been set up to help those who need long-term care. If an individual pays income tax they pay into this fund. The long-term care contribution rate is a maximum of 1.5% of total income.

## HIGH NET WORTH INDIVIDUALS

High Value Resident individuals whose income exceeds GBP 725,000 per annum can apply for a special residence licence to live in Jersey. The current tiered rate of tax on personal, worldwide income is taxed as follows;

- 20% on the first GBP 725,000
- 1% on all income over GBP 725,000
- 20% on income derived from Jersey property.

(Based on 2022 rates and allowances)

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Domestic rates** | | | |
| Companies | 0 | 0 | 0 |
| Individuals | 0 | 0 | 0 |
| **Treaty countries:** | | | |
| Cyprus | 0 | 0 | 0 |
| Estonia | 0 | 0 | 0 |
| Guernsey | 0 | 0 | 0 |
| Hong Kong | 0 | 0 | 4 |
| Isle of Man | 0 | 0 | 0 |
| Liechtenstein | 0 | 0 | 0 |
| Luxembourg | 5/15[1] | 0 | 0 |
| Malta | 0 | 0 | 0 |
| Mauritius | 0 | 0 | 0 |

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Qatar | 0 | 0 | 5 |
| Rwanda | 10 | 10 | 10 |
| Seychelles | 0 | 0 | 0 |
| Singapore | 0 | 1[2] | 8 |
| United Arab Emirates | 0 | 0 | 0 |
| United Kingdom[2] | 0/15[3] | --/0[4] | --/0[5] |

Notes:

1. The lower rate applies in case the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
2. Entry in force: 19 December 2018. Effective date Jersey: 1 January 2019 (other taxes)/1 February 2019 (withholding taxes) Effective date United Kingdom: 1 February 2019 (withholding taxes)/1 April 2019 (corporation taxes)/6 April 2019 (income and capital gains taxes).
3. The 0% rate applies except if the dividends are paid out of income derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income annually and whose income is tax exempt, in which case the 15% rate applies on the distributed dividends. However, if the dividends are paid to a pension scheme, then the 0% rate applies.
4. The 0% rate applies, among others, to interest paid to an individual, pension scheme, bank or any unrelated financial institution, a company in whose principal class of shares there is substantial and regular trading on a recognised stock exchange or any other company provided that the competent authority determines that the establishment, acquisition or maintenance of such company does not have as its main or one of its main purposes to secure the treaty benefits, or if the interest is paid by the state or local authorities. Otherwise the domestic rate applies.
5. The 0% rate applies, among others, to royalties paid to an individual, a company in whose principal class of shares there is substantial and regular trading on a recognised stock exchange or any other person provided that the competent authority determines that the establishment, acquisition or maintenance of that person does not have as its main or one of its main purposes to secure the treaty benefits. Otherwise the domestic rate applies.



# JORDAN

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Amman | Mohammed Khattab | +962 795 572 746<br>mkhattab@pkf.jo |

## BASIC FACTS

| | |
|---|---|
| Full name: | The Hashemite Kingdom of Jordan |
| Capital: | Amman |
| Main languages: | Arabic |
| Population: | 11.10 million (2022 estimate) |
| Monetary unit: | Jordanian dinar (JOD) |
| Internet domain: | .jo |
| Int. dialling code: | +962 |

## KEY TAX POINTS

- Every person with one or more taxable income sources shall submit a tax return according to the form approved by the Tax Authority by the end of the fourth month following the end of the tax period.
- Domestic companies are subject to income tax on worldwide income, although income from the export of goods is exempt until 31 December 2018 and taxable as from 2019. Foreign companies are subject to tax on income from Jordanian sources.
- Special rates of corporate income tax apply to certain industries including transport, construction, banking and other financial industries.
- Capital gains are taxed at the appropriate corporation tax rate if the assets are subject to depreciation rules.
- Credit for foreign taxes is generally only available where a relevant double tax agreement is in place.
- No withholding tax is charged on the payment of dividends by Jordanian companies. However, withholding taxes are charged on the payment of interest, royalties and other charges to both residents and non-residents.
- Income tax is payable by residents and non-residents on salaries earned from any employment in Jordan.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

The Jordanian Tax year is a calendar year starting on 1 January until the 31 December of each year.

The taxpayer might change the Tax year to be compatible with his business.

## COMPANY TAX

Domestic companies are subject to income tax on all their sources of income wherever arising. Foreign working branches (companies) are subject to income tax only on their income from Jordanian sources. Export sales of goods are only income tax exempted until 31 December 2018 and taxable as from 2019. The taxpayer should maintain regular audited accounting records with a separate cost centre for export activities.

Company tax is levied as follows:

| **Domestic companies and foreign operating branches:** | **Rate** |
|---|---|
| Banks | 35% |
| Main communication companies, electricity distribution and generation companies, basic materials mining companies, insurance and re-insurance companies, financial intermediation companies, financial companies, and legal persons who conduct financing leasing activities | 24% |
| Manufacturing sector: | |
| Companies Manufacturing Products Excluding the Pharmaceutical & Apparel Sector. | |
| 2019 | 15% |
| 2020 | 16% |
| 2021 | 17% |
| 2022 | 18% |
| 2023 | 19% |
| 2024 | 20% |
| Pharmaceutical & Apparel Sector Products | |
| 2019 | 10% |
| 2020 | 14% |
| 2021 | 16% |
| 2022 | 18% |
| 2023 | 19% |
| 2024 | 20% |
| Other legal persons than those stated above | 20% |

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## COMPANIES IN THE DEVELOPMENT ZONES

- Companies operating in the transformation industries are subject to 5% taxation on their income, if the local added value of the institution is at least 30%;
- Other activities and projects are subject to a 10% rate;
- The Prime Ministry, upon recommendation by the Investment Board, can decrease this percentage based upon a regulation issued for this purpose;
- The income of institutions registered in the free zone area which conduct a manufacturing activity, or any other activity such as sale, ownership transfer, or provision of goods and services inside these areas is subject to tax based upon the tax categories of the companies and Natural Persons when applicable.

## NATIONAL CONTRIBUTION ACCOUNT

A national contribution account is established at the tax department for the purpose of paying the public debt, whereas its revenues are collected as follows:

- 3% of the taxable income of banks and electricity distribution and generation companies;
- 7% of the taxable income of basic materials mining companies;
- 4% of the taxable income of financial intermediation companies, financial companies, and legal persons who conduct financing leasing activities;
- 2% of the taxable income of main communication companies and insurance and re-insurance companies;
- 1% of the taxable income of the remaining legal persons;
- 1% of the natural persons’ taxable income exceeding JOD 200,000;
- Donations and grants.

The deduction is ceased when the public debt reaches the percentage allowed by the valid Public Debt Law.

## EXEMPTIONS ACCORDING TO THE ARTICLES OF THE LAW

- Agricultural sector exemption;
- Natural persons exemption is for the first JOD 1,000,000 of sales from agricultural activities inside the Kingdom;
- Legal persons exemption is for the first JOD 50,000 of net income from agricultural activities inside the Kingdom;
- Under the new law the end of service indemnity exemption from 1 January 2010 until 31 December 2014 is 50% when in 2014 amounts exceeding JOD 5,000 were subjected as of 1 January 2010;
- For the first JOD 15,000 a five thousand Jordanian Dinars exemption is granted for the employee’s services after 1 January 2015;
- Amounts exceeding what is stated in the previous two items are subject to 9% tax;
- The exemption of the total monthly pension including illness is reduced now to the first JOD 2,500 when in 2014 it was JOD 3,500;

- Adding an exemption covering the amounts distributed from the unions' Solidarity Funds to the members and their heirs in case of death;
- Adding an exemption of JOD 2,000 for each person with ongoing permanent disability.

## FOREIGN NON-OPERATING COMPANIES

## SECURITIES TRANSACTION TAX

Security Transaction Tax is not applicable in Jordan.

## CAPITAL GAINS TAX

Capital gains are taxed at the appropriate corporation tax rate if the assets are subject to depreciation rules.

## TONNAGE TAX FOR SHIPPING INDUSTRY

Tonnage Tax for shipping industries is not applicable in Jordan.

## DIVIDEND DISTRIBUTION TAX

Profits from stocks and dividends distributed by a resident to another resident are exempted, except profits of mutual investment, funds of banks and financial companies.

## BRANCH PROFITS TAX

Jordanian companies' branches operating outside the Kingdom, and foreign investments if the source of capital originated inside the Kingdom, are subject to a 10% tax ratio, based on net income declared in their final accounts which are certified by an external certified auditor.

## SALES TAXES / VALUE ADDED TAX (VAT)

The rates of the sales tax are:

- 16% as a general rate for goods and services;
- 10% on certain goods and live animals;
- 4% for specified agricultural products and meat;
- Zero rate for a list of specified products like energy-saving products and pharmaceutical industry inputs.

A state government initiative to promote industrial growth provides sales tax exemption and defers the payment of the tax payable on goods and services at importation.

## FRINGE BENEFITS TAX

There is no separate fringe benefits tax. Benefits provided by employers to their employees are subject to income tax, computed in the prescribed manner. Employers are obliged to withhold payable income tax on all benefits provided to employees on their behalf. If the company adopts provident funds or insurance plans, employers are required to contribute.

## LOCAL TAXES:

## STAMP DUTY

Stamp Duty of 0.6% is payable on all transactions with governmental and publicly traded corporations.

## LAND AND PROPERTY TAX

No tax is levied on land property except for improvement taxes. However, real estate property is subject to tax at a variable rate between 2% to 5% of a credited value.

## OTHER TAXES:

## CUSTOMS DUTY

Customs Duty is payable on goods imported into Jordan. The rates of basic Customs Duty may reach up to 30% depending on the governmental strategy.

## RESEARCH AND DEVELOPMENT

Research and development expenses can be deducted whenever incurred.

## WEALTH TAX

Wealth tax is not applicable in Jordan.

## GIFT TAX

Income from prizes, the value or amount of which exceeds JOD 1,000, is subject to a final 15% withholding tax rate.

## B. DETERMINATION OF TAXABLE INCOME

Any income incurred in or from the Hashemite Kingdome of Jordan for any person regardless of the place of payment shall be subject to income tax. Generally, to be deductible, an expenditure must be assigned to generate taxable income. Some expenses require a special treatment. Non-resident taxpayers pay tax only on Jordanian earned income. The assessment year is the period of 12 months from 1 January until 31 December.

## DEPRECIATION

Depreciation allowance is available as per the following rates depending on the nature of asset:

| | |
|---|---|
| Buildings (depending upon their nature) | 2% to 10% |
| Furniture and Fixtures | 5% to 15% |
| Plant and Machinery | 20% to 35% |
| Intangible Assets (patents, trademarks, know-how, licences, copyrights, etc) | 10% to 50% |
| Modes of Transportation (land, air, sea) | 15% |

Assets used for less than 180 days in the year of acquisition are entitled to half of the normal depreciation allowance. Depreciation not set off against current year's income can be carried forward for set off against any future income for unlimited period.

## STOCK / INVENTORY

The valuation of closing stock is normally completed on the basis of cost or market value, whichever is lower. The accepted valuation methods include FIFO, weighted average cost or other valuation methods in accordance with IFRS. The valuation basis is to be consistently followed.

## INTEREST DEDUCTION

Interest incurred or paid on borrowings used for business purposes is tax deductible within the same year as mentioned below:

- For new businesses, interest incurred prior to commencement of commercial production is to be capitalised;
- Interest paid for financing another taxpayer is not deductible;
- Interest paid by banks, financial companies and financial leasing companies is fully deductible.

## EXPENDITURE INCURRED FOR EXEMPT INCOME

Expenditure incurred in earning an exempted income from tax is not tax deductible. With regards to the exempted income from trading in dividends, stocks, bonds, equity loan, treasury bonds, mutual investment funds and currencies, the non-deductible amount shall be 25% of the exempted income. In all cases, the non-deductible amount should not exceed the allowable expenses.



## LOSSES

Business losses can be set off against any other income in the same assessment year and against business profits. Losses can be carried forward not exceeding five (5) years. Losses for activities outside the Kingdom are deducted from the activity's profits. There are no provisions for carrying losses backward. Export losses cannot be carried forward.

## MINIMUM ALTERNATE TAX (MAT)

MAT is not applied in Jordan.

## FOREIGN SOURCED INCOME

Jordanian companies' branches operating outside the Kingdom, and foreign investments if the source of capital originated inside the Kingdom are subject to a 10% tax ratio. Any income for a resident person from sources outside of the Hashemite Kingdom of Jordan shall be subject to tax, provided that it originates from money or deposits from inside the Kingdom. Income for a non-Jordanian resident fiscal person is exempt from income tax if this income is derived from outside of Jordan.

## INCENTIVES

In addition to the incentives which are available for export sales of goods, the investment Law provides tax and customs duties exemptions on certain new projects. In case of an undertaking located in a Special Economic Zone, the tax incentives for the first ten years are normally 75%. Input sales tax for export sales is refundable.

## FOREIGN EXCHANGE EARNINGS

Foreign exchange earnings are only taxable for companies.

# C. FOREIGN TAX RELIEF

## UNILATERAL TAX CREDIT WHERE THERE IS NO TAX TREATY

Where a resident of Jordan has paid tax in any country with which Jordan does not have a tax treaty, a credit is not available for such tax payment in Jordan.

## TAX CREDIT UNDER TAX TREATIES

Jordan has entered into tax treaties with many countries. Under an applicable tax treaty, Jordanian residents paying taxes in other countries can claim a credit in Jordan for foreign tax payments as mentioned in each treaty.

# D. CORPORATE GROUPS

There are no provisions in Jordan for consolidation of accounts for tax purposes or provisions for group taxation.

# E. RELATED PARTY TRANSACTIONS

A transfer pricing guideline was introduced under Regulation 40 of 2021.

**Definitions**

- Person: a natural or legal person including group of persons established by contractual arrangement and permanent establishments;
- Taxpayer: a person whose transactions with related persons exceed JOD 500,000 during a period of 12 consecutive months;

- Transactions between related persons: disposition transactions and any exchange of everything of value between the related persons and its taxpayer;
- Transactions between independent persons: transactions between non-related persons;
- Transfer pricing: prices for existing transactions between related persons, including the exchange of goods and services, loans, financing and disposal of movable and immovable funds;
- Approved taxpayer: the taxpayer who submits the special report of each country to the department for reporting purposes on behalf of the Multinational Enterprises group;
- Alternative Parent Establishment: The taxpayer belonging to Multinational Enterprises group that is required to submit the report on each country to the Department on behalf of the Multinational Enterprises group.
- The taxpayer who is obliged to submit a disclosure form about transactions between related persons: each taxpayer whose transactions with related persons exceeding JOD 500,000 during a period of 12 consecutive months shall submit disclosure form stipulated in the provisions.

**Information to be included in the disclosure form**

1. Information associated to related persons or persons associated to transactions between related persons, including the names of these persons, their countries of residence and tax residence;
2. Business restructuring information for the Multinational Enterprises group or the taxpayer;
3. Information about the actual owner and the beneficial owner, as the case may be, for the related persons, including the name, incorporation country, country of residence and ownership percentage;
4. Total revenues, total expenses and the value of the net profit or loss mentioned in the tax return;
5. Information about the type of relation between the persons related to the transactions and related persons and its nature;
6. Description of business nature or business activities for related persons and the transactions between them, including:
   a) purchase or sale of goods (finished or unfinished)
   b) purchase or sale of property and other assets
   c) support or receive services
   d) agency arrangements
   e) leasing arrangements
   f) financing related to search and development
   g) licensing and franchise agreements
   h) financing (including loans and owner's contributions in cash or in kind
7. The method used for transfer pricing;
8. The taxpayer declaration on whether he concluded a transaction between related persons or any transaction without compensation or for non-cash compensation (such as barter and deals) during the tax period of the tax return. In the event that the declaration comprises a transaction between related persons or more, the taxpayer shall submit a statement of the details of these transactions, including information related to the fair market value of the barter or the compensation received;
9. The taxpayer declaration on whether he maintains the documentations related to transfer pricing, including a master file and a local file.

**Person obliged to submit the special report on each country**

A person who is a member of Multinational Enterprises group whose total consolidated revenues exceed JOD 600,000,000 according to their financial statements for the previous tax period shall submit the special report on each country to the Department within a period not exceeding 12 months following the tax period of Multinational Enterprises group. The special report on each country will include the following information:

1. the name of the multinational Enterprise
2. the relevant tax period
3. the currency used
4. place of tax residence
5. the resident subsidiaries, their tax numbers and addresses
6. the place of incorporation if it is different from the place of tax residence
7. the main activities according to the approval model
8. revenues
9. profit/loss
10. income tax paid
11. income tax due
12. the declared capital
13. accumulated profits
14. number of employees
15. tangible assets other than cash or the like.

**Local file**

The taxpayer is obliged to organise a local file that includes basic and detailed information about all transactions with related persons and submit it to the Department within a period not exceeding 12 months following the tax period.

The basic information of the local file includes the following:

1. The information of the taxpayer, including the following:
   a) Description of the administrative organisation of the taxpayer and its organisational structure, and description of the persons to whom taxpayer's administration reports are submitted and the countries in which the headquarters of these persons are located
   b) A detailed description of the taxpayer's business, activities and strategy, including a statement of restructuring operations or asset transfers operations
2. The most important information about the transactions of the related persons and their documents, provided that the information includes the following:
   a) A description of the transactions between related persons
   b) The value of payments and revenues within the group for each category of transactions between related persons
   c) The identity of the related persons participating in each category of transactions
   d) A copy of all agreements concluded by those charged with transactions within the group
   e) A detailed comparison and analysis of the jobs of the taxpayer and related persons
   f) The transfer pricing method adopted for the transactions, the applicable assumptions for this method, and the reasons for choosing this method
   g) List, description and analysis of independent comparable internal or external transactions
   h) The settlements that were made, if any
   i) The financial information on which it is based in applying the transfer price method
3. A comprehensive analysis of the sector in which the person conducts his activities, including:
   a) The biggest competitors
   b) Analysis of strengths, weaknesses, opportunities and threats (SWOT)
   c) Supplier capabilities
   d) Buyer capabilities
   e) Availability of alternatives
   f) The volume and activity of the taxpayer
   g) Supply and demand trends
   h) Requirements to enter the sector
   i) The most important target international markets
   j) Market share
   k) Delivery methods.
4. Financial statements, including the following:
   a) The consolidated annual final financial statements of the taxpayer for the relevant tax period
   b) Tables of information and distribution that show the relationship between the financial statements used in the application of the transfer price method
   c) A summary of the relevant financial data tables used in the analysis of comparability and the source of the data.

**Master file**

The taxpayer is obliged to organise a master file that includes basic and detailed information on global business and transfer pricing policies for the transactions of the Multinational Enterprises group to which the taxpayer belongs, and submit it to the Department within a period not exceeding 12 months following the tax period.

The basic information of the master file includes the following:

1. The organisational structure that shows the ownership of the establishments of the Multinational Enterprises group and the geographical location of each of them
2. A description of the business of the Multinational Enterprises group, including:
   a. Factors affecting business profits
   b. A description of the supply chain for the most important products and services provided by the group in terms of sales volume, including other products and services that represent more than 5% of the group's sales
   c. A list of agreements to provide services concluded between members of Multinational Enterprises group or any similar arrangement
   d. The main markets for the group's products and services
   e. A job analysis showing the value added by the group's establishments
   f. A description of the most important deals related to business restructuring, acquisitions and liquidation during the tax period
3. Information about the intangible assets of the Multinational Enterprises group, including a list of these assets, agreements concluded between related persons, transfer pricing policies, and the group's strategy in managing these assets and transferring the ownership of these assets
4. Information about financing activities between the establishments of the Multinational Enterprises group, including:
   a. General description of how the group will be financed, including the most important financing deals concluded with independent financiers
   b. Determining the members of the Multinational Enterprises group who carry out major financing activities for the group, their countries of incorporation and the headquarters of their Administration

   c. The transfer pricing policies of the Multinational Enterprises group regarding financing operations between related persons
5. Information on the financial and tax positions of the Multinational Enterprises group, which includes:
   a. The consolidated financial statements of the Multinational Enterprises group for the tax period subject of the tax return prepared for financial declaration purposes or for regulatory, administrative, tax or other purposes
   b. A list of transfer pricing agreements concluded between a Multinational Enterprises group and tax administrations, if any.

**Definitions**

- The parent establishment of a Multinational Enterprises group is the establishment that directly or indirectly owns stakes or shares in one or more Multinational Enterprises and that is committed to preparing consolidated financial statements in accordance with international accounting standards generally accepted in its tax residence country and no other taxpayer of this Multinational Enterprises group owns directly or indirectly the shares described.
- The concept of the taxpayer of the Multinational Enterprises group includes:
  - o Any independent business establishment related to Multinational Enterprises group that is included in the group's consolidated financial statements for the purposes of financial reports preparation, or shall be included if its shares are offered for trading in the financial markets
  - o The taxpayer mentioned under the point before if it is not included in the consolidated financial statements of the Multinational Enterprises group because of its volume or the insignificance of its impact
  - o A permanent establishment affiliated with any independent business establishment related to the Multinational Enterprises group listed in the two points before, provided that the business establishment prepares or is required to prepare separate financial statements for this permanent establishment for the preparation of financial and regulatory reports and the preparation of tax returns, or for internal local control purposes.
- The concept of a Multinational Enterprises group includes a legal person residing in one country and is also subject to tax in another country as a result of having a permanent establishment in the other country.

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**Transfer pricing methods**

The taxpayer may adopt any of the following transfer pricing methods in accordance with international accounting standards:

a. Comparable uncontrolled price method
b. The Resale price method
c. The total cost method plus the profit margin
d. Transactional net profit margin method
e. Transactional profit split method.

- The taxpayer shall specify the reasons that were relied upon in choosing the transfer pricing method
- The taxpayer shall provide the assumptions that it has adopted for the purposes of applying transfer pricing
- The taxpayer shall submit a disclosure from a certified accountant explaining the taxpayer's compliance with the group's transfer pricing policy and its impact on the final financial statements
- The taxpayer shall, in the event of adopting any of the transfer pricing methods referred to before in any tax period, continue to adopt the same method for subsequent tax periods.

## F. WITHHOLDING TAX

- There is no withholding tax on dividends paid to non-resident companies;
- There is a 7% withholding tax on gross interest paid to non-resident companies;
- There is a 10% withholding tax on royalties, services fees and management fees paid to non-resident companies.

## G. EXCHANGE CONTROL

There are no exchange control rules in Jordan.

## H. PERSONAL TAX

Jordanians and non-Jordanian resident individuals are both subject to the same rules and taxes are assessed on income in, or from, Jordan. Taxable income is the gross income less the following deductions (exemptions).

Tax on physical persons:

- JOD 10,000 yearly exemption for a resident natural person for 2019 and JOD 9,000 for 2020 and subsequent years;
- JOD 10,000 yearly exemption for dependents for 2019 and JOD 9,000 for 2020 and subsequent years;
- Medical, educational, rent, housing loan interest and Murabaha exemptions for Natural Persons with dependents:
  - o JOD 1,000 starting from 2020 and subsequent years;
  - o JOD 1,000 for the taxpayer's husband starting from 2020 and subsequent years;
  - o JOD 1,000 per child with a maximum of JOD 3,000.

However, the maximum exemption amount granted to taxpayers with dependents including all exemptions shall not exceed JOD 23,000 across the board.

Tax rate categories for Natural Persons with/without dependents:

- 5% on the first JOD 5,000
- 10% on the next JOD 5,000
- 15% on the next JOD 5,000
- 20% on the next JOD 5,000

- 25% on amounts exceeding JOD 20,000 and up to JOD 1 million;
- 30% on amounts exceeding JOD 1 million.

A non-Jordanian resident pays tax only on income from Jordanian sources of income while his/her dependents should be residing in Jordan in order to benefit from the relevant exemptions for dependents.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 0/10 | 0 | 7 | 10 |
| Individuals | 0/10 | -- | 5 | 10 |
| **Treaty countries:** | | | | |
| Algeria | 15 | 15 | 15 | 15 |
| Arab Economic Union Council | --[1] | --[1] | --[1] | --[1] |
| Azerbaijan | 8 | 8 | 8 | 10 |
| Bahrain | 10 | 10 | 10 | 10 |
| Bulgaria | 10 | 10 | 10 | 10 |
| Canada | 15 | 10[2] | 10 | 10 |
| Croatia | 10 | 5[3] | 10 | 10 |
| Czech Republic | 10 | 10 | 10 | 10 |
| Egypt | 15 | 15 | 15 | 20 |
| France | 15 | 5[4] | 0/15 | 5/15/25 |
| India | 10 | 10 | 10 | 20 |
| Indonesia | 10 | 10 | 10 | 10 |
| Iran | 7.5 | 5[5] | 5 | 10 |
| Italy | 10 | 10 | 10 | 10 |
| Korea | 10 | 10 | 10 | 10 |
| Kuwait | 10 | 5[6] | 5 | 30 |
| Lebanon | 10 | 10 | 10 | 10 |
| Malaysia | 10 | 10 | 15 | 10 |
| Malta | 10 | 10 | 10 | 10 |
| Morocco | 10 | 10 | 10 | 10 |
| Netherlands | 15 | 5[4] | 5 | 10 |
| Pakistan | 10 | 10 | 10 | 10 |
| Palestine | 10 | 7 | 10 | 10 |
| Poland | 10 | 10 | 10 | 10 |
| Qatar | 10 | 10 | 5 | 10 |
| Romania | 15 | 15 | 12.5 | 15 |
| Saudi Arabia | 5 | 5 | 5 | 7 |
| Syria | 10 | 10 | 10 | 18 |
| Tunisia | --[7] | --[7] | --[7] | --[7] |
| Turkey | 15 | 10[8] | 10 | 12 |
| Ukraine | 15 | 10[8] | 10 | 10 |
| United Arab Emirates | 0/7 | 0/7[9] | 7 | 10 |
| United Kingdom | 10 | 10 | 10 | 10 |
| Uzbekistan | 10 | 7[10] | 10 | 20 |
| Yemen | 10 | 10 | 10 | 10 |

Notes:

1. No limitation on WHT on dividends, interest and royalties under the treaty. The domestic rate applies. Member states are: Egypt, Iraq, Jordan, Kuwait, Libya, Mauritania, Palestinian Autonomous Area, Saudi Arabia, Somalia, Sudan, Syria, the United Arab Emirates and Yemen.
2. The 10% reduced rate applies if the beneficial owner is a company that controls directly or indirectly at least 10% of the voting power in the dividend-paying company.
3. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds at least 25% of the capital of the dividend-paying company, provided that this holding was not acquired primarily for the purpose of taking advantage of this provision.
4. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.

5. The 5% reduced rate applies if the beneficial owner is a company which has owned at least 25% of the capital of the dividend-paying company.
6. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 5% of the capital of the dividend-paying company.
7. There is no limitation under the treaty, the domestic rate applies.
8. The 10% reduced rate applies if the recipient is a company (excluding partnership) which holds directly at least 25% of the capital of the dividend-paying company.
9. The 0% rate applies if the beneficial owner is the state, one of its political subdivisions or local governments, or a financial institution.
10. The 7% reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company.

# KAZAKHSTAN

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Almaty | Serik Smagulov | +7 707 804 8120<br>serik.smagulov@pkf.kz |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Kazakhstan |
| Capital: | Nur-Sultan |
| Main languages: | Kazakh, Russian |
| Population: | 19.19 million (2022 estimate) |
| Monetary unit: | Kazakhstani Tenge (KZT) |
| Internet domain: | .kz |
| Int. dialling code: | +7 |

## KEY TAX POINTS

- Standard corporate income tax rate is 20%.
- VAT is levied at a standard rate of 12%.
- Dividends, interest and royalties paid to non-residents without a permanent establishment in Kazakhstan are subject to 15% withholding tax, subject to the application of a double tax treaty. Dividends, interest and royalties paid to non-residents registered in a tax haven jurisdiction are subject to 20% withholding tax. Technical service fees and management fees are subject to 20% withholding tax. However, certain technical fees may be reclassified as royalties and thus be subject to 15% withholding tax only.
- Branches are subject to corporate tax at a rate of 20% on their net income. A 15% branch remittance tax also applies to net income after corporate tax regardless of whether the net profit is remitted to the head office but subject to the application of a double tax treaty. The effective tax rate for the income of branches of foreign legal entities therefore amounts to 32% if there is no reduction under a the application of a double tax treaty

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

### COMPANY TAX

Resident companies are taxed on their worldwide income while non-residents are generally only taxed on Kazakhstan-sourced income. A company is considered to be a Kazakh tax resident if it is established under the laws of Kazakhstan or if its governing body or place of actual management and control is located in Kazakhstan.

The standard corporate income tax rate of 20% applies to both domestic and foreign companies. The corporate income tax return is due by 31 March of the year following the reporting tax year.

### CAPITAL GAINS TAX

Capital gains are taxed as normal income and thus subject to the standard corporate income tax rate of 20%.Capital gains from the disposal of shares are exempt, provided that the shares are:

- held for a period of at least 3 years; and
- held in resident companies whose assets which are used for subsurface use activities in value do not exceed 50% of the total asset's value of that company.

### BRANCH PROFITS TAX

Like resident entities, branches are subject to corporate tax at a rate of 20% on their net income. A 15% branch remittance tax also applies to net income after corporate tax regardless of whether the net profit is remitted to the head office but subject to the application of a double tax treaty. The effective tax rate for the income of branches of foreign legal entities therefore amounts to 32% if there is no reduction under the application of a double tax treaty.

## SALES TAX / VALUE ADDED TAX (VAT)

The standard rate of VAT is 12%. It is levied on the supply of goods and services and on imports. VAT is payable by all legal entities (including branches and representative offices of non-resident legal entities) and individual entrepreneurs registered for VAT purposes. The registration is mandatory if the taxable person has a turnover exceeding 30,000 MCI in a calendar period (currently, 1 MCI = KZT 2,917). Voluntary VAT registration is allowed.

The VAT return shall be filed for each tax period by the 15th day of the second month following the reporting period while the deadline for payment of VAT is due by the 25th day of the second month following the reporting period.

## B. DETERMINATION OF TAXABLE INCOME

Entities are subject to corporate income tax on trading profits and other taxable income. In general, all expenses incurred by a taxpayer are deductible if they are made with the view to derive business income (except for those expenses specifically listed as non-deductible by the Tax Code) and if they are supported by appropriate documentation.

Non-deductible expenses comprise, among others, dividends, administrative fines and not duly documented expenses.

## DEPRECIATION

The accepted depreciation method is the declining balance method. The Tax Code provides for the following depreciable asset groups and depreciation rates:

| Asset group | Rate (%) |
|---|---|
| Buildings and constructions (with the exception of oil, gas wells and transmission devices) | 10 |
| Machinery and equipment (except those for oil and gas production, and computer equipment for information processing) | 25 |
| Computers and equipment for information processing, software | 40 |
| Fixed assets not included in the preceding groups but including oil, gas wells and transmission devices | 15 |

## CAPITAL GAINS AND LOSSES

Capital losses that cannot be fully offset against capital gains in the current tax year can be carried forward for up to 10 years and credited against future capital gains, subject to certain exceptions.

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## DIVIDENDS

Dividends received are income tax-exempt, with the exception of some categories such as dividends received from risk investment funds.

No withholding tax is levied on dividends distributed to resident companies. Dividends paid to non-residents without a permanent establishment in Kazakhstan are subject to 15% withholding tax. Dividends paid to non-residents registered in a tax haven jurisdiction are subject to 20% withholding tax.

Dividends are a non-deductible expense.

## INTEREST DEDUCTIONS

Thin capitalisation rules apply in respect of interest paid to related parties and persons registered in black-listed jurisdictions. The interest paid is deductible if the debt-to-equity ratio does not exceed 4:1 (7:1 for financial institutions).

## LOSSES

Operating losses may be carried forward for up to 10 years. Loss carry-back is not available. Depreciation expenses are deductible during a loss-making year.

## FOREIGN SOURCE INCOME

Resident companies and individuals are taxed on their worldwide income while non-residents are subject to tax on their Kazakh-sourced income only.

## TAX INCENTIVES

- Accelerated tax deductions for capital expenditure, subject to certain conditions;
- Incentives for investment in priority economic sectors related to business in special economic zones and investment in qualifying investment priority projects.
- Special tax regimes and incentives for qualifying non-profit organizations and organizations operating in social sectors.

## C. FOREIGN TAX RELIEF

Resident taxpayers may claim foreign tax relief unilaterally or based on tax treaties (if applicable). A credit is generally available for foreign taxes paid on foreign-sourced income on the basis of documentation confirming the foreign income tax payment. Double tax treaties usually grant a tax credit for the tax paid on income and capital having its source abroad. Double tax treaties prevail over domestic tax legislation.

## D. CORPORATE GROUPS

Group taxation is not permitted under the tax legislation, each company must file a separate return. However, non-residents having several permanent establishments in Kazakhstan may opt to submit a consolidated tax return.

**Controlled Foreign Companies (CFC)**

CFC rules apply to residents with at least a 10% participation in an entity based in a jurisdiction having a preferential tax regime. A jurisdiction is considered as having a preferential tax regime if the following conditions are fulfilled:

- the corporate income tax rate is 10% or lower; or
- it has laws concerning the confidentiality of financial information or laws allowing secrecy in respect of the actual owner of property or the income or actual owners, founders or shareholders of a company.

A list of preferential jurisdictions is made by the government. It currently has 57 jurisdictions listed, including Malta and Panama.

## E. RELATED PARTY TRANSACTIONS

### Transfer pricing

The current Law on transfer pricing came into force on 1 January 2009 adopting the arm's length principle and comprising reporting requirements. The methods allowed to determine the market price are the comparable uncontrolled price method, cost plus, resale price, profit split and the transactional net margin method. The legislation does not provide for the possibility to conclude an advance pricing agreement (APA) with the tax authorities.

On 25 April 2018, the State Revenue Committee announced the introduction of a three-tiered approach to TP documentation. According to Law No. 122-VI of 25 December 2017, multinational enterprises (MNEs) that operate in Kazakhstan are obliged to prepare and submit (i) a country-by-country report (ii) a master file (iii) a local file and (iv) a notification.

The Law defines an MNE group as a group of legal entities, including a parent company, which meets all of the following requirements:

- Legal entities are connected through control and/or ownership;
- At least one entity is a Kazakhstan tax resident or a foreign entity that carries out its business through a PE in Kazakhstan; and
- Consolidated financial statements are prepared with respect to such entities. The consolidation requirement could be omitted if it is in line with IFRS.

### Country-by-country (CbC) reporting

The CbC report should be submitted by one of the following members of an MNE group:

- A parent company that is a tax resident in Kazakhstan;
- An authorized member (if such authorization is granted by a parent company); or
- A resident or non-resident entity that operates in Kazakhstan through a PE, upon request of the Kazakhstan tax authorities.



For CbC reporting purposes, a group consolidated revenue for the fiscal year immediately preceding the reporting financial year should not be less than:

- EUR 750 million if a parent entity is a resident of Kazakhstan; or
- As stipulated by foreign legislation if a parent company or an authorized member are not residents of Kazakhstan.

The CbC report should be submitted within 12 months following the reporting financial year or, if it has been requested by the tax authorities, from the date of such request. The CbC reporting requirements were introduced retrospectively with effect from 2016.

### Master file

The MNE group must submit a master file upon request of the tax authorities if a Kazakhstan entity or member of an MNE group performs controlled transactions. The master file for the reporting financial year should be submitted within 12 months from the date of received request.

### Local file

Similar to the requirements stipulated for the master file, if a business activity falls into the scope of controlled transactions, a member of the MNE group should submit a local file. A local file should be submitted if the threshold of a group consolidated revenue is lowered to 5 million monthly calculation index (MCI), which is approximately EUR 30 million. The local file should be submitted to the tax authorities on an annual basis and within 12 months following the reporting financial year.

## F. WITHHOLDING TAX

Dividends, interest and royalties paid to non-residents without a permanent establishment in Kazakhstan are subject to 15% withholding tax. Dividends, interest and royalties paid to non-residents registered in a tax haven jurisdiction are subject to 20% withholding tax. Technical service fees and management fees are subject to 20% withholding tax. However, certain technical fees may be reclassified as royalties and thus be subject to 15% withholding tax only.

## G. EXCHANGE CONTROL

In principle, payments between residents may only be made in Kazakhstani tenge. Under the Civil Code, an obligation between two residents may not be denominated in foreign currency, subject to certain exceptions. This rule does not apply to contracts between residents and non-residents, payments between which may be made in any currency. Certain transactions may be subject to the National Bank's notification or registration regime.

## H. PERSONAL TAX

Residents are subject to tax on their worldwide income. Non-resident individuals are subject to tax on Kazakh-sourced income only. Are deemed to be residents in Kazakhstan:

- individuals who permanently reside in Kazakhstan; or
- individuals who have their centre of vital interests in Kazakhstan.

Employment income is taxed at a flat rate of 10% for residents and non-residents alike. Dividends are taxed at 5% for residents while dividends and capital gains are taxed at 15% for non-residents. Other income is taxed at 10% for residents and 20% for non-residents.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 15/20[1] | 0[26]/15 | 15/20[1] | 15/20[1] |
| Individuals | 15 | -- | 15 | 15 |
| **Treaty countries:** | | | | |
| Armenia | 10 | 10 | 10 | 10 |
| Austria | 15 | 5[2] | 10 | 10 |
| Azerbaijan | 10 | 10 | 10 | 10 |
| Belarus | 15 | 15 | 10 | 15 |
| Belgium | 15 | 5[3] | 10 | 10 |
| Bulgaria | 10 | 10 | 10 | 10 |
| Canada | 15 | 5[4] | 10 | 10 |
| China | 10 | 10 | 10 | 10 |
| Croatia[6] | 10 | 5[5] | 10 | 10 |
| Czech Republic | 10 | 10 | 10 | 10 |
| Estonia | 15 | 5[5] | 10 | 15 |
| Finland | 15 | 5[7] | 10 | 10 |
| France | 10/15[8] | 5[3] | 10 | 10 |
| Georgia | 15 | 15 | 10 | 10 |
| Germany | 15 | 5[5] | 10 | 10 |
| Hungary | 15 | 5[9] | 10 | 10 |
| India | 10 | 10 | 10 | 10 |
| Iran | 15 | 5[10] | 10 | 10 |
| Ireland | 15 | 5[5] | 10 | 10 |
| Italy | 15 | 5[3] | 10 | 10 |
| Japan | 15 | 5[11] | 10 | 10 |
| Korea (Rep.) | 15 | 5[12] | 10 | 10 |
| Kyrgyzstan | 10 | 10 | 10 | 10 |
| Latvia | 15 | 5[5] | 10 | 10 |
| Lithuania | 15 | 5[5] | 10 | 10 |
| Luxembourg | 15 | 5[13] | 10 | 10 |
| Malaysia | 10 | 10 | 10 | 10 |
| Moldova | 15 | 10[14] | 10 | 10 |
| Mongolia | 10 | 10 | 10 | 10 |
| Netherlands | 15 | 0[15]/5[3] | 10 | 10 |
| North Macedonia | 15 | 5[5] | 10 | 10 |
| Norway | 15 | 5[2] | 10 | 10 |
| Pakistan | 15 | 12.5[3] | 12.5 | 15 |
| Poland | 15 | 10[16] | 10 | 10 |
| Romania | 10 | 10 | 10 | 10 |
| Russia | 10 | 10 | 10 | 10 |
| Saudi Arabia | 5 | 5 | 10 | 10 |
| Serbia | 15 | 10[17] | 10 | 10 |
| Singapore | 10 | 5[14] | 10 | 10 |
| Slovak Republic | 15 | 10[18] | 10 | 10 |
| Slovenia | 15 | 5[5] | 10 | 10 |
| Spain | 15 | 5[3] | 10 | 10 |
| Sweden | 15 | 5[19] | 10 | 10 |
| Switzerland | 15 | 0[21]/5[20] | 10 | 10 |
| Tajikistan | 15 | 10[18] | 10 | 10 |
| Turkey | 10 | 10 | 10 | 10 |
| Turkmenistan | 10 | 10 | 10 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Ukraine | 15 | 5[22] | 10 | 10 |
| United Arab Emirates | --[23] | 5[12] | 10 | 10 |
| United Kingdom | 15 | 5[4] | 10 | 10 |
| United States | 15 | 5[24] | 10 | 10 |
| Uzbekistan | 10 | 10 | 10 | 10 |
| Vietnam | 15 | 5[25] | 10 | 10 |

Notes:

1. Subject to the application of a tax treaty, a final 15% withholding tax rate is applied to dividends, interest and royalties paid to non-residents. The rate is 20% if dividends, interest and royalties are paid to entities registered in black-listed jurisdictions. The list currently contains 57 jurisdictions, including Panama and Malta.
2. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company.
3. The reduced rate applies if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the dividend-paying company.
4. The 5% reduced rate applies if the beneficial owner is a company which controls directly or indirectly at least 10% of the voting power of the dividend-paying company.
5. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
6. Effective date: 1 January 2020.
7. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which controls directly at least 10% of the voting power of the dividend-paying company.
8. The general withholding tax rate under the treaty is 15%. However, by virtue of a most favoured nation clause, a reduced 10% rate applies (under the Kazakhstan-Czech Republic treaty the rate is 10%).
9. The 5% reduced rate applies if the beneficial owner is a company which holds directly or indirectly at least 25% of the capital of the dividend-paying company.
10. The 5% reduced rate applies if the recipient is a company (excluding partnership) which holds directly at least 20% of the capital of the dividend-paying company.
11. The 5% reduced rate applies if the beneficial owner is a company that has owned directly or indirectly, for the period of six months ending on the date on which entitlement to the dividends is determined, at least 10% of the voting shares of the dividend-paying company.
12. The 5% reduced if the beneficial owner is a company (other than a partnership) which holds at least 10% of the capital of the dividend-paying company.
13. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 15% of the capital of the dividend-paying company.
14. The reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company.
15. According to article VII of the Protocol to the treaty, dividends paid by a company resident in Kazakhstan to a company resident in the Netherlands, which holds directly or indirectly at least 50% of the capital of the dividend-paying company, shall be exempt from tax in Kazakhstan, provided that the Dutch company has made an investment in the Kazakhstan company of at least USD 1 million, which investment is guaranteed in full or insured in full by the Kazakh government, the Kazakh central bank or any agency or instrumentality (including a financial institution) owned or controlled by the Kazakhstan Government, and has been approved by the Dutch government. If the foregoing investment exceeds USD 1 million, but the entire investment is not guaranteed in full or insured in full, then this provision shall apply only to that portion of the dividends which the guaranteed or insured portion of the investment bears to the total investment.
16. The 10% reduced rate applies if the recipient company owns at least 20% of the capital or the voting power of the dividend-paying company.
17. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
18. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 30% of the capital of the dividend-paying company.
19. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the voting power of the dividend-paying company.
20. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
21. According to article 2 (a) of the Protocol to the treaty, dividends paid by a company resident in Kazakhstan to a company resident in Switzerland, which holds directly or indirectly at least 50% of the capital of the dividend-paying company, shall be exempt from tax in Kazakhstan, provided that the Swiss company has made an investment in the Kazakhstan company of at least USD 1 million, which investment is guaranteed in full or insured in full by the Swiss government, the Swiss central bank or any agency or instrumentality (including a financial institution) owned or controlled by the Swiss Government, and has been approved by the Kazakhstan government. If the foregoing investment exceeds USD 1 million, but the entire investment is not guaranteed in full or insured in full, then this provision shall apply only to that portion of the dividends which the guaranteed or insured portion of the investment bears to the total investment.
22. The 5% reduced rate applies if the recipient company owns at least 25% of the capital or the voting power of the paying company, as the case may be.
23. The domestic withholding tax rate applies.
24. The 5% reduced rate applies if the beneficial owner is a company which owns at least 10% of the voting stock of the dividend-paying company.
25. The 5% reduced rate applies if the beneficial owner is a company that has owned directly at least 70% of the voting power of the dividend-paying company.
26. The 0% rate applies subject to the following conditions:
    - the beneficial owner is not an entity registered in black-listed jurisdictions (see also footnote 1);
    - the shares from which the dividends are derived are listed on the Kazakh stock exchange or the shares are owned for more than 3 years;
    - the resident company is not regarded as a subsurface user; and
    - property of a subsoil user (if any) in the assets of the resident company does not exceed 50%.

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# KENYA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Nairobi | Michael Mburugu | +254 20 4270000<br>mmburugu@ke.pkfea.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | The Republic of Kenya |
| Capital: | Nairobi |
| Main languages: | English, Swahili |
| Population: | 55.95 million (2022 estimate) |
| Monetary unit: | Kenyan Shilling (KES) |
| Internet domain: | .ke |
| Int. dialling code: | +254 |

## KEY TAX POINTS

- Resident and non-resident companies are subject to income tax on income accrued or derived from Kenya at different rates.
- Capital Gains Tax (CGT) is applicable at a rate of 5% on the net gain on the transfer of property. It is a final tax and cannot be offset against other income taxes.
- VAT is chargeable on imports and the supply of goods and services in Kenya. The standard rate is 16%. Certain goods and all exports are zero-rated. Petroleum products are subject to VAT at the rate of 8%. Some goods and services such as unprocessed agricultural products and financial services are VAT exempt.
- Digital Service Tax (DST) is applicable at the rate of 1.5% of the gross transaction value of income of non-resident persons earned from users in Kenya of services that are provided through a digital marketplace. This took effect from 1 January 2021.
- Minimum tax is chargeable at the rate of 1% of the annual gross turnover for resident and non-resident persons with Permanent Establishments (PE) if it exceeds the estimated instalment taxes. However, the High Court has suspended the implementation of minimum tax and the Kenya Revenue Authority (KRA) appealed the matter at the Court of Appeal.
- Kenyan resident individuals are taxed on Kenya-sourced income and on income from employment or services rendered abroad.
- Non-resident individuals are taxable on any income from employment with, or services rendered to, an employer resident in Kenya or the permanent establishment in Kenya of a non-resident employer.
- There are no foreign exchange controls applicable in Kenya and foreign currency is freely transferable in Kenya subject to Anti-Money Laundering Regulations.
- There may be special tax rates for corporations in Special Operating Framework with the Kenyan Government.
- Dividend Distribution Tax at the corporate income tax rate of 30% is applicable on distribution of untaxed gains in the form of dividends.
- Broader definition of control and a permanent establishment in Kenya for the purpose of determining arm's-length price in related party transactions and charging tax on income derived from or accrued in Kenya respectively.
- Control now entails ownership of at least 20% of the shares or voting rights of a company. Moreover, control arises when a person advances loans to another person which constitutes 70% of the book value of the total assets or guarantees at least 70% of the total indebtedness of the other person or appoints more than half of the board of directors/ at least one director/ executive member of the governing board. It also arises when a person or his designate person supplies at least 90% of his sales to another person or purchases at least 90% of the sales of another person as the Commissioner deems the influence in price to be.
- A permanent establishment is now created when there is a warehouse related to a person whose business is providing storage facilities to another person, a farm/plantation for agricultural activities, a building /construction site/ any other supervisory activity connected to the site or project which has existed for a period of 183 days/ and aggregate of between 30 to 183 days/ more than 30 days, providing consultancy services within Kenya for an aggregate period of 91 days per year, an installation/structure used to explore natural resources which continues for more than 91 days, an agent who negotiates and concludes contracts on behalf of the person.

## A. TAXES PAYABLE

### CORPORATION TAX

Corporation tax is based on adjusted taxable profits. The rates are:

- Resident companies: 30%;
- Non-resident companies: 37.5%;
- Turnover tax: 1% on gross monthly turnover payable by resident persons with a turnover of between KES 1 million to KES 50 million.
- Real estate developers constructing at least one hundred residential units per year will enjoy a reduced corporation tax rate of 15% subject to approval from the Cabinet Secretary responsible for Housing;
- Companies engaging in local assembly of motor vehicles will be subject to a reduced income tax rate of 15% for the first five years of operations in Kenya. This has become effective from 1 January 2018.

- Companies engaging in plastic recycling activities will be subject to a reduced income tax rate of 15% for the first five years of operations in Kenya. This has become effective from 7 November 2019.

## CAPITAL GAINS TAX

CGT is applicable at the rate of 5% of the net gain on the transfer of property. It is a final tax and cannot be offset against other income taxes. There are certain circumstances under which CGT is exempted.

## DIGITAL SERVICE TAX (DST)

DST is applicable at the rate of 1.5% of the gross transaction value on the income of non-resident persons, which is derived from or accrued in Kenya from the provision of a digital service or a digital marketplace. Under DST, the income is accrued in or derived from Kenya if the user of the digital service or digital marketplace is in Kenya. The gross transaction value for provision of digital services is the value of the digital service while for provision of the digital marketplace it is the commission or fee paid for use of the online platform. However, resident persons are exempt from paying digital service tax.

Non-resident digital service or digital marketplace providers without a PE in Kenya are required to appoint DST agents in Kenya who will be responsible for remittance of DST in line with the tax laws in Kenya.

## MINIMUM TAX

Minimum tax is applicable at the rate of 1% of the annual gross turnover for resident and non-resident persons with PEs in Kenya and is payable in instalments if it exceeds the estimated instalment taxes. Minimum tax shall be a final tax for loss making companies. There are certain circumstances under which minimum tax is exempted such as: businesses whose retail prices are controlled by the government, insurance businesses and entities gazetted as such by the CS National Treasury, manufacturing companies whose cumulative investment in the preceding four years is at least KES 10 billion, distribution businesses whose income is on commissions and Persons licensed under the Special Economic Zones Act, 2015.

However, the amendments which introduced minimum tax provisions and its enabling regulations were suspended from taking effect by the High Court of Kenya on 20 September 2021. The matter was appealed at the Court of Appeal by the KRA.

## BRANCH PROFITS TAX

A branch of a foreign entity pays corporate tax at the rate of 37.5%. There is no branch remittance tax in Kenya.

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## VALUE ADDED TAX (VAT)

The VAT rates are 0%, 8% and 16%. Exports of good are zero rated while exports of services are VAT exempt. Some goods and services such as unprocessed agricultural products and financial services are VAT exempt. Some privileged bodies enjoy exempt and zero-rated status. Petroleum products are subject to VAT at the rate of 8%.

## WITHHOLDING VAT

Withholding VAT is deductible at the rate of 2% on taxable value of goods and services supplied to appointed agents such as Government Ministries, Departments, Agencies, and any other person appointed by the Commissioner.

## EMPLOYMENT BENEFITS TAX

Cash and non-cash benefits are taxable on the higher of the cost incurred by the employer or the fair market value. The taxable value is added to the emoluments for tax purposes. Non-cash benefits are not taxable where the total aggregate value does not exceed KES 36,000 per annum. In addition, meals with an aggregate value of less than KES 48,000 per annum are not taxable.

Employment income is taxed on a withholding basis known as PAYE at a graduating scale of 10% to 30%.

### Motor Vehicles

The benefit is the higher of 2% per month of the initial cost of the vehicle or the commissioner prescribed rates. For leased vehicles the benefit is the cost of leasing.

### Housing

For non-executive directors the benefit is the higher of 15% of total income (emoluments - for a full-time service director), fair market rental value and rent paid. For agricultural employees it is 10% of emoluments. For other employees it is the higher of rent paid or 15% of emoluments.

### Loans to employees

Loans to employees are taxed at the corporate tax rate on the difference between the interest rate prescribed by the Commissioner and the actual interest rate paid by the employee.

### Other benefits

The taxable benefit of furniture is 1% of cost per month, telephone is 30% of the bill, and employee share ownership plans (ESOPs) is the difference between the market price of shares and the offer price at the date the option is granted.

### Affordable housing relief

Employees making contributions under affordable housing scheme are entitled to an affordable housing relief of 15% of their gross emolument up to a maximum of KES 108,000 per annum.

## OTHER TAXES

## LAND RATES AND RENT

Land rates are based on the location of the property (under zoning laws) and are charged annually at a percentage of the site value.

Land rent is charged annually on all land leases issued by the government based on the value index assigned at by a government valuer according to the use of the land.

## NATIONAL SOCIAL SECURITY FUND (NSSF)

Contributions are set at the rate of a combined minimum of 12% of the pensionable earnings made up of half contributions of the employee and employer.

The NSSF contributions as per the NSSF Act 2013 are set at an upper limit of KES 6,000 per employee earning more than KES 18,000 per month. However, an employee earning less than the lower earnings limit of KES 6,000 will contribute up to a maximum of KES 720. The effective date for the NSSF Act 2013 is yet to be set due to an impending court case.

The old NSSF contributions are therefore still applicable and are set at 10% of monthly income up to a maximum of KES 400 per month. Half of the contribution is paid by the employer and half by the employee. In case of casual employees only the employer pays 5% of gross wages and is payable even for one employee.

Monthly NSSF contributions are payable on or before the ninth day of the month following the month to which the return relates.

## NATIONAL HOSPITAL INSURANCE FUND (NHIF)

NHIF payments are set at graduated scale rates starting at KES 150 per month to a maximum of KES 1,700 per month for employed persons on salaries of KES 100,000 and above, and KES 500 per month for self-employed persons. The remittances are made on or before the ninth day of each month.

## SINGLE BUSINESS PERMIT

The business permit cost is applicable and varies based on respective county government prescribed rates.

## NATIONAL HOUSING FUND LEVY

Effective 1 January 2019, employers and employees are expected to contribute 1.5% (each) on monthly basic salary to the National Housing Development Fund ("Fund"). The contributions should not exceed KES 5,000 per month. However, this is currently suspended due to ongoing litigation processes challenging the legality of its imposition. There is a proposal to make the contribution to the fund voluntary.

## NATIONAL INDUSTRIAL TRAINING AUTHORITY

The Directorate of Industrial Training levies administers the Industrial Training Levy at KES 50 per employee per month. Contributing employers qualify for reimbursement of approved training expenses.



## CATERING LEVY

The catering levy is a 2% tax levied on hotels and restaurants.

## STANDARD LEVY

The standard levy is due from manufacturers at the rate of 0.2% of ex-factory price subject to a minimum of KES 1,000 per month and a maximum of KES 400,000 per year.

## B. DETERMINATION OF TAXABLE INCOME

## CAPITAL ALLOWANCES

Old rates for capital allowances were repealed with effect from 25 April 2020 with the new rates set out as follows:

| Investment Allowance Category | Applicable Rate |
|---|---|
| **Buildings:** | |
| Hotel building | 50% in first year of use and 25% on the residual value per year on equal instalments |
| Building used for manufacture | |
| Hospital buildings | |
| Petroleum or gas storage facilities | |
| Educational buildings including student hostels | 10% per year on equal instalments |
| Commercial building | |
| **Capital expenditure on machinery:** | |
| Machinery used for manufacture | 50% in first year of use and 25% on the residual value per year on equal instalments |
| Hospital equipment | |
| Ships or aircrafts | |
| Machinery used to undertake exploration operations under a prospecting right | |
| Machinery used to undertake exploration operations under a mining right | |
| Motor vehicle and heavy earth moving equipment | 25% per year on equal instalments |
| Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines | |
| Filming equipment by a local film producer licensed by the Cabinet Secretary responsible for filming | |

| Investment Allowance Category | Applicable Rate |
|---|---|
| Furniture and fittings | 10% per year on equal instalments |
| Telecommunications equipment | |
| Purchase or an acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator | |
| Other machinery | |
| Farm works | 50% in first year of use and 25% on the residual value per year on equal instalments |

The capital deductions for machinery used to undertake operations in the extractive industry under a prospecting right shall also be computed on equal instalments and aligned to the Second Schedule.

## DEPRECIATION

This is an accounting expense which is not allowable for tax purposes. However, wear and tear allowances indicated above are allowable deductions while computing income tax.

## STOCK / INVENTORY

The cost of sales is deducted as allowable expenditure before arriving at the accounting profits. General provisions on slow moving stock and stock write-offs may be allowable in arriving at the taxable income based on certain established criteria.

## CAPITAL GAINS AND LOSSES

Capital Gains Tax (CGT) at the rate of 5% on net gains was reintroduced with effect from 1 January 2015 and is a final tax. However, gains on the transfer of securities traded on any securities exchange licensed by Capital Markets Authority are not subject to CGT. In addition, the Kenyan Income Tax Act provides some of the transactions which are exempted from CGT.

CGT is now applicable to gains realised by General Insurance Companies on transfer of property.



## DIVIDENDS

Dividends are taxed on a Withholding Tax (WHT) basis which is a final tax. Dividends are tax-exempt for resident companies controlling more than a 12.5% shareholding of another resident company.

Distribution of dividends from untaxed gains will attract dividend distribution tax at the rate of 30% effective 1 January 2019.

## INTEREST DEDUCTIONS

There is a restriction on the tax deductibility of interest expenses on any gross interest amounts paid or payable to related persons and third parties in excess of 30% of Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA). This is applicable to interest on all loans, payments that are economically equivalent to interest and expenses incurred in connection with raising the finance. It applies to all entities including those in the extractive industry except for:

(a) Banks or financial institutions licensed under the Banking Act; and

(b) Micro and Small enterprises registered under the Micro and Small Enterprises Act, 2012.

## TAX LOSSES

Tax losses can be carried forward to be offset against future taxable income for an indefinite period. The tax loss is only allowable on taxable income derived from the same specific source. These sources include income from renting or occupation of immovable property, income from withdrawals from a registered pension/provident fund by the employer, income from employment, business activities and income from agriculture, horticulture, forestry, etc. Tax Losses are not transferable from one entity to another.

## FOREIGN SOURCE INCOME

Income that is not accrued or derived from Kenya is not assessable in Kenya except:

(a) Employment income for an employee who at the time of employment was a resident person in respect of any employment by him outside or inside Kenya; and

(b) Business activities carried out across borders.

## RESIDENTIAL RENTAL INCOME TAX

Residential rental income tax at the rate of 10% is imposed on gross monthly residential rental income effective 1 January 2016. This classification targets residential property owners whose turnover is between KES 288,000 and KES 15 million annually. However, a taxpayer may opt to pay tax under the normal rates provided by the Income Tax law upon making an application to the Commissioner.

## WITHHOLDING TAX ON USE OF IMMOVABLE PROPERTY

Payments made to a resident in respect of rent, premium or similar consideration for the use or occupation of immovable property is subject to withholding tax at the rate of 10% for appointed agents only, with effect from 1 January 2017.

## TAX INCENTIVES

- Capital deductions are granted on assets based on various classification contained in the Income Tax Act. A ten-year tax holiday is available for certain designated enterprises manufacturing products for exports only (under the Export Processing Zones). At the end of the tax holiday, a reduced corporation tax rate of 25% is available. Special Economic Zones (SEZ) enjoy a reduced corporate income tax rate of 10% for the first 10 years and 15% for the next 10 years.

- A lower corporation tax of 27%, 25% and 20%, for the first 3-5 years for companies newly listed on a securities exchange, with at least 20%, 30% and 40% respectively, of the issued share capital listed. Companies which list their shares or any other security by way of introduction enjoy a lower corporation tax rate of 25% for a period of five years.
- Investment deduction (ID) at the rate of 100% where the cumulative investment value in the preceding three years outside Nairobi and Mombasa Counties is at least KES 2 billion, or where the investment value outside the Counties of Nairobi and Mombasa is at least KES 250 million, or where the capital investments are made in a Special Economic Zone (SEZ).
- Investment Deduction claim at the rate of 150% on capital expenditure supporting the Standard Gauge Railway GR operations up to 31 December 2022.
- Tax exemptions are available for organisations undertaking charitable, medical, alleviation of poverty, and religious activities subject to fulfilling the conditions set by the Income Tax Act.
- Companies engaging in local assembly of motor vehicles will enjoy a reduced corporation rate of 15% for the first five years of operations in Kenya and be subject to a further extension of five years where a company achieves a local content equivalent to 50% of the ex-factory value of the motor vehicles.
- Real estate developing companies constructing at least one hundred residential units per year are subject to corporation tax at the rate of 15% subject to approval from the Cabinet Secretary responsible for Housing.
- Reduced corporation tax rate of 15% for companies operating a plastics recycling plant for the first five years from the year of commencement of operations.
- Trusts and investee companies of Real Estate Investment Trusts (REITs) are exempt from income tax.
- Income Tax exemption for any transactions related to settlement on children from registered family trusts and exemption on income settlements from a family trust from being deemed income of the settlor.
- Sponsorship of Sports by companies is an allowable deduction upon obtaining approval from the Cabinet Secretary in charge of sports.
- Stamp Duty is normally applicable on transfer of property at the rate of 4% for property situated in a municipal area and 2% for property situated in rural areas on the value of the property.
- The government has introduced a waiver of Stamp Duty for first time home buyers under the affordable housing scheme.
- Immediate family transfers are exempt from CGT.

## C. FOREIGN TAX RELIEF

Domestic tax law provides that where foreign income is subject to income tax in Kenya the foreign tax paid will be treated as a deductible expense.

Foreign tax relief is limited only to countries which have a Double Tax Treaty with Kenya. Relief is granted by way of a credit.

## D. CORPORATE GROUPS

Generally, for tax purposes, a corporation tax rate of 30% applies to all incorporated companies irrespective of groups in Kenya. The rate is 37.5% for non-resident companies.

## E. VOLUNTARY TAX DISCLOSURE PROGRAMME (VTDP)

Voluntary Tax Disclosure Program (VTDP) is a programme that was introduced with effect from 1 January 2021 and will run for a three-year period ending 31 December 2023. It will cover tax liabilities that accrued within a period of five years prior to 1 July 2020. If the Commissioner of KRA is satisfied with the voluntary disclosure and enters into an agreement with a taxpayer for payment of the principal taxes, the accrued penalties and interest would be waived 100%, 50% and 25% for disclosures made within the first, second and third year of the VTDP programme respectively.

## F. RELATED PARTY TRANSACTIONS

Related party transactions are allowable expenses if incurred wholly and exclusively in the production of income and taxed as income if earned or accrued in Kenya as business activities.

Companies with related party transactions are required to prepare and document Transfer Pricing Documentation, as per the Kenyan Transfer Pricing Rules effective from 1 July 2006.

## G. WITHHOLDING TAX

The relevant rates are as follows:

| Description | Resident | Non-Resident |
|---|---|---|
| Artists and entertainers | – | 20% |
| Management fees | 5% | 20% |
| Management fees paid by SEZ Enterprise, Developer or Operator | 5% | 5% |
| Professional fees | 5% | 20% |
| Professional fees paid by SEZ Enterprise, Developer or Operator | 5% | 5% |
| Training fees (inclusive of incidental costs) | 5% | 20% |
| Training fees paid by SEZ Enterprise, Developer or Operator | 5% | 5% |
| Royalties | 5% | 20% |
| Royalties paid by SEZ Enterprise, Developer or Operator | 5% | 5% |
| Dividends (nil for resident shareholders with >12.5%) | 5% | 15% |
| Equipment (movable) Leasing | N/A | 15% |

| Description | Resident | Non-Resident |
|---|---|---|
| Interest (bank) | 15% | 15% |
| Interest (Housing bond-HBI) | 10% | N/A |
| Interest on two-year government bearer bonds | 15% | 15% |
| Other bearer bonds interest | 25% | 25% |
| Interest paid by SEZ Enterprise, Developer or Operator | 5% | 5% |
| Rent/Leasing – buildings (immovable)* | N/A | 30% |
| Rent - others (except aircraft) | N/A | 15% |
| Winnings from gaming and betting | 20% | 20% |
| Pensions/provident schemes (withdrawal) | 10-30% | 5% |
| Sale of property or shares in oil, mining or mineral prospecting companies | 10% | 20% |
| Insurance commissions | 10% | 20% |
| Insurance Premiums | N/A | 5% |
| Consultancy and agency (from 1 July 2003) | 5% | 20% |
| Consultancy (citizens of EAC member states) | 5% | 15% |
| Contractual (from 1 July 2003) | 3% | 20% |
| Telecommunication services/Message transmission | N/A | 5% |
| Natural Resource Income (with effect from 1 Jan. 2015) | 5% | 20% |
| Sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services) | N/A | 20% |

* Withholding tax on rent paid to resident persons is only applicable if one is appointed as an agent.

- Services rendered by a non-resident subcontractor without a PE in Kenya are subject to a final 10% withholding tax effective 1 July 2021. Previously, the applicable rate was 5.625%.
- Fees paid by a contractor or a licensee to a non-resident person with respect to management, professional and training services are subject to 10% withholding tax effective 1 July 2021. Previously, the applicable rate was 12.5%.

## H. EXCHANGE CONTROL

There are no foreign exchange controls applicable in Kenya at present, and foreign currency is freely transferable in Kenya.

The Proceeds of Crime and Anti-Money Laundering Act provides that any transaction which involves the movement of USD 10,000 or more must be supported by documentary proof of the reason of such a transfer.

## I. INTERNATIONAL TAX AGREEMENTS

There is an outright recognition of multilateral agreements and treaties entered into or on behalf of the Government of Kenya relating to international tax, compliance prevention of evasion of tax or exchange of information on tax matters. Furthermore, the Country-by-Country reports for ultimate parent entities of Multi-National Enterprises resident in Kenya is enshrined in the tax laws.

## J. PERSONAL TAX

The tax rates are as follows:

| Annual Income (KES) | Rate |
|---|---|
| On the first 288,000 | 10% |
| On the next 100,000 | 25% |
| On income above 388,000 | 30% |

Mortgage tax relief of KES 300,000 per annum is granted on interest payments for one residential premises occupied by the taxpayer and Personal Tax relief is granted at KES 28,800 per annum. In addition, there is insurance relief on contributions made to the National Hospital Insurance Fund ("NHIF") in a year of income.

## K. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| Item | Dividends | | Interest (%) | Royalties/ management and professional fees (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Non-treaty countries** | | | | |
| Companies | 15 | 15 | 5/15/25[4] | 5/20[11] |
| Individuals | 15 | -- | 5/15/25[4] | 5/20[11] |
| **Treaty countries:** | | | | |
| Canada | 25 | 15[1] | 15 | 15 |
| Denmark | 30 | 20[2] | 20[5] | 20 |
| France | 10 | 10 | 12 | 10[6] |

| Item | Dividends | | Interest (%) | Royalties/ management and professional fees (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Germany | 15 | 15 | 15[5] | 15 |
| India | 10 | 10 | 10 | 10 |
| Iran[13] | 5 | 5 | 10 | 10 |
| Korea[13] | 10 | 8[3] | 12 | 10[12] |
| Norway | 25 | 15[2] | 20[5] | 20 |
| Qatar[14] | 10 | 0/5[15] | 10 | 10 |
| Seychelles[14] | 5 | 5 | 10 | 10 |
| South Africa | 10 | 10 | 10 | 106 |
| Sweden | 25 | 15[2] | 15 | 20 |
| United Arab Emirates[13] | 5 | 5 | 10 | 10[6] |
| United Kingdom | 15 | 15 | 15[5] | 15[7] |
| Zambia | –[8] | –[8] | 15/25[9] | 20[10] |

NOTES:

1. The reduced rate applies if the recipient is a company which owns at least 10% of the voting shares of the dividend-paying company during the period of six months immediately preceding the date of payment.
2. The reduced rate applies if the recipient is a company which owns at least 25% of the voting shares of the dividend-paying company during the period of six months immediately preceding the date of payment.
3. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
4. Interest paid by a resident person to a non-resident company is subject to a 25% withholding tax rate in the case of interest from bearer instruments and to 15% in all other cases. The withholding tax applies to the gross amount and is a final tax. Interest paid by an SEZ enterprise, developer or operator to non-resident persons is subject to a reduced rate of 5%.
5. No withholding tax on interest paid by the Kenyan Central Bank or by the Government.
6. 10% for royalties and 20% for management and professional fees.
7. 15% for royalties and 12.5% for management fees.
8. No Kenya withholding tax due on dividends if subject to tax in Zambia.
9. If subject to tax in Kenya interest is tax-exempt in Zambia. Therefore, no reduction under the treaty and the domestic Kenyan withholding tax rate applies.
10. If subject to tax in Kenya royalties are tax-exempt in Zambia. Therefore, no reduction under the treaty and the domestic Kenyan withholding tax rate applies.
11. The WHT rate on royalties paid to a non-resident is at 20% and is final tax. Royalties paid by an SEZ enterprise, developer or operator to non-resident persons are subject to a reduced rate of 5%.
12. 10% for royalties and 0% for technical services.
13. Effective date: 1 January 2018.
14. Effective date: 1 January 2016.
15. The reduced 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 10% of the capital of the dividend-paying company. The 0% rate applies if the beneficial owner is the other contracting State, the central bank or any entity wholly owned directly or indirectly by the other State.

K

# KUWAIT

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Kuwait | Tareq M. Bouresli | +965 5133 3383<br>tareq@pkf.com.kw |

## BASIC FACTS

| | |
|---|---|
| Full name: | Kuwait |
| Capital: | Kuwait City |
| Main languages: | Arabic |
| Population: | 4.38 million (2022 estimate) |
| Monetary unit: | Kuwait Dinar (KD) |
| Internet domain: | .kw |
| Int. dialling code: | +965 |

## KEY TAX POINTS

- Foreign corporate bodies engaged in commercial activities in Kuwait, directly or through an agent, are taxed. The taxable presence of a foreign entity is determined by whether it carries on a trade or business in Kuwait and not on whether it has a permanent establishment or place of business in Kuwait.
- The individuals (Kuwaiti or Foreign national) and Kuwaiti companies wholly and directly owned by Kuwaiti individuals and companies incorporated in the Gulf Cooperation Council (GCC) countries that are wholly owned by GCC citizens (GCC entities) are tax exempt.
- Tax is levied on the foreign company's share of profit, irrespective of whether distributed or not, royalties and franchise, license, patent, trademark and copy right fees received by foreign company are also taxable.
- The tax authorities deem a profit margin for materials and services from outside Kuwait through the head office:
  - o Materials 15% of revenue;
  - o Design 25% of revenue; and,
  - o Consulting 30% of revenue.
- The Tax authorities deem a profit margin for materials and services from outside Kuwait through related parties:
  - o Materials 10% of revenue;
  - o Design 20% of revenue; and,
  - o Consulting 25% of revenue.
- The Tax authorities deem a profit margin for materials and services from outside Kuwait through third parties:
  - o Materials 6.5% of revenue;
  - o Design 15% of revenue; and,
  - o Consulting 20% of revenue.
- Foreign companies operating in Kuwait through an agent, through a joint venture, as a shareholder in W.L.L. or K.S.C. Companies or through Foreign Direct Investment Law should obtain a taxation card. All Individuals, Kuwaiti entities (W.L.L. or K.S.C. or Companies listed in the Kuwait stock exchange) that are not owned by foreign companies need not apply for the taxation card.
- The taxation card must be renewed every year. The taxation card is valid from January to December every year even if the company has a different year end.
- In the event of a failure to file a tax declaration by the due date, a penalty that equals 1% of the tax for each 30 days or fraction thereof during which the failure continues is imposed. In addition, in the event of a failure to pay tax by the due date, a penalty that equals 1% of the tax payment for each period of 30 days or fraction thereof from the due date to the date of settlement of tax due is imposed.

## A. TAXES PAYABLE

### CORPORATE INCOME TAX

The Tax Decree of 1955 (Amiri Decree No 3 of 1955) as amended by Law No. 2 of 2008 and the Executive Byelaw governs taxation in Kuwait. These decrees are supplemented by Administrative orders, Executive Rules and Circulars issued by the Kuwait Tax Authority and various tax treaties with a number of foreign nations. Under the above, foreign companies described in the decree as 'bodies corporate' which carry on business or trade in Kuwait are taxable. The term 'bodies corporate' refers to an association that is formed and registered under the laws of any country or state and is recognised as having a legal existence entirely separate from that of its individual members. Partnerships fall within this definition.

Foreign companies can carry on business in Kuwait either through an agent or joint venture or as a minority shareholder in a locally registered shareholding company. Tax is levied on the foreign company's share of the profit plus any amounts receivable for interest, royalties, commissions, technical services, management fees etc. Beneficial interests held by such entities in a Kuwaiti company through nominee arrangement also are taxable. Income Tax is not payable by Companies wholly and directly owned by GCC citizens (GCC entities) according to Ministerial decision no 3 of 1989.

Upon commencement of business, foreign companies are required to register themselves with the Tax Department within 30 days and apply for a Tax Card, which needs to be renewed every year. A taxpayer may follow one calendar year comprising consecutive 12 months as the first accounting period. For the first and last accounting periods, it is possible to obtain approval for a period shorter or longer than 12 months up to a maximum period of 18 months. A tax return in the national currency Kuwaiti Dinar and in Arabic, is to be submitted to the Tax Department within 105 days from the fiscal year end, in a specified format, accompanied by audited financial statements and other specified documents. The Tax Department requires the Tax Declaration and the supporting statements to be certified by an accountant in practice in Kuwait who is also registered with the Ministry of Commerce and Industry and accredited by the Ministry of Finance.

If a foreign company has more than one activity in a similar line of business in Kuwait, either directly or indirectly through subsidiary companies, income from all activities is to be aggregated for tax purposes. Business losses cannot be carried forward for more than 3 years. The flat tax rate is 15% on taxable income. It is possible to pay the tax due in four equal instalments, if not paid as one deposit along with the tax return.

Field inspections are carried out by the Tax Department to verify the tax declaration on a yearly basis, without exception. Following the tax inspection, a tax assessment order is issued. If this order is not acceptable, the tax payer has the option to file an objection. The taxpayer has the option to approach the appeals committee if the decision of the Tax Department is not to be acceptable.

### ZAKAT

According to Law no 46 of 2006, Zakat is payable by both KSC and KSCC entities at the rate of 1% of the net profit of the company, arrived at after reducing the share of profit, representing non-GCC foreign corporate ownership. GCC entities are treated equally with Kuwaiti entities and accordingly GCC entities are required to pay Zakat in the same manner as Kuwaiti entities.

Kuwait entities that the Kuwait / GCC government partially owns are liable to pay Zakat on the entire income, including the share of profit attributable to the Kuwait government shareholding. Entities that are wholly and directly owned by Kuwait / GCC government are not subject to Zakat and exempted. All companies subject to Zakat are required to submit their return by 15th of the fourth month from the end of the fiscal year.

## NATIONAL LABOUR SUPPORT TAX (NLST)

According to Law no 19 of 2000, all public Kuwaiti shareholding companies listed on the Kuwait Stock Exchange are liable to pay 2.5% of their annual net profit as NLST, excluding the share of profit attributable to a foreign corporate body and after certain allowable deductions.

## CONTRIBUTIONS TO KUWAIT FOUNDATION FOR ADVANCEMENT OF SCIENCES (KFAS)

KSC and KSCC are required to pay 1% of their profits to the KFAS for supporting scientific activities.

## VALUE ADDED TAX (VAT)

There is currently no VAT or other sales tax in Kuwait. However, as a GCC member state, Kuwait is working on the introduction of VAT following the ratification of the GCC VAT framework agreement on 20 April 2017. The Council of Ministers approved a draft law implementing VAT on 7 August 2017, the text of which has not yet been published as of yet. The implementation of VAT was expected to take place in 2021, however, it is currently postponed without any timeline.

## CUSTOMS DUTIES

Imported goods to the country are subject to customs duties. As per the GCC Customs Union, entered into between GCC member states, the unified regional customs tariff for all taxable foreign imports is 5%.

## B. TAX RETENTIONS

Article 37 of the By-laws and executive rules Nos. 5 and 6 of 2013 require that every business entity operating in Kuwait must comply with the following:

1. Notify the names of its contractors and sub-contractors to the Tax Department and also submit copies of contracts with them;
2. Retain 5% from each payment due to contractors and sub-contractors until they provide a tax clearance certificate issued by the Tax Department;
3. Tax law provides that contract owners may be held responsible for paying the tax and penalty where the foreign entity is delinquent in complying its Kuwait tax obligation;
4. TCCs are easier to obtain for Kuwait/ GCC entities and blanket “to whom it may concern” format. However, recently GCC entities are being issued specific NOLs rather than blanket TCCs;
5. Tax retention applicable to Mixed Kuwaiti /GCC companies due to foreign shareholders;
6. Regulations state that where taxpayers have not complied with tax retention regulations, the entire related costs may be disallowed. Recent cases have shown a very aggressive attitude of the tax authorities in this respect where KTA has disallowed the full subcontract for non-compliance;
7. Tax authority looking at compliance on year to year basis;
8. Regulations are worded very broadly. No specifics on which types of contracts fall under the retention regulations/mainly service contract. Also, but not limited to the following types of arrangements:
   a. Royalties / licences/management fee arrangements
   b. Equipment leasing/rental arrangements
   c. Supply agreement which also includes provision of services
9. Pure supply is exempt. If related services elements absent;
10. The Foreign Vendor may obtain a TCC in advance, whereby the 5% tax retention will not be made while making payments to such foreign vendors;
11. Advance TCC can only be obtained by vendors from countries that have a DTT with Kuwait;
12. It would not be possible to obtain an advance TCC for vendors even for pure offshore services (say logistic services until the port of entry in Kuwait etc.), if they are coming from countries without a DTT.
13. Article 39 of the Bylaws empowers the Ministry of Finance to demand payment of the 5% retained amount from the entities holding the amounts, if the concerned contractors or subcontractors fail to settle their taxes due in Kuwait. It also provides that if business entities have not retained the 5%, they are liable for all of the taxes and penalties due by the contractors and subcontractors.

## C. CONTRACT AND SUB-CONTRACT

**Supply and installation contracts.** In supply and installation contracts, a taxpayer is required to account to the tax authorities for the full amount received under the contract, including the offshore supply element, which is the part of the contract (cost, insurance and freight to the applicable port) pertaining to the supply of goods.

**Contractors’ revenue recognition.** Tax is assessed on progress billings (excluding advances) for work performed during an accounting period, less the cost of work incurred. Previously, the authorities did not accept the completed contract or percentage-of-completion methods of accounting. However, the Executive Rules of 2013 do not specifically prohibit the percentage-of-completion method in determining the revenue to be offset against the cost recognised.

**Subcontractors’ costs.** The Kuwait tax authorities are normally stringent with respect to the allowance of subcontractors’ costs, particularly subcontractors’ costs incurred outside Kuwait. Subcontractors’ costs are normally allowed if the taxpayer provides the related supporting documentation (contract, invoices, settlement evidence and other documents), complies with the regulations for the 5% retention on the payments made to the subcontractors and the submission of the contracts to the DIT (see Retention on payments to subcontractors) and fulfils certain other conditions. The tax authorities have also taken the view that they no longer accept losses from work that is subcontracted to other entities.

**Work in progress.** Costs incurred but not billed by an entity at the end of the fiscal year may be carried forward to the subsequent year as work in progress. Alternatively, revenue relating to the costs incurred but not billed may be estimated on a reasonable basis and reported for tax purposes if the estimated revenue is not less than the cost incurred.

### D. TAX INCENTIVES

a) Leasing and Investment Companies Law No. 12 of 1998 allows the formation of investment and leasing companies having their principal place of business in Kuwait, with Kuwaiti or foreign shareholders. The law grants a five-year tax holiday to non-Kuwaiti founders and shareholders of such companies, beginning on the date of establishment of the companies.

b) The Kuwait government issued a Foreign Direct Investment law (Law No. 116 of 2013) regarding the promotion of direct investment in Kuwait. This law offers several incentives to foreign investors, of which the major ones are;

   1. Ability to own or increase ownership in a Kuwaiti company to 100%;
   2. Possibility to operate through a 100% owned foreign branch or representative office;
   3. Income tax and customs duties exemptions.

c) The Law created a new authority, the Kuwait Direct Investment Promotion Authority (KDIPA) in lieu of the Kuwait Foreign Investment Bureau (KFIB).

d) Businesses set up in the Kuwait free trade zone for carrying on specified operations are exempt from taxes on operations conducted in the zone and foreign entities can own 100% of such businesses.

e) Kuwait has begun to use the build, operate and transfer (BOT) method in respect of some large infrastructure projects. Tax and tariff concessions may be built into a BOT contract.

As per circular No 48 of 2013, issued by the Tax Department regarding treatment of exempted companies, the exempted companies shall, however, comply with the provisions of submission of tax declaration, inspection and assessment procedures like other companies in order to be eligible for exemption.

### E. TAX DEVELOPMENTS

New requirements for the submission of the tax return and compliance process were introduced through Executive Rules and Circulars, which increases the disclosures, analysis and information to be submitted along with the tax declaration. Furthermore, taxpayers are to submit a report on an actual basis applying the same adjustments as per the latest assessment order, within 3 months following the tax filing.

The Ministry of Finance is currently studying the implementation of Business Profits Tax and VAT legislation in Kuwait, anticipated to be in line with the Master framework agreement signed and agreed by all GCC member states.



### F. PERSONAL TAX

There is no personal income tax or wealth tax in Kuwait.

### G. TREATY AND NON-TREATY WITHHOLDING RATES

Kuwait has entered into double tax treaties with a number of countries. Treaties with several other countries are at various stages of negotiation or ratification.

Disputes about the interpretation of various clauses of tax treaties between taxpayers and the DIT are not uncommon. Disputes with the DIT regarding tax treaties normally arise with respect to the following issues:

- Existence of a permanent establishment;
- Income attributable to a permanent establishment;
- Tax deductibility of costs incurred outside Kuwait.

Kuwait has also entered into treaties with serval countries relating solely to international air and /or sea transport. Kuwait is also a signatory to the Arab Tax Treaty and the GCC Joint Agreement, both of which provide for the avoidance of double taxation in most areas. The other signatories to the Arab Tax Treaty are Egypt, Iraq, Jordan, Sudan, Syria and Yemen.

There are no withholding taxes on payments to non-resident companies (see next paragraph, however). In addition, under contracts between resident and non-resident entities, 5% of the contract value must be withheld by the resident entity until the non-resident entity presents a non-objection letter issued by the tax authority.

Article 46 of the Executive Regulations provides that investment companies and banks managing portfolios and funds or acting as custodian of shares are required to deduct the tax due on dividend payments made to foreign entities and to remit it to the tax authorities within 30 days of the date of payment. However, dividends related to profits realised in periods starting on or after 10 November 2015 and paid in respect of listed shares are exempt from tax. Also, dividends paid by entities other than those mentioned above are not subject to withholding tax.

There is no withholding tax on interest and royalties paid to non-resident companies.

## LAOS

### CORRESPONDENT FIRM

| City | Name | Contact Information |
|---|---|---|
| Vientiane | Hathsady Douangboupha | +856 20 22 217 400<br>info@grandaccountinglao.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Lao People's Democratic Republic |
| Capital: | Vientiane |
| Main languages: | Lao, Hmong, Khmu, French |
| Population: | 7.48 million (2022 estimate) |
| Monetary unit: | Lao kip (LAK) |
| Internet domain: | .la |
| Int. dialling code: | +856 |

## KEY TAX POINTS

- Domestic and non-resident companies alike are subject to a 20% profit tax (effective as of 1 January 2020).
- Dividends, interest and income from security fees paid to non-resident companies are subject to a 10% withholding tax.
- Income from patents, copyright, trademarks or other intellectual property is subject to a 5% final withholding tax.
- The standard VAT rate is 7% as from 1 January 2022.

## A. TAXES PAYABLE

## CORPORATE TAX

Domestic and non-resident companies alike are subject to a 20% profit tax (effective as of 1 January 2020).

**Lump-sum tax**

Applies to the income of individuals and small businesses not registered for VAT purposes (having an annual business income of less than LAK 400 million (approximately USD 44,000).

## CAPITAL GAINS TAX

There is no law provision of the taxation of capital gains derived from the transfer of tangible assets. However, income arising from sales of securities is subject to a 10% withholding tax.

## BRANCH PROFITS TAX

The tax legislation does not provide for specific rules on the taxation of branches of non-resident companies. They are therefore subject to the same taxation rules as domestic companies.

There is no branch remittance tax in Laos.

## VALUE ADDED TAX (VAT)

The standard VAT rate is 7% as from 1 January 2022. A zero rate applies to the export of goods and the exporter has the right to claim the refund of input tax.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of companies subject to profit tax is computed depending on whether the taxpayer uses the ordinary, advanced, or basic accounting system. A taxpayer using the ordinary or advanced accounting system may determine taxable income applying either of the following computations:

- The difference between the value of assets at net book value at the end of the accounting year minus liabilities and registered capital, reserves, provisions, gain and loss from asset revaluation and retained earnings, as per the balance sheet (method known as the "profit method");
- The difference between gross income and authorised deductible expenses.

A taxpayer using the basic accounting system determines taxable income by deducting total authorised expenses from gross income or alternatively declare gross annual profit if the difference between expenses and gross income cannot be computed.

## DEPRECIATION

Depreciation may be calculated using either the straight-line, double declining balance or unit production method.

| Depreciable assets | Rate (%) |
|---|---|
| Computer software | 20% |
| Structures for industrial purposes (20 years and less) | 5% |
| Structures for industrial purposes (21 years and more) | 2% |
| Transport vehicles (both on land and sea) | 20% |
| Office equipment and supplies | 20% |
| Ships, cruises, ferries and other similar vehicles | 10% |

## LOSSES

Losses can be carried forward for up to 3 years by taxpayers maintaining accounting records, subject to the condition that the losses are certified by the auditor and prior approval of the tax authorities is obtained.

Losses cannot be carried back.

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## C. FOREIGN TAX RELIEF

There are no foreign tax credits available under domestic tax law.

## D. CORPORATE GROUPS

There is no group taxation regime in Laos.

## E. ANTI-AVOIDANCE RULES

**Transfer pricing**

There are no specific TP regulations or guidelines.

**Controlled foreign companies (CFC)**

There are no CFC regulations.

**Thin capitalisation**

There are no specific thin cap rules.

## F. WITHHOLDING TAX

- Dividends, interest and income from security fees paid to non-resident companies are subject to a 10% withholding tax.
- Income from patents, copyright, trademarks or other intellectual property is subject to a 5% final withholding tax.

## G. PERSONAL TAX

Income tax rates applicable to the monthly employment income as of 2020 are as follows:

Employment income tax rates

| Taxable income (LAK) | Marginal rate on excess (%) |
|---|---|
| Up to 1,300,000 | 0 |
| 1,300,001 – 5,000,000 | 5 |
| 5,000,001 – 15,000,000 | 10 |
| 15,000,001 – 25,000,000 | 15 |
| 25,000,001 – 65,000,000 | 20 |
| Over 65,000,000 | 25 |

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## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 10 | 10 | 10 | 5 |
| Individuals | 10 | -- | 10 | 5 |
| **Treaty countries:** | | | | |
| Belarus | 10 | 5[1] | 8 | 5 |
| Brunei | 10 | 5[2] | 10 | 0/10[5] |
| China | 5 | 5 | 5 | 5 |
| Indonesia | 15 | 10[2] | 10 | 10 |
| Korea (South) | 10 | 5[2] | 10 | 5 |
| Luxembourg | 15 | 5[2] | 0/10[3] | 5 |
| Malaysia | 10 | 5[2] | 10 | 10 |
| Myanmar | 5 | 5 | 10 | 10 |
| Singapore | 8 | 5[2] | 5 | 5 |
| Thailand | 15 | 15 | 0/10/15[4] | 15 |
| Vietnam | 10 | 10 | 10 | 10 |

Notes:

1. The reduced rate applies if the beneficiary owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company.
2. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
3. The 0% rate applies if the interest is paid to (i) the Luxembourg State or Central Bank, (ii) to a Luxembourg financial institution or (iii) in respect of a loan, debt-claim or credit that is owned to, or made, provided, guaranteed or insured by the Luxembourg State, local authority or export financing agency thereof.
4. The 10% rate applies if the interest is received by a financial institution (including an insurance company). The 0% rate applies if the interest is paid to (i) the Central Bank of Thailand (ii) the Export-Import Bank of Thailand (iii) the local authorities and (iv) such institution, the capital of which is wholly owned by the Thai government or any local authorities.
5. The 0% rate applies if the royalties are paid to the Brunei government.

# LATVIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Riga | Maruta Zorgenfreija | +371 67 333 647<br>maruta.zorgenfreija@pkf-latvia.lv |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Latvia |
| Capital: | Riga |
| Main languages: | Latvian, Russian |
| Population: | 1.85 million (2022 estimate) |
| Monetary unit: | 1 Euro (EUR) = 100 cents |
| Internet domain: | .lv |
| Int. dialling code: | +371 |

## KEY TAX POINTS

- In accordance with the Corporate Income Tax Law corporate income tax is paid at the moment of the distribution of profits (including at the moment of the deemed profit distribution). Undistributed corporate profits are tax exempt. Corporate income tax (CIT) rate is 20% on the gross distributed amount or 20/80 on the net income, i.e. the taxable base subject to CIT has to be divided by a 0.8 coefficient, thus giving an effective rate of 25%. The described tax regime applies to Latvian resident companies as well as to permanent establishments of non-resident companies that are registered in Latvia.
- The general VAT rate is 21%. A reduced rate of 12% and 5% is applied to certain products and services. Intra-community supply of goods (to a customer registered as a VAT payer in another Member State) is zero-rated.
- Non-arm's length transactions with related parties are treated as a deemed profit distribution.
- Withholding tax is levied at standard rates on certain payments made by Latvian residents to non-residents. If a double tax treaty exists between Latvia and the relevant country, reduced rates or exemptions may apply.
- Latvia has a progressive personal income tax system. The progressive rate is based on the level of annual income.



## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

### COMPANY TAX

A company is resident in Latvia if it is registered, or required to be registered, in Latvia. Resident companies are taxed on profits distributed from their worldwide income. Permanent establishments of non-residents are taxed on profits distributed from income attributable to the branch.

Companies may choose the accounting and taxation period which does not necessarily have to be the calendar year and the length of the taxation (accounting) period is 12 months. Only the first accounting period can be longer than 12 months (subject to a maximum of 18 months). Taxation of corporate profits is postponed until the profits are distributed.

Shipping companies may alternatively apply tonnage tax.

### CAPITAL GAINS TAX

Undistributed profits including capital gains are tax exempt.

### BRANCH PROFITS TAX

Permanent establishments are treated as domestic companies, i.e. taxable income arises at the moment when the profit of the permanent establishment is transferred to the main company.

### VALUE ADDED TAX (VAT)

The general VAT rate is 21%. A reduced 12% rate is applied to certain products and services such as medical goods (according to the list approved by the Cabinet of Ministers), baby food, inland public transportation services, hotel services (accommodation) and supplies of heating to individuals. A reduced 5% rate is charged on supplies of books, mass media (issued in the form of a printed or electronic publication), fresh fruit and vegetables. A 0% VAT rate is applied to COVID-19 vaccines registered in accordance with the regulations governing the pharmaceutical industry, medical devices designed for *in vitro* diagnostics of COVID-19 which comply with the requirements of the European Union, as well as related services (the rate will be applied until 31 December 2022).

Exports and related services are zero-rated. Several types of supplies are VAT exempt. These include the sale of land (except development land with building permission issued after 31 December 2009) and used real estate, supply of medical services, rental of apartments to individuals, and most banking and insurance services. Intra-community supply of goods (to a customer registered as a VAT payer in another Member State) is zero-rated.

A transaction that involves a Latvian taxable person acquiring goods in Latvia from a taxable person registered in another Member State will qualify as an intra-community acquisition within the meaning of the VAT Act. When the Latvian taxable person receives the goods from a supplier, this person will charge VAT on the acquisition and will recover this amount as input tax in the same month (reverse charge accounting).

The VAT registration threshold is EUR 40,000.

There is a 50% restriction on deducting input tax on light passenger cars that are purchased, rented or imported and on their running costs including fuel and repairs (except where the car is used for passenger and carrying goods, taxi services, lease services, and some other specialised services).

VAT is not deductible on representative vehicles (cost exceeding EUR 50,000).

The following types of supplies attract reverse charge accounting if both parties to the transactions are VAT payers: timber, scrap metal, and construction service, electronic goods (smartphones, laptops, tablets, and integrated circuit devices, including microprocessors and central processing units), game consoles, cereal and industrial crops, supplies of unwrought precious metals, precious metal alloys and metals clad with precious metal (including unfinished products), as well as waste precious metal and scrap precious metal.

VAT law provisions with respect to call-off stock sets out the procedure and conditions under which a supplier (a registered taxpayer in another EU member state) is not required to register for Latvian VAT purposes if it supplies call-off stock to a Latvian registered taxpayer.

## FRINGE BENEFITS TAX

Most fringe benefits granted to employees are subject to payroll taxes. A few benefits are tax exempt. These include health and accident insurance premiums paid on agreements concluded by employers on behalf of their employees and contributions to private pension funds or life insurance premiums on the employee's behalf. Health and life insurance premiums and contributions to private pension plans that do not exceed 10% of gross remuneration of an employee in the taxation year are not subject to payroll taxes. Certain conditions need to be met and health and accident insurance premiums may not exceed EUR 426.86.

## LOCAL TAXES

Local authorities are permitted to levy stamp duties. They may be levied on transactions such as obtaining a building permit, placements of advertisements at public locations, organising public trading events, etc.

## REAL ESTATE TAX

Real estate tax is paid by Latvian and foreign companies and individuals that have title (registered with the Land Registry) or legal possession of real estate in Latvia, i.e. land, buildings and engineering structures - roads, bridges, pipelines, communication lines, power station structures, fencing, etc. The standard rate of real estate tax applicable to land, buildings (except residential buildings) and constructions is 1.5% of the cadastral value. The local authorities have the right to set the rate of real estate tax within a range of 0.2 - 3%. If the local authority fails to announce a different rate by 1 October for the subsequent year, the standard rate of 1.5% will apply for that subsequent year.

The local authorities, when issuing binding regulations, have the right to apply a 3% tax rate for buildings that exceed certain construction works' duration, starting from the next month after the construction term expires until the month when the building acceptance document is signed. Tax is calculated on the cadastral value of land, buildings and engineering structures. Some classes of real estate are exempt from tax such as state or municipal real estate used for performing certain functions. A progressive rate has been set for residential houses and any parts of non-residential buildings that are functionally used for living and not used in a trade or business:

- 0.2% of cadastral values up to EUR 56,915;
- 0.4% of cadastral values exceeding EUR 56,915, but not exceeding EUR 106,715;
- 0.6% of cadastral values exceeding EUR 106,715.

A double rate of 3% (standard rate 1.5% plus additional rate 1.5%) applies to uncultivated land capable of agricultural use. If such property, in addition, is not maintained in accordance with regulatory requirements, the local authority can set a rate of up to 4.5% consisting of a maximum allowable rate of 3% plus an additional rate of 1.5% for uncultivated land.

## OTHER TAXES

Stamp Duty is payable on registration of title to real estate with the Land Books at 2% of the purchase price (or cadastral value if higher) if the acquirer of the property is a legal entity, and 1.5% if the acquirer is a natural person. If the property is invested in share capital of a company (investment in kind), state duty is 1% of the investment amount. As of 1 January 2022, stamp duty for registering a title to real estate with the Land Books is capped at EUR 50,000.

## B. DETERMINATION OF TAX BASE

From 1 January 2018 corporate income tax is paid on the following:

Profit distribution:

- declared (calculated) dividends, including interim dividends:
- payments treated as dividends (this is applicable to certain types of entities such as co-operative societies, partnerships, permanent establishments);
- deemed dividends (if share capital has been increased by capitalizing retained earnings, and later share capital is reduced and paid to the shareholders), including any surplus assets on winding-up.

Deemed profit distribution:

- non-business expenses;
- doubtful debts (subject to special rules);
- non-arm's length transactions with related parties;
- interest payments in excess of allowed interest (on loans other than loans from financial institutions);
- loans to related parties (with several exemptions);
- liquidation quota.

Non-business expenses include excess costs incurred on representation and staff sustainability events. Allowed expenses of this category (in aggregate for the financial year) are capped at 5% of the total gross employment pay on which national social insurance contributions have been paid in the preceding financial year. The respective expenses have to be recorded separately from other expenses.

Excess interest payments arise where the associated liabilities (to lenders other than credit institutions) exceed four times the shareholders' equity at the beginning of the tax year, less any revaluation reserve and any other reserves not made as a result of profit. (Covid-19 related exemption from this requirement applies in 2021-2022).

Providing loans to a related party is considered a profit distribution, except for the parent's loans to a subsidiary; short-term loans for up to 12 months; a loan not exceeding a loan received from an unrelated party or not exceeding certain level of registered share capital; or where the lender has no retained earnings at the beginning of the year.

The CIT rate is 20% of the taxable base. Before applying the rate to the taxable base for the tax period, the taxable base shall be divided by a coefficient of 0.8, thus giving an effective tax rate of 25%.

In accordance with the transitional provisions, companies are entitled to distribute profit shown on the balance sheet as at 31 December 2017 to corporate shareholders without the application of new CIT for an unlimited period of time. However, if the shareholders are individuals, personal income tax at 20% rate applies at the moment of distribution of this profit.

### LOSSES

Tax losses accumulated under the previous CIT regime (until 31 December 2017) can be used to reduce tax payable on dividends. The tax credit is capped at 50% of the amount of tax calculated on the dividends; the period in which these tax losses can be used is no longer than 5 years (until 31 December 2022).

## E. RELATED PARTY TRANSACTIONS

Non-arm's-length transactions with related parties would be treated as deemed profit distribution.

## F. WITHHOLDING TAX

Withholding tax is levied on the following payments made by Latvian residents (except individuals) to non-residents.

| | |
|---|---|
| Management and consulting services | 20% |
| Sale of real estate located in Latvia | 3% of sale proceeds (also includes income from sale of shares of companies where real estate comprises more than 50% of company's total assets) |
| Lease of real estate located in Latvia | 5% of rental fees |

Note: All payments to companies registered in tax havens, except payments for purchases of goods and purchases of public securities registered in EU or EEA countries, attract 20%, unless specifically agreed with the tax authorities. However, the mentioned purchases shall be performed at market prices to apply for an exemption.

The rates given above are standard rates. If a double tax treaty exists between Latvia and the relevant country, reduced rates or exemptions may apply (for the most part this applies to management and consulting fees). A Latvian company paying the income to a non-resident company can apply these exemptions/lower tax rates only if the recipient of income has submitted the valid residence certificate stating that the recipient is a resident in that country (certificate to be approved by tax authorities) before the actual payment is made. A residence certificate should be approved by the local State Revenue Service office and is valid tor five fiscal years from the date at which exemption was claimed.

If withholding tax had to be applied to the above-mentioned types of payments to non-residents but the resident entity has failed to do so, the tax from income paid to non-resident has to be paid by the resident entity. Before the applicable rate is applied the taxable base shall be divided by 0.8.

## G. EXCHANGE CONTROL

There is no exchange control in Latvia.

## H. PERSONAL TAX

Income of individuals is taxed at progressive income tax rates as follows:

- 20% - for annual income up to EUR 20,004;
- 23% - for part of annual income which exceeds EUR 20,004 but does not exceed EUR 78,100 (in 2022);
- 31% - for part of annual income, which exceeds EUR 78,100.

Tax in respect of salaries, bonuses and most other types of payments made by Latvian companies is withheld at source and remitted to the tax authorities. If the recipient of income is registered as a sole trader, he/she is responsible for calculating and paying income tax.

Capital gains are taxed at a rate of 20%. A capital gain is the difference between the sales price and the acquisition cost of a capital asset, or the difference between any surplus assets received on a company's liquidation and the original investment, or the down payment on a sale that is not completed. Capital assets include shares, investments in partnerships, and other financial instruments, investment fund certificates, debt instruments, real estate and intellectual property.

Non-resident individuals shall pay tax on income (capital gain) from selling real estate and other capital assets, except publicly traded financial instruments. However, a disposal of shares in a company is deemed to be a disposal of real estate (and thus subject to 20% tax) when real estate comprises more than 50% of the company's total assets either during the year of disposal or in the previous year. The proportion of real estate is calculated at the beginning of the year.

Benefits from the private use of company vehicles are not subject to income tax provided the merchant pays light corporate vehicle tax on cars owned or held. The taxable amount depends on the engine capacity only. If light corporate vehicle tax is paid, car related expenses (fuel, maintenance, rent) can be treated as a deductible expense also for corporate income tax purposes.

## SOCIAL INSURANCE CONTRIBUTIONS

Social insurance contributions are paid by both the employer and employee. The total general rate for resident employees is 34.09% of gross employment income (including salary, bonuses, benefits in kind etc.), 10.5% of which is paid by the individual (withheld from gross salary) and 23.59% by the employer. Special rules apply to Latvian residents employed by foreign companies, foreign nationals employed by foreign companies (performing work in Latvia) and self-employed individuals.

In 2022 the income subject to social insurance contributions is capped at EUR 78,100. Solidarity tax is charged on income that exceeds the cap (in monthly calculations - at the same rate as social insurance contributions). The rate of solidarity tax is 25%. Solidarity tax payments go towards healthcare, social insurance, and personal income tax payments to cover progressive income tax rate for salaries exceeding EUR 78,100. The difference between the social insurance contributions actually paid (at 34.09%) and the calculated SN of 25% is accounted for as an overpaid solidarity tax which is refunded to the employer by 1st September of the after-tax year.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Payments of dividends, interest and royalties to non-resident companies are in principle not subject to withholding tax. However, dividends, interest and royalties paid to companies located in low-tax jurisdictions are subject to a final withholding tax of 20%.

Management and consulting fees generally attract 20% withholding tax while a zero rate is applied if a DTT exemption applies (residence certificate submitted to the Latvian company paying income to non-resident).

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 0/20 | 0/20 | 0/20 | 0/20 |
| Individuals | 0/20 | -- | 0/20 | 5/23 |
| **Treaty countries:** | | | | |
| Albania | 10 | 5 | 5/10 | 5 |
| Armenia | 15 | 5 | 10 | 10 |
| Austria | 10 | 5 | 10 | 5/10 |
| Azerbaijan | 10 | 5 | 10 | 5/10 |
| Belarus | 10 | 10 | 10 | 10 |
| Belgium | 15 | 5 | 10 | 0/5/10 |
| Bulgaria | 10 | 5 | 5 | 5/7 |
| Canada | 15 | 5 | 10 | 0/10 |
| China | 10 | 5 | 10 | 10 |
| Croatia | 10 | 5 | 10 | 10 |
| Cyprus | 10 | 0 | 0/10 | 0/5 |
| Czech Republic | 15 | 5 | 10 | 10 |
| Denmark | 15 | 5 | 10 | 0/5/10 |
| Estonia | 15 | 5 | 10 | 5/10 |
| Finland | 15 | 5 | 10 | 0/5/10 |
| France | 15 | 5 | 5/10 | 0/5/10 |
| Georgia | 10 | 5 | 10 | 10 |
| Germany | 15 | 5 | 10 | 5/10 |
| Greece | 10 | 5 | 10 | 5/10 |
| Hong Kong | 0/10 | 0/10 | 0/10 | 0/3 |
| Hungary | 10 | 5 | 10 | 0/5/10 |
| Iceland | 15 | 5 | 10 | 0/5/10 |
| India | 10 | 10 | 10 | 10 |
| Ireland | 15 | 5 | 10 | 0/5/10 |
| Israel | 15 | 5 | 5/10 | 5 |
| Italy | 15 | 5 | 10 | 0/5/10 |
| Japan | 0/10 | 0 | 0/10 | 0 |
| Kazakhstan | 15 | 5 | 10 | 10 |
| Korea (Rep.) | 10 | 5 | 10 | 5/10 |
| Kosovo | 10 | 0 | 0/10 | 0/5 |
| Kuwait | 5 | 0 | 5 | 5 |
| Kyrgyzstan | 10 | 5 | 5/10 | 5 |
| Lithuania | 15 | 0 | 0 | 0 |
| Luxembourg | 10 | 5 | 10 | 0/5/10 |
| Malta | 10 | 5 | 10 | 10 |
| Mexico | 10 | 5 | 5/10 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Moldova | 10 | 10 | 10 | 10 |
| Montenegro | 10 | 5 | 10 | 5/10 |
| Morocco | 10 | 6 | 10 | 10 |
| Netherlands | 15 | 5 | 10 | 0/5/10 |
| North Macedonia | 10 | 5 | 5 | 5/10 |
| Norway | 15 | 5 | 10 | 0/5/10 |
| Poland | 15 | 5 | 10 | 10 |
| Portugal | 10 | 10 | 10 | 10 |
| Qatar | 5 | 0/5 | 0/5 | 5 |
| Romania | 10 | 10 | 10 | 10 |
| Russia | 10 | 5 | 5/10 | 5 |
| Serbia | 10 | 5 | 10 | 5/10 |
| Singapore | 0/10 | 0/10 | 0/10 | 5 |
| Slovak Republic | 10 | 10 | 10 | 10 |
| Slovenia | 15 | 5 | 10 | 10 |
| Spain | 10 | 5 | 0/5/10 | 0/5/10 |
| Sweden | 15 | 5 | 10 | 0/5/10 |
| Switzerland | 15 | 0 | 0/10 | 0/5 |
| Tajikistan | 10 | 0/5 | 0/7 | 5/10 |
| Turkey | 10 | 10 | 10 | 5/10 |
| Turkmenistan | 10 | 5 | 10 | 10 |
| Ukraine | 15 | 5 | 10 | 10 |
| United Arab Emirates | 5 | 5 | 2.5 | 5 |
| United Kingdom | 15 | 5 | 10 | 0/5/10 |
| United States | 15 | 5 | 10 | 5/10 |
| Uzbekistan | 10 | 10 | 10 | 10 |
| Vietnam | 10 | 5 | 10 | 7.5/10 |

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# LEBANON

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Beirut | Elie Chartouni | +961 1493220 (ext. 101)<br>eliechartouni@pkflb.com |
| Beirut | Georges Chartouni | +961 1493220 (ext. 100)<br>georgeschartouni@pkflb.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Lebanese Republic |
| Capital: | Beirut |
| Main languages: | Arabic |
| Population: | 6.77 million (2022 estimate) |
| Monetary unit: | Lebanese Pound (the LBP is pegged to the USD at an approximate rate of LBP 1,500 per USD 1 since 1999) |
| Internet domain: | .lb |
| Int. dialling code: | +961 |

## KEY TAX POINTS

- Income tax in Lebanon is levied on the territoriality principle, as in general all income derived from Lebanon is subject to tax.
- Generally, companies (as well as branches of foreign companies) are subject to a flat 17% income tax on profits.
- Public work contractors, oil refineries, insurance companies and transport companies, if subject to taxation, are taxed on “lump-sum profits”.

- Holding companies are exempt from income tax on profits and are subject to only an annual lump-sum tax on capital and reserves. Such tax is not to exceed LBP 5 Million per annum.
- Offshore companies are exempt from income tax on profits and are subject to only an annual lump-sum tax of LBP 1 Million.

## A. TAXES PAYABLE

### COMPANY TAX

The tax year runs from 1st January to 31st December. However, a company may use a financial year which is different from the calendar year with the authorization of the tax administration. Companies are requested to submit their tax returns for the year ending 31st December by 31st May of the following year, together with payment of tax due. Companies which were authorized by the tax administration to use a financial year which is different from the calendar year must submit their tax return within a period of five months from the close of their financial year.

### CAPITAL GAINS TAX

Capital gains tax on the disposal of fixed assets is normally computed at a rate of 15%.

### BRANCH PROFITS TAX

Branches of foreign companies are subject to the same income tax rate of 17% as Lebanese companies in respect of their profits realised in Lebanon. Profits earned by branches of foreign companies are deemed to be distributed dividends and are subject to 10% distribution tax on the amount of the profit subsequent to the deduction of income tax.

### VALUE ADDED TAX (VAT)

Subject to certain exceptions, VAT applies to each taxable natural person or legal entity that provides goods or services in the course of an independent economic activity in Lebanon and whose turnover exceeds LBP 100 million during four consecutive quarters and to import and export of goods. A taxpayer may choose to register for VAT even if his turnover is below this threshold. The standard VAT rate is 11%. The VAT law requires any person, who does not have a residence or an elected domicile in Lebanon to appoint a representative with the approval of the tax authority prior to undertaking any delivery of goods or provision of services within the Lebanese territory, regardless of its turnover.

### CUSTOMS DUTIES

Custom Duty is a tax imposed on imports and exports of goods and it is a modern, simple and efficient way to collect tax. Lebanon customs rates are imposed and modified according to decisions from the Lebanese customs authorities. In Lebanon, customs rates are either calculated as a percentage or paid as a lump sum per unit of imported goods.



### STAMP DUTY

Stamp duties are payable at the rate of 0.4% on all deeds and contracts (written or implied) that mention specific payments or other sums of money. Contracts and deeds signed by an offshore company in Lebanon and related to its activities abroad are exempt from the stamp duty.

### BUILT PROPERTY TAX (BPT)

The BPT is an annual progressive tax on built property that ranges between 4% and 14%.

### TAXATION OF PUBLIC CONTRACTORS

All contractors awarded public works settle tax based on the total amounts collected from the government. The rate of deemed profit approved by the tax authorities is 15% on amounts collected.

### SOCIAL SECURITY - NSSF

All employees are required to be registered with the National Social Security Fund. Contributions are made by both the employer and the employee to this Fund on the basis of income. Contributions are divided into three sections: End of Service Indemnity, Family Allowances and sickness and maternity. Although in respect of foreign nationals the company makes family and sickness and maternity contributions, the employees do not benefit from them, except in the case of the following nationalities: British, French, Belgian and Italian.

Social security contributions for local personnel are payable as follows:

a) End of Service Indemnity: 8.5% on total monthly salaries (payable by the employer);
b) Family Allowances: 6% on the monthly salary with a ceiling of LBP 1.5 million per employee (payable by the employer);
c) Sickness and maternity: 11% on monthly salary with a ceiling of LBP 2.5 million per employee (8% as company's share and 3% as employee's share).

## B. DETERMINATION OF TAXABLE INCOME

Taxable profits consist of all revenues earned by the enterprise after deduction of all charges necessary for carrying out the business.

### DEPRECIATION

The amount of annual depreciation of fixed assets is fixed by the Ministry of Finance. Depreciation of land and goodwill is not acceptable for tax purposes.

### STOCK / INVENTORY

For tax purposes, inventory is valued using the weighted average cost method.

## DIVIDENDS

Income tax on distribution of dividends is generally levied at source at a rate of 10%.

## INTEREST DEDUCTIONS

Interest on business loans is generally deductible.

## LOSSES

Losses incurred in any one year may be carried forward for three years. Capital losses may be used to offset taxable profits of the current year but may not be carried forward.

## FOREIGN SOURCED INCOME

Income tax in Lebanon is territorial in general. Income derived from an activity in Lebanon will be subject to Lebanese income tax.

## BAD DEBTS

Bad debts are deductible if a debtor has been declared bankrupt, bad debt provisions will also be deductible if a lawsuit was filed against the debtor.

## FINES AND PENALTIES

Fines and penalties are not deductible in Lebanon.

## OTHER SIGNIFICANT ITEMS

*Other deductible expenses include:*

- Cost of goods sold.
- Cost of services rendered.
- Salaries, wages, and other employee benefits, including end-of-service indemnities.
- Reserves for severance payments, pensions, and disability payments. Surplus provisions are added to profits.
- Rent of business premises or, if the premises are owned by the taxpayer, their depreciation.
- Advertising and publicity expenses, within certain limits.
- Travel, telephone, and vehicle expenses, within certain limits.
- Entertainment expenses that are properly supported.
- Board remuneration against services performed.
- Accrued expenses as long as their occurrence is certain.
- Employees' life insurance premiums are deductible as long as they are included in the employees' benefits subject to payroll tax.

*Other non-deductible expenses include:*

- With the exception of normal maintenance expenses, costs that increase the value of the property, plant, or equipment (such costs should be capitalised and depreciated in accordance with the fiscal depreciation rates).
- Losses or share-in-costs resulting from enterprises, offices, and branches situated outside Lebanon.
- Representation allowances in excess of 10% of an employee's basic salary, as well as unjustifiable and unreasonable salaries.
- Personal expenses, such as payments deducted by an employer or partner for the management of the business and for certain business expenses incurred by the employer or partner.
- Appropriations made to board members that do not comprise remuneration for work done.
- Provisions, other than those specifically allowed by law. Examples of non-deductible provisions include provisions for bad debts, provisions for slow moving items, and provisions for bonuses, contingencies, and charges.

## INCENTIVES

The Lebanese tax system has instituted tax exemptions on certain activities or income. There are two types of tax exemptions.

Permanent tax exemptions include those in respect of:

- Educational establishments, hospitals, orphanages, asylums; affiliated with associations.
- Agricultural investors;
- Sea and air transport companies, and provided there is a reciprocal agreement, foreign companies belonging to countries where Lebanese companies are operating;
- Public institutions that do not compete with private establishments.

Temporary tax exemptions: The Lebanese tax system has instituted temporary tax exemptions mainly for newly established industries if they are set up in one of the development areas designated by the government. In addition, certain industrial activities are exempt when they relate to the economic development of the country and they fulfil certain legal requirements.

## TAXATION BASED ON TURNOVER

Certain enterprises are not taxed on the actual net profits realised but apply a percentage of the annual turnover to arrive at their taxable profits.

## TAX ON INTEREST RECEIVED

Interest revenue generated from accounts opened with Lebanese banks and from treasury bonds are subject to a 10% withholding tax. This rate is effective starting 2019 and applied over a period of three years. The 7% rate will be applied again as of the day after the third year is completed.

## C. FOREIGN TAX RELIEF

There are no unilateral measures for the avoidance of double taxation.

## D. CORPORATE GROUPS

Corporate groups are not generally recognised in Lebanon.

## E. RELATED PARTY TRANSACTIONS

The tax authorities have the right to modify the amount and conditions of transactions carried out between related parties on the basis of the amount and conditions that would have prevailed in similar transactions between two independent parties and under competitive conditions. Parties are deemed to be related where one of the parties has the power to determine the other party's financial, economic and organisational activities.

## F. WITHHOLDING TAX

Remuneration paid to non-residents in consideration for services rendered in Lebanon are subject to a withholding tax at a rate of 7.5%. This rate is reduced to 2.25% when the sums paid relate to materials and equipment.

## G. EXCHANGE CONTROL

There are no restrictions concerning the repatriation of profits, income and capital nor are there any restrictions on the convertibility of currency. Residents can freely import and export national banknotes. They may own, deal in, export and import gold. Residents may own foreign currencies and foreign securities, and may maintain bank balances abroad. Non-residents can freely import and export national banknotes. They may maintain foreign currency accounts with banks in Lebanon.

## H. PERSONAL TAX

Residents, whether Lebanese or foreign, are taxable on income derived from Lebanon or from Lebanese sources only. Self-employed individuals are bound to submit their tax returns, together with payment of tax due for the fiscal year ending on 31st December, by 31st January if they are deemed taxable based on the lump-sum profit method and by 31st March if they are taxed on actual profits. Tax rates on income from personal independent services (basis of lump sum profits) are as follows:

| Band (in LBP) | Rate on band |
|---|---|
| 0 – 9,000,000 | 4% |
| 9,000,001 – 24,000,000 | 7% |
| 24,000,001 – 54,000,000 | 12% |
| 54,000,001 – 104,000,000 | 16% |
| 104,000,001 – 225,000,000 | 21% |
| Over 225,000,000 | 25% |

Regarding payroll income tax, the employer shall withhold the tax from the salary of its employees and shall pay it on their behalf on a quarterly basis. Rates of taxes on wages and salaries are applied after family deductions as follows:

| Band (in LBP) | Rate on band |
|---|---|
| 0 – 6,000,000 | 2% |
| 6,000,001 – 15,000,000 | 4% |
| 15,000,001 – 30,000,000 | 7% |
| 30,000,001 – 60,000,000 | 11% |
| 60,000,001 – 120,000,000 | 15% |
| 120,000,001 – 225,000,000 | 20% |
| Over 225,000,000 | 25% |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 0/10[1] | 0/10[1] | 7/10[2] | 7.5[3] |
| Individuals | 10 | -- | 7/10 | 7.5 |
| **Treaty countries:** | | | | |
| Algeria | 15 | 15 | 10 | 10 |
| Armenia | 10 | 5[4] | 8 | 5 |
| Bahrain | 0 | 0 | 0 | – |
| Belarus | 7.5 | 7.5 | 5 | 5 |
| Bulgaria | 5 | 5 | 7 | 5 |
| Cyprus | 5 | 5 | 5 | 0 |
| Czech Republic | 5 | 5 | 0 | 10 |
| Egypt | 10 | 10 | 10 | 5 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| France | 0 | 0 | 0 | 7.5 |
| Iran | 5 | 5 | 5 | 5 |
| Italy | 15 | 5[5] | 0 | 0 |
| Jordan | 10 | 10 | 10 | 10 |
| Kuwait | 0 | 0 | 0 | 5 |
| Malaysia | 5 | 5 | 10 | 8 |
| Malta | 5 | 5 | 0 | 5 |
| Morocco | 10 | 5[6] | 10 | 10/5 |
| Oman | 10 | 5 | 10 | 10 |
| Pakistan | 10 | 10 | 10 | 7.5 |
| Poland | 5 | 5 | 5 | 5 |
| Qatar | 0 | 0 | 0 | 0 |
| Romania | 5 | 5 | 5 | 5 |
| Russia | 10 | 10 | 5 | 5 |
| Senegal | 10 | 10 | 10 | 10 |
| Syria | 5 | 5 | 10 | 18 |
| Tunisia | 5 | 5 | 5 | 5 |
| Turkey | 15 | 10[7] | 10 | 10 |
| Ukraine | 15 | 5[8] | 10 | 10 |
| United Arab Emirates | 0 | 0 | 0 | 5 |
| Yemen | 10 | 10 | 5 | 7.5 |

Notes:

1. Dividends distributed by Lebanese resident companies to non-resident companies are subject to a 10% final withholding tax. The 5% reduced withholding tax rate is no longer applicable with effect from 26 October 2017. Dividends distributed by holding companies and offshore companies are exempt from withholding tax.
2. Interest on bank deposits or bonds is subject to a 7% withholding tax while other interest is subject to a 10% withholding tax, unless a treaty applies. The 7% rate was increased to 10% for a 3-year period as of 1 August 2019.
3. Royalties paid to a non-resident are subject to a 7.5% withholding tax, unless a treaty applies.
4. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the equity capital of the dividend-paying company. A 10% of the gross amount of the dividends in all other cases.
5. The 5% reduced rate applies if the beneficial owner is a company which has owned at least 10% of the capital of the dividend-paying company for a period of at least 12 months preceding the date the dividends were declared. A 15% of the gross amount of the dividends in all other cases.
6. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company. A 10% of the gross amount of the dividends in all other cases.
7. The 10% reduced rate applies if the effective (beneficial) owner is a company (other than a partnership) which holds directly at least 15% of the capital of the dividend-paying company.
8. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company.

## LESOTHO

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Maseru | Adache Sunday | +266 22 32 9799<br>admin.lesotho@pkf.com |

### BASIC FACTS

| | |
|---|---|
| Full name: | Kingdom of Lesotho |
| Capital: | Maseru |
| Main languages: | English, Sesotho |
| Population: | 2.17 million (2022 estimate) |
| Monetary unit: | Basotho Loti (LSL) |
| Internet domain: | .ls |
| Int. dialling code: | +266 |

## KEY TAX POINTS

- A company is liable to tax separately from its members, and dividends are only taxable if they are from unqualified income. A manufacturing company is taxed at a special rate of 10% on profits whilst a non-manufacturing company is taxed at a standard rate of 25% on profits.
- Capital gains and losses: A taxable gain or loss on disposal of an asset is the difference between its adjusted cost base and proceeds. No tax implication arises from the disposal of assets, such as a private residence or motor vehicle, provided they are not used in the production of income subject to tax.
- A branch of a non-resident company in Lesotho is subject to tax at the standard rate of tax of 25% on repatriated income in addition to income tax on the chargeable income of the branch.
- VAT is a broad based tax levied on the supply or consumption of goods or services including supplies to the government. It is also levied on imported goods and services. Only registered persons can operate VAT and registration may be on a compulsory, mandatory or voluntary basis. The VAT registration threshold is LSL 850,000. There are four rates of VAT; 0%, 5%, 14% (standard rate) and 15%.
- Fringe Benefits Tax (FBT) is imposed on employers who provide their employees with fringe benefits. The Income Tax Act specifically identifies certain fringe benefits, all other benefits fall under the definition of employment income hence taxable to employees.
- Lesotho is a member of the Southern African Customs Union (SACU) which links all members by a single tariff and no customs duty applies between them, i.e. the SACU is treated as a single customs territory.
- Taxable business income is determined after the off-set of allowable deductions such as capital allowances, business expenses and available tax losses.
- Personal tax is based on residency. An individual is a resident if they have a place of abode in Lesotho, are present in Lesotho for more than 182 days in any consecutive period of twelve months (which includes all or part of the year of assessment), are an official of the Lesotho Government posted overseas during the year of assessment or have a resident lifestyle.

## A. TAXES PAYABLE

The national government administers taxes through the Lesotho Revenue Authority (LRA) and levies may be charged by both the national government and district councils.

## COMPANY TAX

A company is defined as a body corporate or unincorporated, whether created or recognized under the law in force in Lesotho or elsewhere, but does not include partnership or trust. A company is liable to tax separately from its members, and dividends are only taxable if they are from unqualified income. A manufacturing company is taxed at a special rate of 10% on profits whilst a non-manufacturing company is taxed at a standard rate of 25% on profits.

## CAPITAL GAINS TAX

A taxable gain or loss on disposal of an asset is the difference between its adjusted cost base and proceeds (see below under ‘capital gains and losses’).

### Personal assets

No tax implication arises from the disposal of assets, such as a private residence or motor vehicle, provided they are not used in the production of income subject to tax.

### Special situations

A number of special situations are identified in the Act in respect of which special rules apply.

1. **Loss on disposal to an associate**

Where an asset is disposed of at a loss to an associate, the loss is not recognized for tax purposes. In such a situation, the asset is deemed to have been sold by the disposer and acquired by the buyer for its adjusted cost base at the date of disposal.

2. **Asset depreciation under the pooling method**

Gains and losses do not normally arise where assets are depreciated using the pooling method. However, there is a required treatment for three particular situations.

- Where, after disposal, there is a credit balance on the pool, then that credit balance is treated as a gain and forms part of business income.
- Where, after all the assets in a pool have been disposed of, a debit balance remains, then that debit balance is treated as a loss and is an allowable deduction against business income.
- Where the balance in a pool is less than LSL 500 and there have been no additions to the pool during the year, then that balance is an allowable deduction against business income.

3. **Transfer between spouses and former spouses**

Where an asset is transferred between spouses or between former spouses as part of a divorce settlement, a taxable disposal has not arisen. In such cases the (former) spouse is deemed to have acquired the asset at its adjusted cost base to the other (former) spouse as at the date of transfer. Correspondingly, the (former) spouse transferring the asset is deemed to have disposed of it for its adjusted cost base at the date of transfer.

4. **Involuntary conversion and re-investment**

Special treatment is available for situations when an asset is involuntarily disposed of and a similar asset is acquired. Such situations cover, for example, compensation under an insurance policy for the destruction of an asset or a payment for the compulsory acquisition of an asset.

- If the proceeds are less than the adjusted cost base, then the loss is allowable. The new asset is deemed to have been acquired at its actual cost. Please note:

- If the full amount of the proceeds is re-invested in a new asset, no chargeable gain arises and the new asset is deemed to have been acquired for the adjusted cost base of the asset disposed of.
- If the full amount of the proceeds is not re-invested in a similar asset then the un-invested proceeds to the extent that they form part of any gain are taxable. The newly acquired asset is deemed to have been acquired at the adjusted cost base of the asset disposed of.

5. **Transfer of assets on death**

Where an asset is transferred to a personal representative or beneficiary on the death of a taxpayer a disposal for tax purposes is not deemed to have arisen. In such a situation, the personal representative or beneficiary is deemed to have acquired the asset for its market value at the date of death or its adjusted cost at the date of death, whichever is higher.

6. **Contribution of asset to partnership**

Where a taxpayer transfers an asset to a partnership and part of the contribution of capital to the partnership and the taxpayer`s interest in the partnership exceeds 50% after the contribution of the asset then no gain or loss is deemed to have arisen on the disposal of the asset. The taxpayer is deemed to have disposed of the asset for its adjusted cost base at the date of transfer and the partnership is deemed to have acquired it for that amount.

## BRANCH PROFITS TAX

A branch of a non-resident company in Lesotho is subject to tax at the standard rate of tax of 25% on repatriated income (branch remittance tax) in addition to the 25% corporate income tax on the chargeable income of the branch. Repatriated income is the chargeable income of the branch minus:

- Lesotho income tax paid on that chargeable income;
- Any profits reinvested in the branch; and,
- Every repatriation of moneys by the branch is treated for tax purposes as having been made first out of the branch income, notwithstanding that it may be treated otherwise in the records of the branch.

## VALUE ADDED TAX (VAT)

Prior to July 2003, a Sales Tax was in operation and this contributed to the Government Budget until 30 June 2003. From 1 July 2003 the Sales Tax ceased and was replaced by Value Added Tax (VAT) in accordance with the VAT Act (passed by Parliament in 2001). VAT is a broad based tax levied on the supply or consumption of goods or services including supplies to the government. It is also levied on imported goods and services and referred to as a 'destination based tax' because it is levied at the place where the consumption of service occurs.

Supplies subject to VAT must be made by a registered vendor and they must not be an exempt supply, i.e. a small businesses not registered for VAT cannot levy VAT on supplies to the final consumer. Only VAT registered persons can operate VAT, i.e. charge VAT on their sales invoices. Registration for VAT purposes can either be on a compulsory, mandatory or voluntary basis. The VAT registration threshold is LSL 850,000.

1) Compulsory VAT registration is required within 14 days where a person conducts business in Lesotho and it is clear that within a 12 month period their turnover of taxable supplies will exceed LSL 850,000. However, the following persons are required to register for VAT purposes, regardless of the threshold:
   a. National, regional or public authorities who carry on enterprises;
   b. Auctioneers; and,
   c. Persons carrying on an enterprise outside Lesotho whose goods or services are consumed in Lesotho.
2) Mandatory registration: The Commissioner of VAT can direct a person to register for VAT when their turnover exceeds the registration threshold, i.e. it is mandatory for them to register because the annual turnover is the determining factor.
3) Voluntary registration: VAT registration can be applied for where the turnover is less than the registration threshold. The Commissioner of VAT can approve such a registration at his discretion. Entrepreneurs often opt to voluntarily register for VAT purposes in order to recover input VAT paid on purchases.

Suppliers of exempt services such as banking services, educational services, etc. cannot register for VAT even if the annual turnover exceeds the threshold. If the supplier provides both the exempt and taxable services, the Commissioner will consider the taxable supplies. The VAT tax period is one month. VAT is payable or claimable on or within twenty days after the end of the month. There are four VAT rates in Lesotho:

a) 0% for exports of goods and services and on maize meal, maize (grain), bread, milk, beans, peas, agricultural inputs (fertilizers, seeds and livestock feed, un-malted sorghum), hens eggs and paraffin intended for use as fuel for cooking, illuminating or heating;
b) 9%: Electricity;
c) 12%: Telecommunications;
d) 15% (standard rate): other goods and services supplied or imported.

VAT may be accounted for on either an accrual (or invoice) basis or a cash (payment) basis. Restrictions to claim input VAT apply to:

a) Expenses for private use;
b) Expenses incurred prior to two months before registering for VAT;
c) Vendor on cash basis but who has not paid the expense;
d) Entertainment of customers and clients in restaurants, theatres and night clubs;
e) Staff refreshments such as coffee, tea and other snacks;
f) Catering services acquired for staff canteens and dining room;
g) Subscription fees for sporting or recreational clubs;
h) Christmas lunches and parties, including hire of venues;

i) Beverages, meals and other hospitality and entertainment supplied to customers and clients at product launches and other promotional events and etc.

By way of exception to the above, the input tax incurred in relation to vendors who are in the business of supplying entertainment and meals and refreshments for organizers of seminars and similar events may however be claimed. Penalties for non-compliance and fraud: there are two types of additional tax or fines for failing to make a return or to pay by due date as well as acts of fraud. There are fines which are imposed by Commissioner of Vat and those imposed by courts. Some penalties for non-compliance and fraud are shown below:

| Infringement | Penalty / Additional tax |
|---|---|
| 1. Late submission of a return | Additional tax of 22% per month or part thereof of the VAT payable |
| 2. Late payment of VAT | Additional tax of 22% per month or part thereof of the outstanding VAT amount |
| 3. Failure to file a return or pay | An offence which is liable on conviction to a fine |
| 4. Incorrect or false return or other declaration | Criminal offence which is liable on conviction to a fine or up to 2 years in prison |
| 5. Fraudulent evasion | Criminal offence which is liable on conviction to a heavy fine or up to six years in prison |

## FRINGE BENEFITS TAX

Fringe Benefits Tax (FBT) is imposed on employers who provide their employees with fringe benefits. The Income Tax Act specifically identifies fringe benefits as; car, housing, utilities, domestic assistance, meal or refreshment, medical, loan, debt waiver and excessive superannuation contributions. All other benefits will then fall under the definition of employment income hence taxable to employees. Certain benefits provided by an employer are however exempt, such as:

a) Meals or refreshments provided in a canteen, cafeteria, or dining room operated by or on behalf of the employer solely for the benefit of the employees and which is available to all non-casual employees on equal terms.

b) Medical fringe benefit available to all non-casual employees on equal terms.

c) A fringe benefit relating to exempt employment income.

d) A fringe benefit, the value of which is so small as to make accounting for it unreasonable or administratively impractical.

e) Provision of a security guard.

f) Housing fringe benefit to the extent it is in excess of 20% of an employee's remuneration for the year of assessment in which the benefit is provided.

g) Fringe benefits provided to a domestic assistant.

For the purpose of meals and refreshments and medical fringe benefits, a non-casual employee is defined as an employee who does not meet any of the following two conditions:

a) An employee who is employed under a single contract, arrangement or understanding which is for a fixed period of less than one month. However, if the contract is subsequently renewed, such that one has been employed for more than one month from the commencement of the original contract, that person is a non-casual employee; or,

b) An employee who works for less than 15 hours per week over the course of a month.

The total of all taxable values provided to an employee in the year of assessment is divided by 60% to gross it up to a taxable amount. FBT is 40% of the taxable amount and is an allowable deduction at the level of the employer. Employers are required to make returns and payments of FBT within 14 days after every quarter.

## LOCAL TAXES

Local taxes in Lesotho are sometimes referred to as domestic taxes. These include VAT already mentioned above, pay-as-you-earn (PAYE) and corporate income tax (CIT). PAYE is charged on employment income and CIT is charged on company profits.

## OTHER TAXES – CUSTOMS DUTY

The Southern African Customs Union (SACU) consists of Botswana, Lesotho, Namibia, South Africa, and Swaziland. The SACU Secretariat is located in Windhoek, Namibia. SACU was established in 1910, making it the world's oldest Customs Union. Negotiations to reform the 1969 Agreement started in 1994, and a new agreement was signed in 2002. The new arrangement was ratified by SACU Heads of State.

The Economic structure of the Union links the Member states by a single tariff and no customs duties between them. The Member States form a single Customs territory in which tariffs and other barriers are eliminated on substantially all the trade between the Member States for products originating in these countries and there is a common external tariff that applies to non-members of SACU, which is shared according to the revenue sharing ratio.

## INTEREST RECEIVABLE

Interest payable to a resident of Lesotho by a resident of Lesotho, other than an individual, is subject to a withholding tax of 10%.

# B. DETERMINATION OF TAXABLE INCOME

## CAPITAL ALLOWANCES

Tax depreciation can be claimed on the capital cost of premises (normally limited to industrial premises) and equipment including those for non-subsistence farming. The two methods of claiming tax depreciation (capital allowances) are the Single Asset Method or the Pooling Method. Declining Balance Depreciation Rates:

| Group | Assets | Rate |
|---|---|---|
| 1 | Automobiles; taxis; light general purpose trucks; tractors for use over-the-road; special tools and devices. | 25% |

| Group | Assets | Rate |
|---|---|---|
| 2 | Office furniture; fixtures, and equipment computers and peripheral equipment and data handling equipment; buses; heavy general purpose trucks; trailers and trailer mounted containers; construction equipment. | 20% |
| 3 | Any depreciable asset not included in another group. | 10% |
| 4 | Railroad cars and locomotives and railroad equipment; vessels, barges, tugs and similar water transportation equipment; industrial buildings; engines and turbines; public utility plant. | 5% |

**Single Asset Depreciation**

The single asset method is similar to the reducing balance method of accounting and applies where a taxpayer has not elected for pooling to apply. No matter whether a pooling election has been made, single asset depreciation will apply to depreciable assets that are only partly used in the production of income that is subject to tax, and to assets in group 4.

**Pooling of assets**

Where pooling of assets applies, the depreciation allowance is calculated separately for each pool by applying the rate of depreciation for the pool against the balance of the pool at the end of year of assessment. Where consideration is received on the disposal of assets during a year of assessment and the amount exceeds the closing balance of the pool, the excess consideration is treated as a gain from the disposal of fixed assets and included in gross taxable income, i.e. it is treated as business income.

If no assets have been added to the pool during the year of assessment, and the closing balance of the pool is less than LSL 500, the taxpayer is permitted to write off the pool balance as a deduction.

| Single Asset Method | Pooling Method |
|---|---|
| Depreciation allowance is granted for the period during the year that the asset is in use, i.e. dates when the fixed assets were purchased and disposed of must be kept. | The assets are depreciated on the basis that they were acquired exactly half way through the year. |
| This method is always applicable to Group 4 assets and to all other assets when pooling has not been elected for. | It only applies when it is elected for. Once elected for, the election is irrevocable. It cannot be applied to Group 4 assets. |
| When the asset is disposed, a gain or loss may occur which will form part of the business income or a deduction against the business income respectively. | Gains and losses do not arise on disposal as the proceeds are deductible from the pool. However where all the assets are disposed and a balance remains, the balance is an allowable deduction. If the balance of the pool is a credit, then it forms part of the business income in the year in which it arises. |
| It requires the maintenance of detailed asset registers. | It does not require the maintenance of detailed asset registers. |
| It can be applied to assets both fully and partially used in the production of income, subject to an apportionment of the amount attributable to the production of income. | It cannot be applied to assets partially used in the production of income. |

**Farming Assets**

Tax depreciation can be claimed on assets of non-exempt farming activities. The method depends on when the asset was acquired and whether an election has been made by the taxpayer, although farm buildings may be treated separately.

## STOCK / INVENTORY

A cash-basis taxpayer may calculate the cost base of trading stock on the prime-cost or absorption-cost method, and an accrual-basis taxpayer must calculate the cost base of trading stock on the absorption-cost method. The value of trading stock on hand at the end of the year of assessment is the lower of its cost base or market value at that date. Where particular items of trading stock are not readily identifiable, a taxpayer may account for the trading stock on the first-in-first-out (FIFO) method or the average-cost method.

## CAPITAL GAINS AND LOSSES

**Depreciable Business Assets**

The adjusted cost base of depreciable business assets is the tax written down value on the date of disposal. Where the proceeds are less than the tax written down value, the loss is an allowable deduction against Business Income.

**Depreciable business assets – non-depreciable**

Non-depreciable business assets, which may include office buildings, fall into two categories.

**a) Non-depreciable business assets held at 1 April 1993:**

The adjusted cost base of the asset is deducted from the proceeds. In the case of such assets, the adjusted cost base is the higher of original cost or market value as at 1 April 1993. Where the proceeds exceed the adjusted cost base, then the gain forms part of business income. Where the proceeds are less than the adjusted cost base, the loss is an allowable deduction. However, the loss is only allowable to the extent that there is an actual loss. Thus, if the proceeds exceed the original cost but not the value as at 1 April 1993, the loss is not an allowable deduction. This is a no gain, no loss situation.

**b) Non- depreciable assets acquired after 1 April 1993:**

The adjusted cost base of the asset is deducted from the proceeds. The only adjustments to cost base are capital improvements. Where the proceeds exceed adjusted cost base, then that gain forms part of business income. Where the proceeds are less than the adjusted cost base, then that loss is an allowable deduction against business income.

### Farming assets – depreciable and non-depreciable

The tax legislation now distinguishes between commercial farming (not exempt from income tax) and subsistence farming (exempt from income tax). The tax treatment of such disposals would be like other asset except for the following transitional provisions:

- The cost base of any farming asset disposed which was purchased before 31 March 1996 is equal to its market value on 31 March 1996. This applies to trading stock and other assets. This is to ensure that the individual is only taxed in respect of the gain or loss accruing after the removal of the exemption, i.e. from 31 March 1996.
- It is important to note that while the market value as at 31 March 1996 is taken as the cost base for disposals of commercial farming assets, the adjusted cost base as at 31 March 1996, arrived at by assuming that the single asset method of depreciation has been applied since acquisition of the asset, is taken for depreciation purposes. For the purpose of disposal, the cost base would again depend on whether the asset is depreciable or not:
- For depreciation assets, gains are calculated as the proceeds less the tax written down value taking account of notional allowances for pre 1 April 1996 assets.

For non-depreciable assets, the higher of the market value as at 1 April 1996 and original cost is used as the cost base for disposal purposes.

The tax treatment of these assets is similar to business assets except that the 1 April 1993 date is substituted for the 1 April 1996.

### Investment assets – immovable property

Such investment assets fall into two categories:

a) Land and buildings giving rise to rental income; and,

b) Shares in companies whose primary assets consist of investments in immovable properties.

Determining whether land or buildings are investment assets or business assets depend on whether rental income is being derived from the asset. These assets are grouped into two categories; those held at 1 April 1993 and those acquired after 1 April 1993. For assets held at 1 April 1993 there is a different calculation method to establish the cost base. If the asset has been held for more than twelve months, then the adjusted cost of the asset can be increased for the effects of inflation between 1 April 1993 and the date of disposal. Where the proceeds exceed the adjusted cost base, there is an allowable loss which can be offset against any gains arising from the disposal of any investment asset (movable or immovable). Any unutilised loss can be carried forward for set-off against future gains. However, the amount of the loss that is allowed is restricted to the extent that the loss is an actual loss. It is therefore necessary to make a comparison between the proceeds and the original cost. If, on this basis, there is a profit, then the loss is not allowable. If there is a loss, only the actual loss will be allowable.

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### Investment assets – not immoveable property

For purposed of calculating the tax implications on the disposal of these assets, they are divided into two categories:

**a) Investment assets held at 1 April 1993**

The adjusted cost base (higher of original cost or market value as at 1 April 1993) of the asset is deducted from the proceeds. Where the proceeds exceed the adjusted cost base, the gain forms part of property income. Where the proceeds are less than the adjusted cost base, then there is an allowable loss.

Such loss can be offset against any gains arising from the disposal of any investment asset (movable or immovable). Any unutilized loss can be carried forward for set-off against future gains. However, the amount of the loss that is allowed is restricted to the extent that the loss is an actual loss. It is therefore necessary to make a comparison between the proceeds and the original cost. If on this basis there is a profit, then the loss is not allowable.

**b) Investment assets acquired after 1 April 1993**

The treatment of such disposals is straight-forward. Where the proceeds are less than the original cost then the loss is an allowable loss. Such loss can be offset against any gains arising from the disposal of any investment asset (movable or immovable). Any unutilized loss can be carried forward for set-off against future gains.

## DIVIDENDS

A resident company which pays a dividend is liable to pay advance corporation tax (ACT) at the rate of 25/75 of the dividend payment except to the extent that the distribution is made out of qualified income (manufacturing Income subject to the 10% special rate and dividends received from another resident company). ACT is an advance payment of the company's income tax liability on its distributed profits and is not an additional tax. A company may credit ACT against its income tax liability, including instalments of income tax. A resident company must, within seven days of paying dividends, file a return of ACT stating:

a) The amount of dividends paid;

b) ACT payable; and,

c) The amount of ACT which has been satisfied by way of set-off in accordance with Section 87(4).

Where there has been no set-off of ACT, it must be paid within seven days of the dividend payment. This payment can be carried forward indefinitely for set-off against future tax liability. A dividend paid by a resident company is not included in the gross income of a resident individual. This in effect means that the maximum rate of tax on a manufacturing dividend is 10% and on a non-manufacturing dividend it is 25%. It also permits passage of dividends between resident companies without any further liability to taxation.

### Redemption of shares

On redemption of shares, a company may purchase a certain proportion of shares from each shareholder or from a certain number of shareholders. If the former approach is adopted then the redemption is on pro-rata basis otherwise not on a pro-rata basis. Where the redemption is on a pro-rata basis, the gains or losses are treated normally. However, where the redemption is not on pro-rata basis, the gain is treated as a distribution to the shareholders and therefore the company has to account for ACT like on ordinary dividends.

### Disguised dividends

There may be a number of transactions between a company and a member of the company or an associate of a member, which are, in substance, a distribution and as such will be treated as a dividend for the purpose of ACT. Where the transaction is with an associate of a member, the dividend is treated as having been paid to the member and not the associate.

### Dividend stripping

Dividend stripping occurs where a company, just before it is to pay dividends out of its qualified income (which does not attract ACT), is acquired by another company. The acquiring company receives the dividends and then subsequently sells the acquired company at a loss. The Commissioner has the discretion to treat a dividend paid as part of a dividend stripping transaction and not paid out of qualified income, in which case the taxpayer will be liable to ACT in respect of the dividends.

## INTEREST DEDUCTIONS

### Thin capitalisation

Where a resident company (not principally engaged in a money-lending business) has a debt-to-equity ratio in excess of 3 to 1, the Commissioner may disallow a deduction for the interest paid on that part of the debt in excess of the aforementioned ratio, regardless of the lender, but cannot re-characterize the payment as a dividend.

## LOSSES

### Individuals

Where business income of an individual taxpayer is exceeded by deductions relating to that income, the loss (being the amount of the excess):

- May not be deducted against other income of the taxpayer but shall be carried forward; and,
- May be deducted in determining the chargeable business income in subsequent years of assessment.

Where property income of an individual taxpayer is exceeded by deductions relating to that income, the loss (being the amount of the excess):

- May not be deducted against other income of the taxpayer but shall be carried forward; and,
- May be deducted in determining chargeable property income in subsequent years of assessment.

### Companies

Where the taxpayer is a company, the excess of the deductions allowed over the taxpayer's gross income shall be carried forward and may be deducted in determining chargeable income in subsequent years of assessment. Where manufacturing income of a resident company is exceeded by the deductions relating to that income, the loss (being the amount of the excess):

- May not be deducted against other income of the company but shall be carried forward; and,
- May be deducted in determining the chargeable manufacturing income in subsequent years of assessment.

Assessed losses are deductible from chargeable income and may be carried forward indefinitely until fully absorbed. A final year loss incurred upon the completion of a long-term contract may be carried back and relieved against the income of the preceding year of assessment. Where there has been a change of 50% or more in the underlying ownership or control of a company, the carry-forward of a loss, deduction or credit ceases to be available, unless the company:

- continues to conduct the same business; and
- does not engage in a new business or investment, except with the approval of the Commissioner General, for a period of 3 years after the change.

### Losses on disposal of business assets

A loss arising from the disposal of a business asset, whether or not the asset was on capital or revenue account, is allowed as a deduction.

### Unutilised capital losses on disposal of investment assets

Losses on disposal of investment assets are only allowed to the extent of gains derived by the taxpayer from the disposal of investment assets by the taxpayer. Any unutilised losses in a year of assessment can be carried forward indefinitely for future set-off against chargeable gains arising on disposal of investment assets.

## FOREIGN SOURCED INCOME

Resident companies are subject to tax on a worldwide basis. Non-resident companies are taxed on Lesotho-sourced income only. Therefore, income derived abroad by a resident company is taxed as domestic income. An exception applies to foreign dividends, which are not exempt like domestic dividends, but are included in the taxable base. Relief is granted for foreign taxes paid on repatriated income.

Foreign-sourced income from employment income in a foreign country derived by a resident individual is exempt from income tax if the income is chargeable to tax in the foreign country. The table below illustrates how certain individuals are taxed on foreign and Lesotho sourced-income.

| Individual | Employment income | Business income | Property income | Other income |
|---|---|---|---|---|
| Resident citizens and permanent residents | Worldwide except if sourced and taxed abroad | Worldwide | Worldwide | Worldwide |
| Diplomat residents | Foreign source taxable if exempt | Lesotho source only | Lesotho source only | Lesotho source only |

| Individual | Employment income | Business income | Property income | Other income |
|---|---|---|---|---|
| Lesotho diplomats | Foreign service allowance is exempt | Worldwide | Worldwide | Worldwide |
| Expatriates | Worldwide | Worldwide (except foreign disposal) | Worldwide (except foreign disposal) | Worldwide |
| Non-resident | Lesotho source only | Lesotho source only | Lesotho source only | Lesotho source only |

## INCENTIVES

There are several incentives relating to taxation in Lesotho, namely:

- The manufacturing tax rate is reduced to 10%;
- The deduction of pension contributions from the gross income which is before tax and its exemption when receiving the payment;
- The exemption of dividends to a resident individual from a resident company;
- A tax exemption for subsistence farming by a resident individual;
- An interest deduction to the individual as specified in the legislation (sections 27 and 158).

## C. FOREIGN TAX RELIEF

A resident taxpayer is entitled to a foreign tax credit against their liability to Lesotho income tax in respect of any foreign income tax borne directly or indirectly by the resident on foreign-sourced income subject to Lesotho tax. The foreign tax credit is calculated by applying the average rate of Lesotho income tax to the foreign-source income reduced by any deduction properly allocated to that income. The calculation is made separately for business income and for other income.

Foreign income tax borne by:

- A partnership is treated as borne by partners;
- A trustee (where the income on which the trustee was assesses is included in the gross income of a beneficiary under this Order) is treated as borne by the beneficiary;
- A beneficiary (where the income on which the beneficiary was assessed is included in the income of a trustee under this Order) is treated as borne by the trustee.

Where a resident company is entitled to both a credit for advance corporation tax and a foreign tax credit, the foreign tax credit shall be applied first. For the purpose of the above, the average rate of Lesotho income tax is the percentage that the Lesotho income tax, before the foreign tax credit, is of chargeable income of the taxpayer and in the case of a taxpayer with both business and other income, the average rate of tax is to be calculated separately for both categories of income. Foreign income tax includes foreign withholding tax but does not include a foreign tax designed to raise the foreign tax level on the income so that the taxation of the country of residence of the taxpayer is reduced.

## D. CORPORATE GROUPS

There is no group taxation in Lesotho. A company is liable to tax separately from its members, and dividends are only taxable if they are from unqualified income. A manufacturing company is taxed at a special rate of 10% on profits. A non-manufacturing company is taxed at standard rate of 25% on profits.

## E. RELATED PARTY TRANSACTIONS

### Transfer pricing

The Commissioner has broad discretion to distribute, apportion, or allocate income, deductions, or credits between associated taxpayers to prevent tax evasion or to clearly reflect the income of such taxpayers. This includes adjusting the income arising from the transfer of intangible property between associates so that it is commensurate with the income attributable to the intangible property.

### Controlled Foreign Companies

Lesotho does not have CFC legislation.

## F. WITHHOLDING TAX

Dividends, interest, royalties and management fees are subject to a final withholding tax at 25% of the gross amount, subject to the application of a double tax treaty. For interest, royalties and management fees paid by manufacturing companies subject to a concessional corporate tax rate, the withholding tax rate is 15%. Regarding technical fees, Lesotho-sourced service contract income (i.e. a contract other than an employment contract, under which the primary purpose is the performance of services whether or not goods are provided which give rise to Lesotho-sourced income) is subject to a final 10% withholding tax on the gross amount.

## G. PERSONAL INCOME TAX

Personal tax is based on residency. An individual is a resident if they:

- Have a place of abode in Lesotho;
- Are present in Lesotho for more than 182 days in any consecutive period of twelve months which includes all or part of the year of assessment;
- Are an official of the Lesotho Government posted overseas during the year of assessment;
- Have a resident lifestyle.

Resident individuals are, in general, taxed at the following rates (effective 1 April 2020):

| Chargeable income (LSL) | Tax rate (%) |
|---|---|
| Up to 64,200 | 20 |
| In excess of 64,200[1] | 30 |

1. Personal tax credit of LSL 10,080

**Interest**

The first LSL 500 of interest derived from a single savings account with a registered financial institution resident in Lesotho by a resident individual is exempt from income tax. As the Lesotho branch of a non-resident financial institution is deemed to be a resident company under Section 6(2), an account held with such a branch qualifies for the exemption. An account held with a foreign branch of a non-resident financial institution does not however qualify for exemption, and the interest paid on such an account is fully taxable with a credit for any foreign tax (such as withholding tax) paid on the interest.

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 0/25 | 0/25 | 15/25 | 15/25 |
| Individuals | 0/25 | -- | 25 | 15/25 |
| **Treaty countries:** | | | | |
| Mauritius | 10 | 10 | 10 | 10[3] |
| South Africa[1] | 15 | 10[2] | 10 | 10 |
| United Kingdom[4] | 10/15[5] | 5/15[5] | 10 | 10 |

Notes:

1. The tax treaty is effective from 26 June 2016 with respect to withholding taxes and from 1 April 2017 with respect to other tax matters.
2. The reduced rate applies if the beneficial owner is a company which owns at least 10% of the capital of the paying company.
3. 0% rate for technical services.
4. Effective date: 1 November 2018 (withholding taxes)/1 April 2019 (other taxes) (Lesotho).
5. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company. The 10% rate applies in other cases. However, a 15% rate applies to dividends paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of article 6 of the treaty by an investment vehicle whose income from such immovable property is exempted from tax and which distributes most of this income annually.

# LIBERIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Monrovia | Nim'ne E. Mombo, Sr. | +231 776 835 784<br>nemombo@pkf.com.lr |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Liberia |
| Capital: | Monrovia |
| Main languages: | English & Five (5) Principal Local Language Groups |
| Population: | 5.29 million (2022 estimate) |
| Monetary unit: | Liberian Dollar (L$ or LD) and United States Dollar (US$ or USD) both of which are national currencies of Liberia. The Liberian Dollar (L$) is legal tender. Exchange rates between the two national currencies are market determined from time to time. The Central Bank of Liberia (CBL) publishes the applicable prevailing daily rate of exchange between the two national currencies. However, the published CBL rates are merely indicative rather than prescriptive. The CBL published rates are based on market rate surveys that the CBL regularly conducts several times each week. |
| Internet domain: | .lr |
| Int. dialling code: | +231 |

## KEY TAX POINTS

- The standard corporate income tax rate is 25% while the petroleum and mining income tax rate is 30%. An additional 20% surtax is payable by high-yielding (i.e. when the project's pre-tax rate of return on total investment is greater than 22.5%) mining projects on the positive net accumulated cash-flow at the close of a year of assessment and is a deductible expense for income tax purposes.

- Losses can be carried forward 5 years for general companies and 7 years for specific companies. Losses cannot be carried back.
- Dividends, interest, royalties, and technical and management fees paid to non-residents are in principle subject to a 15% withholding tax. The rate may differ for mining, petroleum and renewable resource projects.
- VAT is levied at a standard rate of 10%. Reduced rates of 0% and 7% may also apply in certain cases.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES - COMPANY TAX

### Resident versus non-resident

For tax purposes, the Revenue Code of Liberia ('the Code') distinguishes between residents and nonresidents. It has no distinguishing provisions for taxation of citizens versus non-citizens. Therefore, a resident alien and a resident citizen are subject to the same Liberian taxation. Similarly, a nonresident alien and a nonresident citizen are also subject to the same Liberian taxation.

### Distinguishing features – resident vs non-resident

Whereas the global income of a resident person (legal or natural), is subject to Liberian taxation regardless of source, only the Liberiasourced income of a nonresident person is subject to Liberian taxation. The foreignsourced income of a nonresident is not taxed in Liberia. Moreover, whereas for a resident taxpayer, income tax determination is as variously specified in the Code, the Liberiasourced income of a nonresident person is taxed only by way of withholding tax at source at specified rates.

### Tax Identification Number (TIN) required

Every resident taxpayer, whether an individual or a legal person, is required to have a Tax Identification Number (TIN), which is obtainable from the Liberia Revenue Authority (LRA). A resident taxpayer who provides services is required to provide the service provider's TIN to each service recipient. As more fully later explained below, the service recipient is authorised and required to withhold tax from the service provider at specified rates, depending on the type of service. The service recipient is then required to file an appropriate withholding tax return in which the TIN is used to identify each service provider from whom taxes have been withheld.

### Company tax

Corporate income tax is 25% flat on net taxable income.

### Quarterly advance payments and Minimum Tax required

- Where annual turnover is L$5 million or more, or is reasonably expected to be L$5 million or more per annum, corporate income tax is required to be paid in four quarterly instalments calculated at 2% of the gross sales (turnover) per quarter.
- Where annual turnover is less than L$5 million but greater than L$ 200,000, or is reasonably expected to fall within that range, corporate income tax is computed at 4% of turnover per quarter. A taxpayer in this category is referred to as a 'small taxpayer'. The turnover tax is in lieu of and constitutes the only income tax required of such a 'small taxpayer'.

A taxpayer with annual turnover of L$ 200,000 or less is classified as a 'petty trader'. The income tax required of petty traders consists of a fixed amount established by statute or regulation.

### Overpayments resulting from quarterly advance payments

In case of taxpayers with annual turnover of L$5 million or more, any excess tax paid resulting from the required quarterly payment is creditable against other nonincome tax liability, if any, for the current tax year. Where no such other tax liability applies, at the election of the taxpayer, any excess tax paid is either refundable or creditable against future tax liabilities, provided that no such tax credit can be applied in excess of the minimum tax (see below) required for the year.

Where the taxpayer desires a refund, a written claim for such refund is required. In that case, per the Code, the refund is required to be made within 90 days following the taxpayer's claim for a refund. In the absence of a written claim for refund, any excess tax paid becomes creditable against future tax payments, subject to the minimum tax explained below. Unused excess tax credits for any tax year may be carried forward to future periods for up to a maximum of five years. Beyond that time limit, a taxpayer may either request a refund for the remaining unusable tax credit for a specific tax year or lose the credit.

### Minimum tax

For taxpayers with annual gross income (turnover) of L$5 million or more, the quarterly advance payments calculated at 2% of quarterly turnover constitutes the minimum tax payable for the tax year, even in cases of net operating loss or where zero taxable income would otherwise apply. Therefore, tax credits or tax refunds that would otherwise arise in the case of an excess payment arising from the quarterly advance payments mentioned above, cannot exceed the required minimum tax.

## CAPITAL GAINS AND LOSSES

There are no special tax rates for capital gains and losses. Where applicable, all such gains and losses are included in the standard calculation net taxable income (or net operating loss) for the tax year.

## BRANCH PROFITS TAX

Not applicable in Liberia. Therefore, in practice, a branch operation would normally be set up in Liberia as a subsidiary of a foreign corporation. In case of a domestic corporation, each branch location is required to obtain an annual license. However, one single consolidated tax return is required for corporate income tax (CIT) purposes.

## GOODS & SERVICES TAX (GST)

### Goods Tax – General rule

Except for those that are specifically identified in the Code as exempt supplies, an excise tax applies at 10% in the case of goods manufactured in Liberia. Also except for those specifically identified in the Code as exempt supplies, import duty applies at specified rates in the case of goods imported into Liberia. All exports are duty free.

### ECOWAS Trade Liberalisation Scheme

As its name indicates, the Scheme is designed to liberalise and therefore promote trade among member states of the Economic Community of West African States (ECOWAS). On that basis goods manufactured in an ECOWAS member state are exempt from import duty and also from the ECOWAS Trade Levy (ETL).

### Service Tax

Except where specifically declared exempt by the Code, a service tax applies in respect of a supply of ten specific categories (listed below) of services in connection with the carrying on of a business. The service tax is calculated at 10% of the consideration payable for such supply, in connection with supply of the following services:

1) Electricity services;
2) Telecommunications services;
3) The provision of water for a fee;
4) Services supplied in carrying on the business of a hotel or similar facility (including board, lodging, and incidental services), and restaurant meals, beverages, and other services supplied on the premises of a hotel;
5) Services supplied in carrying on the business of a restaurant or café (including supplies of meals or beverages), and supplies of take-away meals by a restaurant, café, supermarket or similar supplier;
6) Gambling services:
    a) in a casino;
    b) lottery ticket sales;
    c) betting at a track or off-track betting establishment; or
    d) drawings or other games of chance conducted by telecommunications suppliers or other similar suppliers;
7) Sale of tickets by international transport services (air, land and sea);
8) Services of a travel agency or travel arranger, including the issuing of tickets;
9) Sporting or game arranger services, including the issuing of tickets; and
10) Other services (specified in regulations) in the sectors of air travel, vehicle rental, communications, automotive repair services, professional services (excepting medical services), and port-related services.

## B. DETERMINATION OF TAXABLE INCOME

Corporate Income Tax (CIT) is calculated on taxable income derived in accordance with either US Generally Accepted Accounting Principles (US GAAP) or International Financial Reporting Standards (IFRS). Owing to Liberia's historical ties to the United States of America, until 2011, US GAAP has over the years prevailed in Liberia, as the national comprehensive system of accounting. However, in 2011, the Central Bank of Liberia (CBL) required, by Regulation, that all banks operating in the Country adopt and comply with IFRS for financial statements and other reporting purposes as specified in the CBL Regulation. Moreover, encouraged by the Liberian Institute of Certified Public Accounting (LICPA), which has, over the years, organised orientation seminars for the purpose, many other corporate entities have adopted IFRS for Small and Medium Enterprises (IFRS for SMEs). Few others have adopted Full IFRS.

The Revenue Code of Liberia (RCL) requires that corporations use accrualbasis accounting for taxfiling purposes, but without specifying under which comprehensive system of accounting that is to be done. Even so, for that purpose IFRS is generally assumed although the LICPA, which has the legal authority to do so has not yet formally prescribed IFRS as a required comprehensive system of accounting in Liberia. Under the Code, other legal persons (e.g., partnerships and trusts) as well as individuals are generally free to use cash basis or accrual basis accounting, at the taxpayer's choice, provided that the chosen method of accounting may not be subsequently changed without the prior written approval of the Commissioner General (CG) of the Liberia Revenue Authority (LRA). However, natural persons as well as partnerships and trusts, may be required to use accrual basis accounting for a tax year in which business income 'exceeds the amount specified in Regulations'.

## DIVIDENDS

As a general rule, dividends are taxable to the recipient. However, a cash dividend received by one domestic Liberian corporation from another domestic Liberian corporation is tax exempt. The exemption does not apply if the dividend is received by virtue of redeemable shares that the recipient has in the domestic corporation that has paid the dividend; or if such dividend is received 'in a dividend stripping arrangement as defined in regulations'.

## EXCLUSIONS FROM GROSS INCOME

### Sickness, disability, or death benefits

Payments received by a taxpayer on account of illness of self or injury to another, or on account of the death of a natural person to whom the recipient is related, is excluded from income of the recipient. Payments qualifying for this exclusion include amounts paid as proceeds of health insurance or disability insurance or benefits; as damages for or in settlement of a claim of damages for injury to a natural person; or as proceeds of a life insurance policy or as a death benefit. This exclusion applies to the amount received regardless of whether such amount is received as a lump sum or as part of a series of annuity payments.

### Tax-exempt government obligations

Interest on an obligation issued by the Republic of Liberia and declared by the Government to be a taxexempt obligation is excluded from the income of the holder of the obligation.

### Personal-use property

Gains on the sale of personal-use property are excluded from income up to L$1,600,000. Excess, if any, is included in gross taxable income.

## DEDUCTIBLE BUSINESS EXPENSES

A taxpayer is permitted a deduction for the ordinary expenses of producing income during a tax year. Among others, these principally include:

### Investment incentives

The Revenue Code of Liberia provides a range of investment incentives that cover exemptions from import duties and also permit a number of accelerated depreciations on qualifying assets. In general, the incentives apply primarily to the mining, agricultural and renewable energy sectors. Also, in general, investment incentives include exemption from import duties of specified asset categories, usually for up to five years during the initial establishment period of a qualified business operation. They additionally include accelerated depreciation up to an aggregate of 30% of the cost of qualifying asset(s) in the year such asset(s) are put into operation. The adjusted tax cost of each qualifying asset is then depreciated on an assetbyasset basis or put into an appropriate asset category for subsequent additional depreciation, as further discussed below under Depreciation or Amortisation.

Qualification for such incentives requires certification for the purpose by the National Investment Commission (NIC), which is required by the Code to appropriately coordinate with the Liberia Revenue Authority (LRA) and the Ministry of Finance and Development Planning (MOFD) in reaching an appropriate determination regarding each application for the investment incentives provided in the Code. Tax incentives to be granted in respect of investments valued ten million (US$10 million) or above, require prior ratification by the National Legislature Liberia. As applies for all statutes of the land, it also requires that the President of Liberia approves such ratification for such to become effective as part of the Liberian Code of Laws.

## COST OF SALES

### Inventory of trading stock

To avail of inventory cost deduction provisions in the Code, a taxpayer is required to maintain proper books of account wherein inventory valuation is in accordance with a comprehensive system of accounting that is acceptable to the LRA, with IFRS increasingly becoming the norm for this purpose. For inventory items that are specifically identifiable, specific identification valuation of such inventory is required. For inventory items that are not readily identifiable, the standard methods of inventory valuation (including FIFO, LIFO, average cost) are acceptable for tax purposes. Periodend inventory is required to be valued at the lower of cost or market value.

Once chosen, a standard inventory valuation method may not be subsequently changed for the same or a similar category of inventory except with the prior written permission of the Liberia Revenue Authority (LRA). A deduction is allowed for the cost of inventory sold during the tax year.

Other standard operating costs of sales are also deductible.

### Depreciation and amortisation

The Code permits a deduction of depreciation or amortisation for depreciable or amortisable property used in a business. For this purpose, the Code recognises three categories of depreciable assets: (i) Tangible Moveable Property (ii) Tangible Fixed Property and (iii) Intangible Property. Assets classified as Tangible Fixed Property and Intangible property are depreciable under the straightline line method on an assetbyasset basis over a 15-year period. Special rules apply for concessionaires. Those special rules are substantially consistent with the preceding except that the period of amortisation/depreciation may be shorter in some cases, which thereby increases the annual depreciation/amortisation amount(s) applicable.

Assets classified as Tangible Movable Property are divided into two subcategories: heavy duty machinery and light duty machinery. Heavy duty machinery includes items such as tractors and earthmoving equipment, airplanes, ships, badges, heavy trucks (more than 5 tons empty weight) telecommunication towers, power support towers, buses for 20 or more passengers, power generators (hydro or fuel driven) for a defined community; and similar equipment. Light duty machinery includes items such as passenger automobiles, office furniture, computers, printers, telephones, passenger vans or buses for fewer than 20 passengers, light trucks (less than 5 tons empty weight), and similar equipment. Under the Code, tangible move able assets that do not clearly fall into the category of light machinery are classified as heavy machinery for the purpose of depreciation.

For tax purposes each subcategory of heavy-duty machinery and light duty machinery constitutes a distinct depreciation pool. A depreciation expense for the heavy duty machinery is calculated at 30% of the adjusted tax cost of the entire pool of heavy duty tangible machinery. A depreciation charge for the pool of light duty machinery is similarly calculated at 40% each year.

In each case the adjusted depreciation base of the pool is comprised of the preceding depreciation base increased by the adjusted tax bases of additions made to the base during the tax year and reduced, per the foregoing, by the depreciation amount for the current year. That base may be further adjusted by the tax adjusted bases of disposals during the year reduced by recoveries from insurance or from sale of specific assets, provided that such recoveries may not reduce the adjusted cost of the asset below zero.

### Business losses

A deduction is allowable for losses incurred and sustained by a business during a tax year, including a loss from the disposition of property used in a business, provided that the loss is limited to the extent of any compensation covered by insurance or otherwise by proceeds from disposal of such property.

### Net operating loss carried forward

Net operating loss incurred in one tax year is carried forward up to but not beyond the fifth tax year following the initial year of operating loss.

### Bad debts

A bad debt expense deduction is allowable for a bona fide business indebtedness that is determined to be uncollectible and is written off the taxpayer's books of accounts during the tax year. However, except for commercial banks operating in Liberia, where regulations issued by the Central Bank of Liberia apply, no deduction is allowed for a general provision for doubtful accounts.

### Business interest expense

Interest expense on business indebtedness for the interest cost attributable to a tax year is deductible for such tax year, whether paid or accrued during that year. However, deduction for interest payable to any person other than a resident bank is limited to the amount of interest received plus 50% of taxable income excluding interest income.

### Non-cash benefits provided by an employer

Technically includable, at market value in excess of L$100,000, in the annual taxable gross income of an employee, who is then taxed on a progressive scale with maximum marginal tax rate at 25%. However, in practice, the market value provision is not enforced owing to (i) practical difficulties concerning determination of market value in certain cases and also (ii) related difficulties having to do with uniform application of such valuation in other cases.

### Charitable contribution deduction

The Code permits a deduction for charitable contributions made to a qualifying charity as defined in the Code. The deduction is limited to an amount not in excess of 15% of the taxpayer's taxable income (computed before reduction for charitable contributions but after inclusion of any gain on property transfer).

## C. FOREIGN TAX RELIEF

For resident taxpayers only, a foreign income tax credit is available for a foreign tax that is an income tax paid or due (in the case of accrual basis taxpayers) to a foreign government for income that is not sourced from Liberia. However, the tax credit cannot exceed the Liberian tax amount that would otherwise have been required. Per the Code, the credit is available only where the foreign tax paid or due is either an income tax or one imposed in lieu of an income tax. Because the tax is subject to determination of that precondition, it is, in practice, available on a country by country basis, the onus being on a taxpayer who desires the credit to show that the foreign tax in question meets the precondition indicated above. That aside, the tax credit applies without regard to whether a double taxation or any other special tax treaty exists between Liberia and such foreign government. Moreover, the tax credit is applicable regardless of whether the relevant foreign tax has been paid or is due to the home country of the taxpayer or to another country. Furthermore, provided the specified Code requirements for the tax credit are met, applicable foreign tax credits may be obtained with respect to more than one foreign country.



## D. CORPORATE GROUPS

There is no group taxation in Liberia. The transfer of losses between group members is not allowed.

## E. RELATED PARTY TRANSACTIONS

Clear arm's-length transactions are acceptable under the Code. However, where the Commissioner General (CG) of the Liberia Revenue Authority (LRA) determines that a taxpayer's treatment of a relatedparty transaction in the accounting records of the taxpayer is not on an armslength basis, the Commissioner is authorised, under the Code, to 'reconstitute' such relatedparty transaction(s) as the Commissioner General deems fit under the circumstance in order to show the true underlying economic value(s) for a Liberian taxpayer, and thereby the tax consequence(s) of such relatedparty transaction(s). Where deemed required, either party, taxpayer or LRA, may seek the opinion of the Authority's Legal Department on the matter. If not satisfied with the decision of that Department, the taxpayer, but not the LRA, may appeal a decision of the Department to the Board of Tax Appeal (BOTA). Either party may, if it so decides, appeal BOTA's decision to the Tax Court and, if need be, thereafter to the Supreme Court of Liberia.

Effective 2018, a duly approved Transfer Pricing (TP) Regulation has been incorporated into the tax law of Liberia. All taxpayers who engage in TP activities with related parties during a tax year are required to file appropriate Transfer Prising returns no later than 31 March of the calendar subsequent year.

## F. WITHHOLDING TAX

### On payments to service providers

As part of advance payment of annual income tax liability, every service recipient (other than a salary or wage employer), who pays an independent service provider any amount in excess of L$1,000 in a year or reasonably expects to pay such service provider more than L$ 1,000 in a year for service(s) received or to be received from such service provider, is required to withhold a service tax on each payment, including advance payments, made to the service provider. The service recipient who makes a taxable payment to a service provider is, by law, designated a withholding agent of the Liberia Revenue Authority (LRA). A fine of between L$ 200,000 and L$ 500,000 may apply to a service recipient who fails to withhold the tax as required. In addition, the LRA may require a service recipient who fails to withhold as required, to pay to the Authority the requisite withholding tax. The payor may then have recourse to the service provider in order to recover the withholding tax that was required of such service recipient. However, the tax is on the service provider and, where the withholding is suitably documented, is deductible from the final annual tax liability of the service provider.

The withholding tax rates applicable are indicated in the table below. The amount withheld is required to be paid over to the Liberia Revenue Authority (LRA) not later than ten calendar days into the next calendar month following the calendar month in which the tax was withheld. An appropriate withholding tax return is required to accompany such payment to the LRA.

### On personal income of employees

Withholding tax applies to salaries and wages that meet or exceed a specified threshold. Personal income is taxed on a progressive scale, with the maximum marginal rate at 25%.

### Other withholding taxes

Withholding taxes are also imposed on all payments to nonemployees for services that reach or exceed or are reasonably expected to reach or exceed a specified annual threshold. In particular, withholding taxes apply for all payments of dividends, gambling winnings, interest, rents, royalties and the acquisition price (in a property transfer transaction) of an investment in Liberia, etc. The tax rates applicable are indicated in the table below:

| | | Withholding tax rates | |
|---|---|---|---|
| | | Resident | Non-resident |
| Item | Description | % | % |
| 1 | Acquisition price of an investment in Liberia (property transfer) | 10 | 15 |
| 2 | Dividends | 15 | 15 |
| 3 | Gambling winnings | 20 | 20 |
| 4 | Interest | 15 | 15 |
| 5 | Licence fees | 15 | -- |
| 6 | Rents | 10 | 15 |

## G. EXCHANGE CONTROL

**Dual Currency Regime**

- Liberia has a dual currency regime. The US dollar (USD or US$) circulates widely in the national economy alongside the Liberian dollar (LD or L$). Both are official currencies of Liberia. Exchange rates between the two national currencies are market determined.
- Unless otherwise specifically stated, tax rates indicated in the Revenue Code of Liberia are for Liberian dollar amounts. Taxes are payable in both currencies. Tax on US dollar income is generally payable in US dollars while tax on Liberian dollar income is also generally payable in Liberian dollars. However, where cross currency equivalent dollar conversion is required, the prevailing market exchange rate, as published by the Central Bank of Liberia, is used.

### Currency Control

- Only the Central Bank of Liberia (CBL) imports foreign currency notes. Moreover, travellers are not allowed to take more than ten thousand US dollars out of the Country on the traveller's person and/or within his luggage. Strangely, no corresponding restriction applies to Liberian dollars. This omission was clearly an oversight on the part of those who drafted the applicable legislation. In a legal test case, a Liberian amount (LD) amount substantially in excess of the LD equivalent of US$ 10,000 at the then prevailing exchange rate, was seized from a traveller who had such LD amount as part of his luggage. The court determined that, as worded in the applicable law, the US$ 10,000 restriction mentioned above does not apply to Liberian dollars. The court therefore ordered that the traveller's LD cash be returned to him and he was free to travel outside the Country with that amount without further hindrance. Except as stated above, there is no restriction on movement of currency into and out of the country, provided such movement is done via the banking system. There are also no restrictions on repatriation of profits or other funds, also provided such transfers are made via the banking system.

## H. PERSONAL TAX

An individual is considered resident in Liberia for the entire year of assessment if that individual:

- has a normal place of abode in Liberia and is present in Liberia at any time during the year of assessment;
- is present in Liberia for more than 182 days in a 12-month period that ends during the year of assessment; or
- is an employee or an official of the government of Liberia posted abroad during the year of assessment.

The following standard income tax rates plus base amounts apply, in general, on the taxable income of individuals:

| Taxable income (LD) | Base amount (LD) | Tax rate (%) |
|---|---|---|
| Up to 70,000 | 0 | 0 |
| 70,001 – 200,000 | 0 | 5 |
| 200,001 – 800,000 | 6,500 | 15 |
| In excess of 800,000 | 96,500 | 25 |

**Inheritance and Gift Tax**

There is no inheritance tax and also no gift tax in Liberia.

**Gifts and Transfers By Death**

Property received in a donative transfer or transfer by death is also excluded from the income of the recipient.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies | Qualifying companies | | |
| **Domestic rates** | | | | |
| Companies | 5/15 | 15 | 0/5/15 | 15 |
| Individuals | 5/15 | -- | 0/5/15 | 15 |
| **Treaty countries** | | | | |
| Germany | 15 | 10[1] | 0/10/20[2] | 10/20[3] |

Notes:

1. The 10% rate applies if the recipient is a company which itself, or jointly within a partnership with other companies, holds at least 25% of the capital of the dividend-paying company.
2. The 10% rate applies if the recipient is a bank or other financial institution. The 0% reduced rate applies if the interest is derived from Liberia and paid to the German Government, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or to the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft).
3. The 20% rate applies to payments made as consideration for the use of, or the right to use, any copyright, excluding cinematographic films or tapes for television or broadcasting, or any trademark (trade name). The 10% rate applies to payments in all other cases.

# LIBYA

## CORRESPONDENT FIRM

| City | Name | Contact Information |
|---|---|---|
| Tripoli | Dr. Tarek Mohamed Brigh | +218 91 32 36 465<br>t_brig@hotmail.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | State of Libya |
| Capital: | Tripoli |
| Main languages: | Arabic |
| Population: | 7.04 million (2022 estimate) |
| Monetary unit: | Libyan Dinar (LYD) |
| Internet domain: | .ly |
| Int. dialling code: | +218 |

## KEY TAX POINTS

- Companies are subject to corporate tax at a rate of 20% applied to their taxable income and Jehad tax at 4% of taxable income.
- Employment (salaries and wages) tax is calculated on an employee's base salary plus any allowances at a maximum rate of 10%. Other taxes levied on personal income include a Jehad tax at 3% of taxable salary income and a Solidarity Fund contribution at 1% of taxable salary income.
- Social security contributions (INAS) are payable by all employees working in Libya whether local or foreign, based on gross income with a total of 15% (3.75% employee contribution, 11.25% employer contribution).
- Capital gains are treated as ordinary business income and taxed at the general corporate income tax rate of 20%.
- Libya does not impose any Value Added Tax (VAT).

## A. TAXES PAYABLE

In Libya, any income resulting in Libya from any assets existent therein, whether material or immaterial or from any activity or work therein, will be subject to tax. The latest income tax law has been issued on 28 January 2010 listed under number (7) of the year 2010. The new law has come into force as from 28 April 2010, replacing the old Income Tax Law no (11) of 2004.

## COMPANY TAX

Income derived from Libya and abroad for the national companies and branches of foreign companies in Libya, whatever the type of their activity or purpose might be, are subjected to corporate tax. Companies shall be understood as general companies and private joint-stock companies. Branches of foreign companies shall be understood as the aspects of activity and capitals as performed by foreign companies in Libya, whatever their organization or legal status may be. Companies are liable to corporate income tax on their profits stemming from any business they carry on in Libya. They are subject to 20% corporate tax and 4% Jehad tax on taxable income.

In some cases where a foreign company is not registered in Libya, a deemed profit tax (mostly 20% to 60% of total income as a net profit) may apply and be taxed at the general corporate income tax rate of 20%. Deemed profit tax may apply to companies that do not record their books and accounts in accordance with local regulations.

## CAPITAL GAINS TAX

Capital gains are treated as ordinary business income and taxed at the general corporate income tax rate of 20%. Proceeds of sale of any business asset and liquidation proceeds received during the tax period are included in business profit.

## BRANCH PROFITS TAX

Income from branches held by foreign companies registered in Libya are calculated and taxed on the same basis of corporate income tax at 20%.

## VALUE ADDED TAX (VAT)

Libya does not impose any VAT.

## FRINGE BENEFITS TAX

In general, cash benefits paid to employees are added to their salary and taxed accordingly. There are, however, some exceptions such as travel allowances, telephone allowance, fuel allowance and the use of a company car.

## LOCAL TAXES

A special tax (Jehad tax) is imposed on wages, companies, duties on certain business activities, and some customs duties. This tax is payable under Law No. 44/1970 and is levied on personal income at 3% and corporate profits at 4%.

## OTHER TAXES

Certain legal transactions are subject to registration duties. These include:

## STAMP DUTY

Stamp duty is due on certain transactions at varying rates as well as fixed duties under the Libyan Stamp Duty Law No. (12) of (2004) and its amendment No. (8) of (2010). A contract negotiated in Libya must be registered with the Tax Department within 60 days of signing the contract. Contracts are subject to a 1% Stamp Tax on the value of the contract plus 0.05% on the 1% Stamp Tax.

## CUSTOMS AND EXCISE DUTY

Customs, excise and other taxes may be charged by the Customs and Excise Department.

## B. DETERMINATION OF TAXABLE INCOME

## CAPITAL ALLOWANCES

Generally, expenses incurred wholly and exclusively for the purpose of the business are deductible. However, specific rules apply in respect of certain categories. For example, the general expenses or fees for services or interests or commissions charged by the foreign company to its branch in Libya shall be only considered in the amount deemed necessary for achieving the purposes of the branch and at a maximum of (5%) of the administrative expenses approved by the Tax department. Provisions and reserves are not permissible deductions for tax purposes.

## DEPRECIATION AND AMORTISATION

Depreciation of assets used in business activities must be computed at a maximum annual percentage. For tax purposes, the straight-line method is normally adopted, and depreciation rates shall not exceed the following:

| **Description** | **Annual Rate of Depreciation (%)** |
|---|---|
| Buildings with machinery installed on it | 3 |
| Other Buildings | 2 |
| Passenger Vehicles | 20 |
| Trucks | 10 |
| Vessels | 4 |
| Ferries and fishing boats | 4 |
| Aircrafts | 8 |
| Furniture for offices, houses, stores | 10 |
| Furniture for hotels cafes, restaurants and hospitals | 20 |
| furniture for camps outside cities | 20 |
| Office machineries | 10 |
| Electric generators | 15 |
| Computers and related equipment | 20 |
| Computer programs | 10 |
| Other machineries | 15 |
| Start-up fees (at establishing the company) are normally amortised within the next five years | 20 |



## STOCK / INVENTORY

Inventories are mostly valued at cost and calculated on a FIFO basis. However, the method chosen must be applied consistently. Inventory reserves are not permissible deductions for tax purposes.

## CAPITAL GAINS AND LOSSES

As mentioned above, capital gains and losses are usually taxable as ordinary income.

## DIVIDENDS

Dividends received from other companies will be subject to tax at the tax rate applicable to business income and is considered as “other income in P&L statement”.

## INTEREST DEDUCTIONS

Interest payable is generally tax deductible on an accruals basis.

However, interest payable on taxes, fines and penalties is not deductible. Also, interest derived from loan finance received from shareholders is not deductible.

## LOSSES

Losses of fiscal year may be carried forward up to five years if the Tax Department certifies the loss. Losses may not be carried back.

## FOREIGN SOURCE INCOME

The tax authorities levy taxes on resident companies on all profits arising from foreign sources in the same way as income from local sources. Except for income raised for persons as salaries.

## TAX INCENTIVES

In 2010, the Libyan authority promoted Libyan and foreign companies to invest in Libya. Law No. 9/2010 aims at the promotion of national and foreign capital investment, with the purpose of setting up investment projects, within the scope of the state's general policy and the objectives of economic and social development, in order to particularly ensure achievement of the following goals:

- Technically upgrade and qualify Libyan cadres and elevate their efficiency, in order to acquire advanced skills in addition to opening employment opportunities.
- Endeavour to introduce know-how and technology and thereof inserted into the Libyan economy.
- Contribution towards setting up, developing or rehabilitating economic, service and production units, in a manner that assists such units to compete and be introduced into the world markets.
- Achievement of development in the relevant area.
- Increase and diversify income sources.
- Control energy consumption.
- Utilise locally available raw material

The investment project, subject to the provisions of this Law, shall enjoy the main following privileges:

- Exemption of the machinery, equipment and apparatuses necessary for the execution of the project, from all taxes, customs duties, import fees, service charges and other fees and taxes of a similar nature.
- Exemption of the investment project from income tax for any activity, for the first 5 years.
- Exemption of commodities produced for export, from production tax, customs duties and such charges imposed on exports.
- Exemption of stamp duty payable in accordance with the effective legislation.
- Other exemptions are available for certain projects and some nationalities companies.

However, the Executive Regulation of this Law shall decide the conditions and rules necessary for the execution of invested companies.



## C. CORPORATE GROUPS

There is no group basis tax option in Libya. Each company has to submit its tax returns separately including the holding company.

## D. RELATED PARTY TRANSACTIONS

Related party transactions negotiated at arm's length are treated the same as non-related party transactions.

## E. EXCHANGE CONTROL

Foreign companies are able to transfer distributable annual net interests and revenues achieved by the foreign capital invested in the project. However, transfer abroad is regulated by the Central Bank of Libya and subject to authorisation from the bank.

## F. PERSONAL INCOME TAX

Resident and non-resident individuals are subject to tax only on their Libyan salaries (income). Other sourced income (other than registered as a company) is taxed according to its source. Tax on income (personal or partnership) from agriculture is levied at a flat rate of 0%, income on commercial and professional activities is subject to 15% tax, income from industry and crafts is taxed at 10% and partnership income is taxed at 10%.

## SALARIES AND WAGES TAX

The salaries and wages tax is calculated on the base salary plus any allowances and taxed as follows:

- Allowance: LYD 1,800 for a single person, LYD 2,400 for a married person, plus LYD 300 for every child (per annum);
- the tax rate is calculated after the personal allowance deductions and employee contribution of INAS deductions. The rates are 5% for the first LYD 12,000 per annum and 10% above LYD 12,000;
- Other taxes levied on personal income include Jehad tax at 3% of taxable salary income, and Solidarity Fund at 1% of taxable salary income.

## SOCIAL SECURITY CONTRIBUTIONS (INAS)

The contributions are payable by all employees working in Libya whether local or foreign, based on gross income with a total of 15% (3.75% employee contribution and 11.25% employer contribution).

## G. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Dividends and royalties are not subject to withholding tax. Interest on bank deposits derived by non-residents is subject to a 5% final withholding tax.

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Non-treaty countries** | | | | |
| Companies | 0 | 0 | 0 | 0 |
| Individuals | 0 | -- | 0/5 | 0 |
| **Treaty countries:** | | | | |
| Algeria | –[1] | –[1] | –[1] | –[2] |
| Egypt | –[2] | –[2] | –[2] | –[2] |
| France | 10 | 5 | 0 | 0/10 |
| India | –[1] | –[1] | –[1] | –[1] |
| Malta | 15 | 5 | 5 | 5 |
| Mauritania | –[1] | –[1] | –[1] | –[2] |
| Morocco | –[1] | –[1] | –[1] | –[2] |
| Pakistan | –[2] | –[2] | –[2] | –[2] |
| Serbia | 10 | 5 | 10 | 10 |
| Singapore | 10 | 5 | 5 | 5 |
| Slovak Republic | –[1] | –[1] | 10 | 5 |
| Sudan | –[2] | –[2] | –[2] | –[2] |
| Syria | 10 | 5 | 10 | 1[2] |
| Tunisia | –[1] | –[1] | –[1] | –[2] |
| Ukraine | 15 | 5 | 10 | 10 |
| United Kingdom | 0/15[3] | 0/15[3] | 0 | 0 |

Notes:
1. No limitation on the withholding tax rate under the Arab Maghreb Union income tax treaty.
2. Domestic withholding tax rate applies. Income is subject to tax in the source country only.
3. 15% if the dividends are paid by a property investment company to a beneficial owner of the other state and the latter is other than a pension scheme. Otherwise, the 0% rate applies.

# LUXEMBOURG

## MEMBER FIRMS

| City | Name | Contact Information |
|---|---|---|
| Luxembourg | Olivier Martin | +352 24 14 34 1<br>o.martin@alliance-revision.lu |
| Luxembourg | Jean Medernach | +352 28 80 12<br>jean.medernach@pkf.lu |

## BASIC FACTS

| | |
|---|---|
| Full name: | Grand Duchy of Luxembourg |
| Capital: | Luxembourg |
| Main languages: | French, German, Luxembourgish |
| Population: | 644,554 (2022 estimate) |
| Monetary unit: | 1 Euro (EUR) = 100 cents |
| Internet domain: | .lu |
| Int. dialling code: | +352 |

## KEY TAX POINTS

- Luxembourg resident companies are subject to tax on their worldwide income. Non-resident companies are taxable in Luxembourg only on certain Luxembourg-sourced income.
- For tax year 2022, corporate income tax (“CIT”) is levied at a rate of 18.19%, assuming a taxable income higher than EUR 200,000.
- Luxembourg resident companies and non-resident companies having a permanent establishment in Luxembourg are also subject to municipal business tax (“MBT”), which is payable at rates that vary depending on the municipalities (e.g. 6.75% for Luxembourg-city).

- VAT taxable persons performing supplies of goods or services should charge VAT (standard rate of 17%) on these supplies unless transactions are subject to a reduced rate, are exempt from VAT, or are outside of the VAT scope. VAT may also be due on intra-UE acquisitions of goods and supplies of services as well as on import of goods.
- Capital gains are in principle regarded as ordinary business income and are taxed at the normal income tax rates. Exemptions and roll-over relief apply in some cases.
- Net worth tax ("NWT") is charged on companies' net assets value, after some deductions (and exemption of certain assets).
- In certain cases, foreign income tax may be credited against domestic income tax up to the amount of the domestic tax. Non-creditable portion of foreign income tax is considered a tax-deductible expense.
- Profits and losses of Luxembourg group companies may be pooled (tax unity) under certain conditions.
- Transactions by a company with shareholders and related parties must be at arm's length.
- In general, withholding tax is levied on dividends paid by resident companies. Dividends paid to companies covered by the EU Parent-Subsidiary Directive are exempt under certain conditions. Subject to certain exceptions, neither interest nor royalties are subject to withholding tax.
- Resident individuals are liable to tax on their worldwide income. Non-resident individuals are only taxable on specific Luxembourg-sourced income.
- Inheritance tax and gift tax rates vary according to the degree of kinship of the persons involved and the value of the assets inherited/received.

## A. TAXES PAYABLE

### COMPANY TAX

Luxembourg resident companies are subject to income tax on their worldwide income. Relief from taxation might be available for certain types of income either based on Luxembourg internal tax law or based on double tax treaties concluded by Luxembourg. As a matter of law, a company is considered resident in Luxembourg if it has its registered office or its central administration in Luxembourg. As a matter of practice, substance considerations have become increasingly relevant when assessing tax residency.

Non-resident companies are taxable in Luxembourg only on certain Luxembourg-sourced income. Income tax is composed of corporate income tax and municipal business tax.

For 2022, the corporate income tax rate (unemployment surcharge included) amounts to 18.19% (17% if the taxable income is more than EUR 200,000, and 7% of unemployment surcharge).

Municipal business tax is levied at a rate varying between 6.75% and 10.5% depending on the municipality where the company has established its business. For companies established in Luxembourg City, MBT is levied at 6.75% of their taxable income.

L

Therefore, companies established in Luxembourg City are taxed at a combined income tax rate (CIT + MBT) of 24.94%.

The applicable NWT rate is 0.5% on adjusted net assets for the portion of taxable net wealth up to EUR 500 million while the portion of taxable net wealth that exceeds EUR 500 million is taxed at a rate of 0.05%.

Luxembourg corporate (non-transparent) taxpayers and Luxembourg permanent establishments of non-resident corporate taxpayers can benefit from a net wealth tax reduction if they undertake:

- To enter in a reserve account, before the end of the following year, an amount equivalent to 5 times the NWT reduction requested; and
- To maintain such reserve in their balance sheet for 5 years following the reduction request.

The NWT reduction amounts to 1/5th of the reserve created, without exceeding the CIT liability (as increased by the employment fund surcharge and before application of tax credit) of the previous year. The reduced NWT may not amount to less than the reduced minimum NWT.

Any distribution or reduction of the reserve before the 5-year period expiry triggers an increase of the NWT payable for the given year equal to 1/5th of the reserve used.

Since 2019, the minimum NWT due by a resident company amounts to EUR 4,815 if its financial fixed assets, receivables owned on related companies and on companies in which it has a participating interest, transferable securities and cash, all together exceed **90% of the total balance sheet and EUR 350,000**. In all other cases, the minimum NWT varies between EUR 535 and EUR 32,100 depending on the total balance sheet (see details below).

| Balance sheet total as at beginning of fiscal year | Total minimum net wealth tax (EUR) |
|---|---|
| Does not exceed EUR 350,000 | 535 |
| Exceeds EUR 350,000 without exceeding EUR 2,000,000 | 1,605 |
| Exceeds EUR 2,000,000 without exceeding EUR 10,000,000 | 5,350 |
| Exceeds EUR 10,000,000 without exceeding EUR 15,000,000 | 10,700 |
| Exceeds EUR 15,000,000 without exceeding EUR 20,000,000 | 16,050 |
| Exceeds EUR 20,000,000 without exceeding EUR 30,000,000 | 21,400 |
| Exceeds EUR 30,000,000 | 32,100 |

In addition, the minimum NWT due is reduced by the CIT liability of the previous tax year after deduction of tax credits available. The minimum NWT is also applicable to some entities being exempt from ordinary NWT (securitisation companies, venture capital investment firms (SICARs), ...).

The final NWT liability is the higher of ordinary NWT calculated under the percentage method (as reduced by 1/5 of the relevant reserve, if any) and of minimum NWT (as reduced by the CIT liability from the previous year, if any).

## CAPITAL GAINS TAX

Capital gains are in principle considered ordinary business income and are taxed at the normal corporate tax rate. Exemptions and roll-over reliefs apply in some particular cases.

## BRANCH PROFITS TAX

No special tax is levied on branch profits. Luxembourg branches of non-resident companies are subject to corporate income and municipal business tax at the same rates as Luxembourg resident companies.

Luxembourg branches of non-resident companies are only taxed on the income attributable to the Luxembourg branch. Relief from taxation might be available for certain type of income based on Luxembourg internal tax law.

## SPECIAL REGIMES AND MEASURES

- **Family Wealth Management Company (Société De Gestion De Patrimoine Familial)**

  A family wealth management company (société de gestion de patrimoine familial or "SPF") is exempt from CIT, MBT and NWT, but is subject to an annual subscription tax of 0.25% calculated on its share capital and share premiums, which is payable on a quarterly basis. The activities of the SPF are limited to holding and managing certain financial assets. The SPF may not carry out any trade or business and is not allowed to hold real estate investments directly or indirectly through Luxembourg or foreign tax transparent vehicles. Finally, the shares of the SPF may, subject to certain limited exceptions, only be owned by individuals.

- **Holding Companies**

  Holding companies (société de participations financières or abbreviated "Soparfi") are fully taxable Luxembourg resident companies that take advantage of the provisions of the participation exemption regime (see below: taxation of capital gains and dividends) and of double tax treaties concluded by Luxembourg.

- **Investment Funds**

  Investment funds include the common investment fund (FCP), the Investment Company with variable capital (SICAV) and the Investment Company with fixed capital (SICAF). Investment funds may be used both for undertakings for collective investments in transferable securities (UCITS) or alternative investments funds (AIF). Investment funds are subject to the approval and supervision of the financial sector supervising authority, i.e. the "Commission de Surveillance du Secteur Financier" (CSSF). Investment funds are exempt from CIT, MBT and NWT but could be subject to a specific 20% real estate tax on income and gains arising from real estate assets located in Luxembourg. Investment funds are, however, subject to an annual subscription tax of 0.01% or 0.05% calculated on a quarterly basis on net asset value.

  Sustainable investment funds could be subject to subscription tax at a reduced rate of up to 0.04% depending on the level of sustainability.

  Investment Funds are considered taxpayers for VAT purposes.

  The investment fund management services VAT exemption also applies to investment advisory services rendered by third parties to an investment management company relating to investments in transferable securities. Further to the implementation of the "AIFM" Directive in local law, the VAT exemption also applies:

  - o To the management entities of Alternative Investment Funds (AIF); and,
  - o To entities (i) established within the EU similar to entities benefiting from the VAT exemption regime in Luxembourg and (ii) under the supervision of an organism similar to the CSSF or to the "Commissariat aux Assurances".

  Certain double tax treaties signed by Luxembourg apply to investment funds incorporated as a SICAV or SICAF. An investment fund constituted as a FCP does not benefit from double tax treaties.

- **Specialised Investment Fund**

  Compared to the traditional investment funds, the Specialised Investment Fund (SIF or Fonds d'Investissement Spécialisé) has greater flexibility with regard to its investment policy and less regulatory constraints due to the fact that it is reserved for professional or well-informed investors. There are no initiator/promoter requirements. SIFs are also subject to the agreement and supervision of the CSSF. SIFs are exempt from income tax and net worth tax. SIFs are, however, subject to an annual subscription tax of 0.01% calculated on a quarterly basis on the net asset value of the fund.

- **Securitisation Vehicle**

  Securitisation vehicles (organismes de titrisation) are used to convert assets, liabilities and risks into transferable securities. A securitisation structure typically involves an originator, the vehicle and the investors. The originator transfers assets and/or risks of any type to the vehicle. The vehicle issues securities and uses the funds collected to pay for the purchase of the assets. Two types of structures are available:

  a) The securitisation fund, which is subject to similar rules as investment funds, except that no subscription tax is levied;

  b) The securitisation company, which is a fully taxable entity that basically qualifies for the application of tax treaties and EU directives.

  Only securitisation vehicles issuing securities to the public on a continuous basis have to be authorised and are supervised by the CSSF to carry out their activities. For securitisation companies, any commitment to investors or creditors, such as the payment of dividends or interest, qualifies as a tax deductible expense. This lead, in most cases, to almost full tax neutrality.

  As from financial years starting after 1 January 2023, securitisation vehicles would no longer benefit from the exemption for the interest limitation rules; net deductible borrowing expenses would be limited to either 30% of the EBITDA or EUR 3,000,000.00 (whichever is higher).

  Securitisation companies are subject to the minimum NWT tax although being exempt from ordinary NWT.

  Distributions of proceeds by a securitisation vehicle to its investors qualify as interest payment for Luxembourg income tax purpose no matter whether the securities owned by the investors qualify as equity or debt and consequently are not subject to withholding tax. Securitisation vehicles are considered taxpayers for VAT purposes, exercising an exempt activity.

- **Venture Capital Company**

  A venture capital company (société d'investissement à capital risque or 'SICAR') is a specific vehicle for collecting venture capital from professional or well-informed investors. A SICAR can be set up as a tax transparent limited partnership or as a non-transparent corporate entity. SICARs are approved and supervised by the CSSF. SICARs may invest in assets with high-risk/increased return perspectives.

  They are subject to few restrictions but may have a flexible investment policy with no diversification rules or leverage restrictions. Umbrella SICARs are able to create multiple investment compartments with specific investment policies. SICARs set-up in the form of corporate entities are fully taxable entities. SICARs are exempt from income tax on any income from securities (dividends, capital gains) and from cash held for future qualifying investments.

  SICARs are subject to the minimum NWT although being exempt from ordinary NWT.

  Non-resident beneficiaries are exempt from tax in Luxembourg on income derived from these companies.

  SICARs are generally considered taxpayers for VAT purposes.

- **Special limited partnership (société en commandite spéciale or abbreviated SCSp)**

  The law transposing the AIFM Directive into domestic law, has introduced the special limited partnership (société en commandite spéciale or 'SCSp') as a new legal entity into Luxembourg company law. The SCSp is designed to take over the simplicity of the Anglo-Saxon limited partnership, namely: flexibility, confidentiality, limited investor liability and tax transparency. The SCSp is a limited partnership formed between a general partner (GP) who has unlimited liability, and one or more limited partners (LPs) whose liability is limited to the amount of their contribution to the partnership.

  From a Luxembourg company law perspective, the SCSp has no legal personality. The absence of legal personality means that the SCSp is not subject to the same Luxembourg company law requirements as other entities, with the result that it is not required to file financial statements with the company registry. In addition, limited partnerships are not required to disclose investor identity or the investors' contributions in the SCSp.

  The SCSp is transparent for Luxembourg corporate income and net wealth taxes. As a consequence, the SCSp is, in principle, not subject to corporate income tax. Instead, the partners are subject to income tax on their share in the profits of the SCSp. Non-resident partners in an SCSp are, however, only taxable in Luxembourg on their share in the profits of the SCSp if the activity of the SCSp qualifies as a commercial activity within the meaning of the Luxembourg income tax law. If the activity of the SCSp qualifies as a commercial activity, the SCSp is in addition subject to Luxembourg municipal business tax.

  The activity carried out by investments funds incorporated under the legal form of a Luxembourg SCSps (or even a SCSs) does not qualify as a commercial activity within the meaning of the Luxembourg income tax law, unless at least one of the limited partners is a corporate entity that owns an interest of at least 5% in the SCSp (or SCS).

- **Reserved Alternative Investment Fund (RAIF)**

  The Reserved Alternative Investment Fund (RAIF or Fonds d'Investissement Alternatif Réservé) has similar flexibility as the SIF. However, unlike a SIF, the RAIF is not subject to the approval of the CSSF but shall be managed by an authorised alternative investment fund manager (AIFM). The absence of approval from the CSSF substantially reduces the time to market a RAIF from its launch. RAIFs are reserved to well-informed investors.

  If the constitutional documents of an RAIF foresee and the RAIF effectively invests exclusively into risk-capital, the RAIF is taxed in the same way as a venture capital company. In this case, the RAIF's auditor must confirm the investment in risk capital.

  In all other cases, the RAIF is exempt from income and net wealth tax. However, it is subject to an annual subscription tax of 0.01% calculated on the net asset value of the RAIF. In certain cases, the RAIF may be exempt from subscription tax.

  **Real Estate tax for certain investment funds**

  Investment funds having a legal personality separate from that of their partners are, as from 1 January 2021, subject to an annual real estate tax on income and capital gains arising from real estate located in Luxembourg and held directly or indirectly through Luxembourg or foreign tax transparent entities.

- **Shipping Register**

  In addition to specific and general incentives, shipping companies are in principle only subject to aggregated corporate income tax of 18.19% for 2022 (no municipal business tax) and enjoy simplified rules with respect to social security and wage tax.

## VALUE ADDED TAX (VAT)

VAT applies to the following operations:

- The supply of services and goods made by a taxable person in Luxembourg;
- Intra-community acquisitions of goods from another Member states realised by a taxable person or by a non-taxable legal entity;
- Importations of goods from outside the European Union irrespective of whether the importation is made by a taxable or non-taxable person.

A taxable person is any person carrying out an independent economic activity on a regular basis, regardless of the aim, the results or the location of the activity.

A taxable person carrying out an economic activity in Luxembourg should register for Luxembourg VAT within 15 days from the beginning of its economic activity. There is no threshold for the VAT registration.

Similarly, non-taxable legal entities realizing intra-community acquisitions of goods (if exceeding EUR 10,000) are required to register for VAT.

The periodicity of the filing of VAT returns depends on the annual turnover of the VAT taxable person:

| Turnover (VAT excluded)<br>< EUR 112,000 | Turnover (VAT excluded) between EUR 112,000 and<br>EUR 620,000 | Turnover (VAT excluded)<br>> EUR 620,000 |
|---|---|---|
| Annual VAT return | Annual VAT return<br>Quarterly VAT returns | Annual VAT return<br>Monthly VAT returns |

The standard VAT rate is 17%. Reduced rates amount to 3%, 8% and 14%.

In principle, a taxable person may deduct 100% of input VAT paid or declared from the output VAT collected on its turnover. No deduction is, however, available if the goods and services purchased are used for the supply of services which are exempt from VAT and which do not give right to a deduction of input VAT. In that case, input VAT may not be recovered at all.

The deductibility of input VAT has to be determined based on the “real use” method. When a VAT taxable person carries out both operations that give right and do not give right to recover input VAT, that person has to determine to which activity each expense relates. Thus, input VAT on expenses related to an activity that gives right to recover input VAT can be recovered for the full amount. However, input VAT on expenses related to an activity that does not give right to recover input VAT cannot be recovered at all. Expenses that are not directly attributable to a single activity should be apportioned between them based on the most accurate allocation keys.

By way of exception, the general prorate method is applicable to expenses which cannot be apportioned between either activities (e.g. overhead costs).

VAT audits performed by the Luxembourg VAT authorities are supposed to be based on electronic documents available in an electronic audit file (“Fichier audit informatisé AED” or FAIA) containing all information pertaining to the economic activity of a taxable person. The FAIA aims at ensuring an easier, smoother and cheaper process for the audit of accounting information and documentation by the Luxembourg VAT authorities. Upon request from the Luxembourg VAT authorities, any taxable person using an electronic accounting system should be able to provide the FAIA to the Luxembourg VAT authorities. By way of exception, FAIA is not required if turnover does not exceed EUR 112,000.

Supplies of telecommunication, television, radio or broadcasting services and other electronically supplied services as well as supplies of services to Luxembourg consumers may be declared through the One-Stop-Shop (“OSS”). Since 1 July 2021, EU and non-EU business may use, respectively, the Union or the non-Union scheme system for their reporting obligations for the above supplies of services whose place of supply is located in the EU.

Since 1 July 2021, for intra-EU distance sales, VAT registration and the filing of VAT returns in Luxembourg is no longer necessary in case the foreign business opts to complete and file VAT returns under the Union scheme of the OSS.

For import distance sales, VAT registration and filing of VAT returns in Luxembourg is no longer necessary in case the EU and non-EU supplier opt for the Import scheme of the OSS for sales of import goods not exceeding EUR 150 (no VAT due on import). Alternatively, they could elect to have import VAT collected from the customer by the Customs declarant / postal courier. As a side note, the exemption for low-value goods (less than EUR 22) has been abolished.

Small businesses may however remain subject to VAT in their Member state (no foreign VAT registration and no use of the OSS) provided that the threshold of EUR 10,000 is not reached in the current and preceding year. This threshold applies both to distance sales of goods and the provision of electronic services.

When digital marketplaces facilitate transactions with EU consumers, said marketplaces may – subject to conditions – become the ‘deemed supplier’ of the goods and become liable for collecting VAT (possibly through the OSS).

Luxembourg law allows VAT grouping, i.e. resident taxpayers and permanent establishments of foreign entities being members of the group may elect to be considered as one single taxable person for VAT purposes so that supplies between group members are disregarded for VAT purposes.

The VAT group is an optional regime that shall be maintained for at least 2 calendar years among group members that are to be bound by financial, economic and organisational links. The financial link must be certified by an auditor or chartered accountant.

The VAT group regime does not have any implications regarding third party transactions of members that continue to deal with external providers using their individual VAT registration numbers.

The Group is required to file a single common VAT return under its own VAT registration number and all members are jointly and severally liable for any VAT debt, despite the appointment of one representative in charge of VAT compliance and liaising with VAT administration.

An entity can be a member of only one VAT group.

## VAT FREE ZONE

Luxembourg has a temporary VAT exemption regime providing for VAT neutral treatment of transactions concerning goods stored in specific locations.

## TAX REPRESENTATIVE

Under certain circumstances, a tax representative can be appointed in Luxembourg by taxable persons established outside the EU.

## OTHER TAXES

There is no stamp or registration duty on the transfer of shares or goodwill in Luxembourg. Nor is there any such duty on the transfer of receivables.

- Non-resident companies are subject to net worth tax only on certain Luxembourg assets i.e. branch located in Luxembourg or real estate located in Luxembourg.
- A subscription tax is payable by SPFs (0.25%) and investment funds (0.05% or 0.01%, see also above).
- Luxembourg–established UCIs, SIFs and RAIFs in corporate form, which hold – directly or indirectly through transparent entities – Luxembourg-located real estate are subject to an annual real estate levy on income derived therefrom.
- Specific registration duties are due in case of donations and upon successions. The tax burden is lower in the event of an inheritance.
- Registration duties due on the direct sale of real estate generally ranges from 7% to 10% (including transcription tax) depending on the municipality where the real estate property is located.
- For the contribution of Luxembourg real estate to Luxembourg commercial or civil companies in exchange for shares or interests, the aggregate transfer tax rates (including transcription taxes) have been increased in 2021 from 1.1% to 3.4% (for real estate located outside Luxembourg-city) and from 1.4% to 4.6% for real estate located in Luxembourg-city.

- Contributions to the share capital of a company are subject to a lump sum registration duty of EUR 75.
- Real estate located in Luxembourg triggers annual land tax.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company corresponds to the difference between the taxable income and allowable deductions. All business expenses are, in principle, deductible, subject to specific limitations regarding interest payments. Expenses linked to exempt income based on Luxembourg internal rules are deductible to the extent that they exceed exempt income.

### DEPRECIATION

Methods available are the straight-line depreciation and the declining balance at rates reflecting useful life of the relevant asset. Land may not be depreciated. Buildings and intangible assets may only be depreciated using the straight-line method.

A taxpayer can opt, upon request, to defer (part of) the depreciation until the end of the depreciation period of the asset. The depreciation period corresponds to the useful lifetime of the asset.

Accelerated depreciation method is available for renovated rental property or “sustainable property renovation”.

### STOCK / INVENTORY

Inventory includes raw materials, work in progress, finished goods and real estate bought for resale. Valuation is at the lower of production or purchase cost and market value. Accepted valuation methods include FIFO, LIFO and any other method if justified and applied consistently.

### CAPITAL GAINS AND LOSSES

In principle, capital gains from the sale of business assets are taxed at the ordinary income tax rate. A roll-over relief is available (subject to certain conditions) for profits realised upon the sale of real estate or non-depreciable assets. Capital losses are tax deductible provided that they have an economic justification. Capital gains/losses generally correspond to the difference between the sales price reduced by ancillary costs relating to the sale and the net book value of the asset being sold.

Capital gains from the sale of substantial shareholdings are tax exempt. Substantial shareholdings are shareholdings of at least 10% or of an acquisition cost of at least EUR 6,000,000, which are continuously held for at least 12 months. The exemption applies to shareholdings in subsidiaries that are within the scope of the EU Parent-Subsidiary directive (2011/96/UE), or that are incorporated as fully taxable companies that are subject to an income tax which is comparable to Luxembourg corporate income tax (i.e. the income tax amounts to at least 8.5% and is calculated on a taxable base which is determined in a similar way as the income subject to Luxembourg corporate income tax).

Capital gains realised upon the disposal of shares of substantial shareholdings remain taxable for an amount corresponding to the sum of the expenses related to the shareholding and any write-down recorded on the shareholding that reduced the tax base of the company in the year of disposal or in the previous financial years. This rule is known as the “recapture rule”.

An 80% exemption applies to the capital gain realised upon the sale of certain qualifying intellectual property rights (please refer to section below for more details). A recapture mechanism provides that capital gains remain taxable up to the sum of the expenses which were deducted from the taxable income in prior years.

### INCOME FROM INTELLECTUAL PROPERTY

The Luxembourg IP regime provides for a partial (80%) exemption of net income from eligible assets.

Eligible assets include software, patents, utility models and other rights equivalent to patents. Trademarks are no longer eligible.

With regard to an eligible asset, eligible net income is equal to gross eligible income earned in a financial year minus eligible expenses deducted in that financial year and directly or indirectly allocable to that asset.

Note that the eligible net income may have to be adjusted in order to ensure that the eligible net income of an asset earned in a given year qualifies for the tax exemption only if the total net chargeable income earned since the asset was used exceeds the total operating expenses in relation to that asset. As long as the sum of negative eligible net income exceeds the sum of positive eligible net income, no exemption is granted.

According to the so-called “nexus approach”, the partial exemption is only granted if the taxpayer has actually carried out R&D activities in Luxembourg and has therefore incurred the related R&D expenses in Luxembourg. R&D expenditure is the key indicator for measuring R&D activity in Luxembourg. Based on the nexus approach, net income is multiplied by the “nexus ratio” (R) as described in the following formula: sum of eligible expenses incurred in relation to the eligible asset / sum of total expenses incurred in relation to the eligible asset.

Taxpayers claiming the benefit of the IP regime are subject to a monitoring and documentation obligation in order to be in a position to (i) establish a link between R&D expenditure, an eligible IP asset, and the related income, (ii) identify the expenditure required for R&D activities and be able to justify a direct link to the creation, development or improvement of an IP asset, and (iii) outline how the R&D activities are organised, i.e. identify the R&D project(s) pursued, the related scientific/technological challenges, the milestones that led to the expected result(s) and to an eligible asset. In principle, these obligations have to be met separately with regard to each eligible asset.

### LIMITATION OF CORPORATE TAX DEDUCTIBILITY OF ‘GOLDEN HANDSHAKES’

Voluntary departure indemnities or dismissal indemnities above EUR 300,000 are not tax deductible for employers.

### DIVIDENDS

In principle, dividends received constitute a fully taxable income. However, dividends from substantial shareholdings are tax exempt. Substantial shareholdings are direct shareholdings of at least 10% or an acquisition cost of at least EUR 1,200,000, which are continuously held for at least 12 months (the 12 month holding period can also be met prospectively). The exemption applies to all dividends from subsidiaries that are within the scope of the EU Parent-Subsidiary Directive (2011/96/EU) or that are incorporated as a fully taxable company subject to an income tax comparable to Luxembourg corporate income tax (i.e. the income tax rate amounts to at least 8.5%) and is calculated on a taxable base which is determined in a similar way as the income subject to Luxembourg corporate income tax).

Since 2016, Luxembourg no longer exempts dividend distributions received by a Luxembourg company from shareholdings in EU companies qualifying for the EU Parent-Subsidiary Directive if such distributions are treated as a tax-deductible expense in the hands of the paying EU Company. Luxembourg neither exempts dividend distributions received from EU companies qualifying for the parent subsidiary if the dividend is derived through a structure that is considered to be abusive within the meaning of the Council Directive 2015/121/EU.

Expenses, including interest expenses and write-downs, in direct economic relation with the shareholding out of which the exempt dividend is paid will be non-deductible for tax purposes up to the amount of exempt dividend derived during the same financial year. On the other hand, expenses exceeding the amount of the exempt dividend received from such shareholding during the same financial year remain deductible for tax purposes. Such excess may create tax losses that can be carried forward. Dividends from fully taxable companies in which the recipient does not have a substantial shareholding are 50% tax exempt.

## INTEREST DEDUCTIONS

Interest on loans that finance investments intended to generate taxable income is deductible to the extent that the interest rate is at arm's length. Interest associated with exempt income is deductible only to the extent that it exceeds such exempt income. Even though there are no formal thin capitalisation rules provided for by the Luxembourg tax law, the Luxembourg tax authorities, in principle, require an 85-to-15 debt-to-equity ratio for the financing of shareholdings owned by Luxembourg companies. In case this ratio would not be respected, the Luxembourg tax authorities could disallow interest paid on the portion of the debt exceeding the 85-to-15 ratio.

An interest limitation rule provides that "exceeding borrowing costs" of a taxpayer are only deductible up to the highest of 30% of taxable EBITDA or EUR 3 million.

Exceeding borrowing costs is the excess of borrowing costs (being defined as interest expenses on all forms of debt and other costs economically equivalent to interest as well as expenses incurred in connection with the raising of finance) over interest income and other equivalent taxable revenues.

The application of the interest limitation rule at tax unity level (on an entity-by-entity basis) is optional.

Entities outside the scope of the interest limitation rule: financial undertakings and standalone entities are not subject to interest limitation rules:

- Financial undertakings are mainly entities covered by EU directives and regulations and include financial institutions, insurance and reinsurance undertakings, UCITS, AIF, securitisation vehicles covered by EU regulation 2017/2042;
- Standalone entities are entities not belonging to a consolidated group for financial accounting purposes and having no "associated enterprises" as defined under the CFC section.

Loans outside the scope of the interest limitation rule are:

- Loans concluded before 17 June 2016. The exclusion does not apply to any subsequent modifications of such loans, i.e. to interest in relation to any increase in the amount or duration of the loan or to any surplus interest generated by an increase of interest rate. In these situations, grandfathering only applies to the original terms of the loan;
- Loans used to finance long-term public infrastructure projects where the project operator, borrowing costs, assets and income are all located in the EU.

Upon request, a taxpayer being a member of a consolidated group for financial accounting purposes may deduct the entire amount of its exceeding borrowing costs if he can demonstrate that the ratio of its equity over its total assets is higher or at least equal (with a 2% tolerance) than the equivalent ratio of the group. Relevant financial statements shall be drawn up in accordance with IFRS or with standards from the national reporting system of an EU member state.

Exceeding borrowing costs can be carried forward without limitation and unused interest capacity can be carried forward for 5 years.

## LOSSES

Losses incurred until the tax year 2016 may be carried forward indefinitely. Losses incurred as of the tax year 2017 may be carried forward for 17 years. No carry-back is allowed.

## FOREIGN SOURCE INCOME

Foreign-sourced income is generally taxable under domestic law, unless it is exempt from Luxembourg income tax based on a double tax treaty concluded by Luxembourg or based on internal Luxembourg tax law. Foreign-sourced income that is typically exempt from Luxembourg income tax based on double tax treaties concluded by Luxembourg includes business profits attributable to permanent establishments located in a treaty country, as well as income derived from real estate properties located in a treaty country.

## HYBRID MISMATCHES

The aim of these measures is to eliminate double non-taxation outcomes created by the use of certain hybrid instruments or entities entailing the following consequences:

- Deduction of the same expenses or losses both in Luxembourg and another jurisdiction in which the expenses are incurred or the losses are suffered (double deduction); or
- Deduction of a payment in Luxembourg as the source country without inclusion of the corresponding income in the taxable income in the other jurisdiction (deduction without inclusion).

Luxembourg will deny the deduction of an expense to the extent of such expense being deductible in another jurisdiction where the expense has its source (double deduction) or to the extent corresponding income is not taxable in another jurisdiction (deduction without inclusion).

A hybrid mismatch aims at a situation involving a Luxembourg entity subject to corporate income tax, a Luxembourg permanent establishment of a non-resident entity or any entity considered as tax transparent according to Luxembourg domestic tax law generating one or more of the following mismatches, pursuant to ATAD 2 directive:

- Hybrid entity mismatch
- Hybrid financial instrument mismatch
- Hybrid transfer
- Disregarded permanent establishment mismatch
- Diverted branch payment
- Deemed branch payment
- Imported mismatch
- Tax residency mismatch.

These provisions only apply between associated enterprises or within the frame of a structured arrangement, as defined by the Luxembourg tax law.

Further clarification is expected regarding the concepts of “significant influence in the management” and “acting together”.

As from tax year 2022, transparent entities or arrangements that are incorporated or established in Luxembourg will, subject to certain conditions, be treated as corporate taxpayers and will be subject to Luxembourg corporate income tax (CIT).

This rule will only apply to an entity or arrangement (e.g., a partnership or a special limited partnership) if one or more non-resident associated enterprises holding in aggregate a direct or indirect interest of at least 50% of the voting rights, capital interests or rights to profit in the entity or arrangement are located in one or several jurisdictions that regard the entity or arrangement as opaque (Reverse Hybrid Entity).

Where these conditions are met the Reverse Hybrid Entity will be subject to CIT, but only for that part of its income that is not otherwise taxed in Luxembourg or in another jurisdiction (including that of the investor). The tax liability of the Reverse Hybrid Entity is limited to CIT and does not extend to MBT.

## CFC LEGISLATION

Controlled Foreign Companies (“CFC”) legislation has been introduced as from 2019.

Luxembourg will tax in the hands of resident corporate taxpayers the non-distributed income of an entity or a permanent establishment which qualifies as a CFC, provided such non-distributed income arises from non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage.

An entity or a permanent establishment qualifies as a CFC if the following two conditions are met:

- The Luxembourg corporate taxpayer, alone or with its “associated enterprises”, holds a direct or indirect participation of more than 50% in such entity, in terms of participation in the share capital, voting rights or profit entitlement; and,
- The income tax paid by this entity or permanent establishment is lower than 50% of the Luxembourg corporate income tax that would have been payable, if Luxembourg income tax law were to be applied (for 2022: 50% of 17%, i.e.8.5%).

If a subsidiary of a Luxembourg company qualifies as a CFC, any undistributed income of the CFC is to be included in the Luxembourg company’s taxable base if it arises from “non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage”. This is the case if the CFC:

- would not own the assets which generate its income; or
- would not have undertaken the risks, were it not controlled by the LuxCo. This criterion assesses whether the significant people functions, which are relevant to those assets and risks and play an essential role in generating the CFC income, are located at the level of the CFC or elsewhere in the group.

In practice, taxation of profits of a CFC will depend on whether or not the actual conduct of the CFC business has occurred out of the Luxembourg company.

The following foreign entities are excluded from the CFC rules:

- Entities with accounting profits of no more than EUR 750,000;
- Entities with accounting profits amounting to no more than 10% of their operating costs for the relevant tax year.

Specific rules apply to avoid double taxation of CFC income in case of a dividend distribution from or a capital gain made upon disposal of the CFC.

## ASSOCIATED ENTITIES

The concept of “associated entities” has become a key concept in Luxembourg tax law. Whether two entities are “associated entities” may be relevant for:

- the application of the interest limitation rule;
- the application of the transfer pricing rules;
- the application of the anti-hybrid rules;
- the application of the CFC legislation.

There are slight differences in the term “associated enterprises” for each of these rules. In general, with regard to a Luxembourg taxpayer, associated entities are:

- Resident or non-resident taxpayers subject to Luxembourg CIT or entities being transparent under Luxembourg law in which the taxpayer holds a direct or indirect participation of a certain percentage, in terms of participation in the share capital, voting rights or profit entitlement;
- Individuals or resident or non-resident taxpayers subject to Luxembourg CIT or transparent entities holding in the taxpayer a direct or indirect participation of a certain percentage, in terms of participation in the share capital, voting rights or profit entitlement;

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- All entities, including the taxpayer, held by an individual or a resident or a non-resident corporate taxpayer or a transparent entity for a certain percentage, in terms of participation in the share capital, voting rights or profit entitlement.

## TAX INCENTIVES

A tax credit is available for qualifying capital expenditures. The investment tax credit is calculated as follows as of 2017:

a) 13% of the difference between the value of total depreciable fixed tangible assets other than real estate and the average value of such assets during the last five years;

b) 8% on investments up to EUR 150,000 in such assets during the tax year and 2% on investments exceeding EUR 150,000. For investments linked to environmental protection or adaptations enabling the hiring of disabled persons, the rates are 9% and 4% respectively.

Some types of environment friendly cars have expressly been declared eligible for investment tax credit.

Unused investment tax credits may be carried forward for 10 years. Other incentives are available for various investments, company creations, company reorganisations, research and development activities, creation and development of innovative industrial or service-providing businesses and investments in view of the protection of the environment. Incentives may be granted in various ways such as capital grants and subsidies, loans from the national investment bank, interest subsidies, promotional assistance, tax exemptions and state guarantees, as well as access to fully equipped land, at low cost, in certain business parks.

Acquisition of software (if not acquired from an associated entity) entitles to a separate tax credit of 8% of the acquisition cost up to EUR 150,000 in a given tax period and 2% for investment exceeding EUR 150,000. The tax credit is limited to 10% of the tax liability of the year during which the acquisition has been made.

The investment in the development of new products, the launching of the production phase and the initial marketing thereof may benefit from the issuance of venture-capital certificates. Venture-capital certificates are issued to investors providing funds to companies realizing qualifying investments. Venture-capital certificates provide its holder with a tax credit of 30% of its nominal amount without exceeding 30% of the holder’s taxable profit. Venture capital certificates may be assigned once.

Hiring unemployed individuals was incentivised by way of a tax credit of 15% calculated on the monthly salary paid to qualifying hires over a period of 36 months after hiring. This incentive remains available until 31 December 2019.

Incentives for vocational training consist of a tax credit of 10% or a subsidy of 14.5% of qualifying expenses such as planning, evaluation, travel, catering and registration fees.

Other incentives include export financing (Ducroire).

## C. FOREIGN TAX RELIEF

Foreign income tax may be credited against domestic income tax up to the amount of the domestic income tax. If the foreign tax exceeds domestic income tax, the excess is generally deductible from taxable profits. No relief is available for the income tax paid by the distributing company on the profits distributed as a dividend to a Luxembourg company. In general, Luxembourg tax treaties provide for an exemption of the income derived from foreign permanent establishments or from foreign real estate.



## D. CORPORATE GROUPS

Luxembourg resident affiliates can combine their respective tax results. A tax consolidation group may be formed under certain conditions by a Luxembourg company or a Luxembourg permanent establishment of a non-resident company with its direct or indirect Luxembourg subsidiaries. A tax consolidation group may also be formed between the Luxembourg subsidiaries and permanent establishment(s) of a fully taxable resident or non-resident parent company, without including the parent company into the tax unity. As a result, sister companies which are owned by the same direct or indirect parent company can form a tax consolidation in Luxembourg. The tax consolidation remains subject to various conditions. These conditions did not materially change compared to the conditions under which the previous tax consolidation regime was available.

Further to a 2020 European Court of Justice decision (C-749/18), Luxembourg law allows a vertically consolidated group to change into a horizontal form without adverse consequences. This is a temporary measure which will cease to have effect at the end of tax year 2022.

In case of a tax consolidation, each tax payer is subject individually to the net worth tax. However, the cumulated minimum net worth tax due by the companies that are part of the tax consolidated is capped at EUR 32,100.

## E. RELATED PARTY TRANSACTIONS

Transactions by a company with its shareholders and related parties have to be at arm’s length. If transactions between related parties are not at arm’s length, they may give rise to hidden profit distributions (upward adjustment) or a TP adjustment (upward or downward adjustment). Luxembourg tax law defines the arm’s-length principle in the same way as article 9 of the OECD Model Tax Convention. The arm’s-length principle is required to be met for all intra-group transactions, whether the related parties are resident abroad or resident in Luxembourg. Luxembourg tax law also extends the general documentation and substantiation requirements to the documentation and substantiation of intra-group transactions.

Luxembourg tax law includes specific transfer pricing provisions on how to determine the arm’s- length remuneration applicable to intra-group transactions. The approach to determine the arm’s-length remuneration is in line with the principles of the amended Transfer Pricing guidelines issued by the OECD.

It also continues to be possible to obtain confirmation from the Luxembourg tax authorities on the at arm’s length character of intra-group transactions. However, in order to obtain a binding clearance from the Luxembourg tax authorities it is required that the company requesting the clearance meets certain organisational and economic substance requirements.

## F. THIN CAPITALISATION RULES

Luxembourg tax law does not contain any specific thin-capitalisation rules, except for SPFs. In principle, a company’s debt financing is not limited to a percentage of its paid-in capital. In practice, however, the tax authorities may challenge debt/equity ratios exceeding 85/15 for companies engaged in holding and/or group financing activities not complying with the arm’s length principle.

## G. CHAMBER OF COMMERCE FEE

Membership of the Chamber of Commerce is mandatory for all Luxembourg commercial companies and branches. The fee is based on taxable profits (before losses carried forward) and ranges from 0.025% to 0.20%. The minimum annual contribution amounts to EUR 70 (partnerships and limited companies) and EUR 140 for any other corporation (due even by companies in a loss position). Holding companies listed as such must pay a lump-sum contribution of EUR 350.

## H. WITHHOLDING TAX

### DIVIDENDS

Dividends distributed by a Luxembourg fully taxable resident corporation are generally subject to WHT at a rate of 15%, unless a WHT exemption or reduction, which may be provided by domestic or tax treaty law, applies.

Domestic law provides for a WHT exemption for dividends paid by special purpose vehicles such as SPFs, investment funds and SICARs.

Further, dividends paid to entities (or their Luxembourg permanent establishments), which are:

- Resident fully taxable corporations or EU entities within the scope of the EU Parent-Subsidiary directive; or;
- Fully taxable at an income tax comparable to Luxembourg corporate income tax and resident in treaty countries or member countries of the Espace Economique Européen (EEE);

are exempt from withholding tax if at the date when the dividends are put at its disposal, the beneficiary holds or commits itself to hold a direct shareholding representing at least 10% of the share capital of the distributing company or an acquisition price of at least EUR 1.2 million for a period of at least 12 months.

The withholding tax exemption may be denied in the case of a Luxembourg company distributing dividends to a qualifying company resident in another Member State, if the dividend distribution is paid within the context of a structure that is considered to be abusive within the meaning of the Council Directive 2015/121/EU.

An indirect shareholding through a Luxembourg or foreign partnership comparable to a Luxembourg partnership is deemed to be held directly.

### INTEREST

Interest payments are, in principle, not subject to withholding tax. Withholding tax on interest payments to individuals is subject to an automatic exchange of information. Interest paid by Luxembourg paying agents to individuals resident in Luxembourg is subject to a 20% final withholding tax subject to certain conditions.

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### ROYALTIES

In general, Luxembourg does not levy withholding tax on royalties, except on income from the copyright of literary or artistic work, within the limits of any applicable tax treaty provisions.

## I. PERSONAL TAX

Individuals resident in Luxembourg pay income tax on their worldwide income. Individuals are considered to be resident in Luxembourg if they have their domicile or their habitual abode in Luxembourg. Based on Luxembourg internal law the latter is the case if the individual has been present in Luxembourg for more than six months. In case a double tax treaty applies, residence is determined with reference to the rules provided for by said treaty. Non-resident individuals are only taxable on certain specific Luxembourg-sourced income.

The tax base consists of assessable income less certain special allowable deductions. Assessable income includes: business income, income from agriculture and forestry, income from self-employment, employment income, pensions and annuities, income from investments and savings, rental income and other income (including capital gains). Highly qualified workers who are hired on the international labour market may, during an eight-year period, benefit from certain tax-exempt compensations.

Interest earned by resident taxpayers on certain savings is subject to a 20% final withholding tax.

Capital gains realised by resident taxpayers are taxable as follows (1.4% dependence insurance contribution excluded):

- Sale of shareholdings held for less than 6 months: taxation at progressive income tax rates (max. 45.78%);
- Sale of shareholdings held for more than 6 months and > 10%: taxation at half the ordinary progressive income tax rates (max. 22,89%), plus a tax credit of EUR 50,000 (doubled for spouses/partners jointly taxable/renewable every 10 years);
- Sale of shareholdings held for more than 6 months and ≤ 10%: exemption.
- Sale of main residence: exemption (subject to conditions);
- Sale of real estate held for less than 2 years: taxation at the ordinary progressive income tax rates (max. 45.78%);
- Sale of real estate held for more than 2 years: taxation at half the ordinary progressive income tax rates (max. 22,89%), plus a tax credit of EUR 50,000 (doubled for spouses/partners jointly taxable/renewable every 10 years), plus a tax credit of EUR 75,000 if the property was inherited in direct line (subject to conditions).

The law transposing the AIFM Directive into domestic law has also formalised the rules applicable to the taxation of income from carried interest realised by certain employees of an alternative investment fund (AIF) or of its management company. Subject to certain conditions, income from carried interest realised by certain employees of an AIF or of its management company is taxed as “other income” at 1/4 of the global tax rate applicable to that individual’s taxable income (max. 11.445%).

Income tax due on employment income is withheld at source. Similarly, income tax is withheld at source on dividends paid by Luxembourg companies. The final amount of income tax due for a particular tax year is to be paid after the notification of a tax assessment by the tax authorities. Income tax due for a particular year is assessed by taking into account tax credits for foreign income taxes, income tax withheld at source in Luxembourg and advance tax instalments paid for the relevant year. Advance tax instalments are paid on a quarterly basis and are fixed based on the balance remaining due according to the latest income tax assessment.

Income tax is calculated based on progressive income tax rates. The rates indicated below exclude a 7% contribution to the employment fund. The contribution to the employment fund is increased to 9% in case the taxable income exceeds EUR 150,000 for taxpayers taxed at the tax classes 1 and 1a or exceeds EUR 300,000 for tax payers taxed at tax class 2.

| Taxable Income (EUR) | Marginal Rate (Class 1) |
|---|---|
| 0 – 11,265 | 0% |
| 11,265 – 13,137 | 8% |
| 13,137 – 15,009 | 9% |
| 15,009 – 16,881 | 10% |
| 16,881 – 18,753 | 11% |
| 18,753 – 20,625 | 12% |
| 20,625 – 45,897 | increase of 2% per bracket of EUR 1,944 |
| 45,897 – 100,002 | 39% |
| 100,002 – 150,000 | 40% |
| 150,000 – 200,004 | 41% |
| Above 200,004 | 42% |

On extraordinary income, income tax is calculated at preferential tax rates. Extraordinary income includes e.g. income from the sale of businesses, capital gains on substantial shareholdings sold after more than six months of purchase, one-off payment of (supplementary) pension benefits (entered into by employee) and capital gains on real estate located in Luxembourg and sold after more than two years. Capital gains on substantial shareholdings sold after more than six months after their purchase are taxed at half the global income tax rate. The global income tax rate corresponds to the effective income tax rate arising on a taxpayer's total taxable income. Therefore, half the global income tax rate does not exceed 24.29% (including the contribution to the employment fund).

From a tax point of view, individual resident taxpayers are allocated to 3 different tax classes. The allocation to the relevant class depends upon the marital status.

| Marital status | Age below 64 on 1 Jan | Age above 64 on 1 Jan |
|---|---|---|
| Single** | 1 or 1a | 1a |
| Married* | 2 | 2 |
| Legal partnership*** | 2 | 2 |
| Separated** | 1 or 1a | 1a |
| Divorced** | 1 or 1a | 1a |
| Widow** | 1a | 1a |

* Class 2 continues to apply for the year when the marital status has changed and for the three following years. Spouses may opt to be taxed individually, in which case each spouse will be taxed in class 1 with his/her relevant portion of income.

** 1 applies without children, 1a with children.

*** Partners may opt to be taxed individually, in which case each partner will be taxed in class 1 with his/her relevant portion of income. As a reminder, the partnership must have been in existence for 12 months and the withholding tax on salary is carried out according to class 1 or 1a (without or with child(ren) respectively).

For class 1, the general tax rates apply. For class 2, the total income of both spouses is split into 2 halves, each half is taxed at the income tax rates applicable to class 1 and income tax thus calculated is multiplied by 2.

Non-resident married taxpayers are in principle taxed in tax class 1. They may elect to be treated as resident taxpayers (taxed at a rate which is determined by taking into account their worldwide income less deductions and allowances), provided that one of the following conditions is met:

- More than 50% of the household's professional income is taxable in Luxembourg (for Belgian citizens only);
- More than 90% of the global income of one of the spouses is taxable in Luxembourg;
- The foreign income of the Luxembourg taxpayer does not exceed EUR 13,000.

In that case, the non-resident couple may choose between:

- Individual taxation (class 1): spouses may opt to be taxed individually, on their own income or on a re-allocation of household income;
- Collective taxation (class 2): spouses are taxed on the sum of their global worldwide income.

As from 1 January 2021, a tax-efficient employee profit-sharing scheme has been introduced and may be exempt from wage tax up to 50% at the level of the employee (subject to conditions).

## TAX CREDITS AND CHILD BONUSES

Tax credits are available to individuals deriving income from self-employment, employment income or pensions and annuities. The employee tax credit varies depending on the taxable income of the individual and amounts to a maximum of EUR 696 (for a taxable income of EUR 80,000). The tax credit for self-employed persons and pensioners amounts to EUR 300.

In addition, a tax credit is available for single taxpayers who are taxed in tax class 1a. This single parent tax credit varies between EUR 750 and EUR 1,500 depending on the taxpayer's taxable income.

There is a monthly child bonus of EUR 76.88 per child under the age of 21 or above such age in case of students.

Contributions for social security coverage are indicated in the table below.

| Social Contributions | Private Sector Workers | |
|---|---|---|
| | Worker (in %) | Employer (in %) |
| **Paid by:** | | |
| Illness | 3.05 | 3.05 |
| Pension | 8.00 | 8.00 |
| Accident | -- | 0.675 – 1.125 |
| Old age care ("Assurance Dépendance") | 1.4 | -- |
| Mutual Insurance ("Mutualité des Employeurs") | -- | 0.60 – 2.98 |
| Health check ("Santé au travail") | -- | 0.13 – 0.14 |
| **Total** | 12.45 | 12.46 – 15.30 |

Notes:

A minimum monthly wage of EUR 2,256.95 (EUR 2,708.35 for qualified workers) applies in Luxembourg. Wages are linked to the inflation index, which currently amounts to 855,62 as per 1 October 2021. The index will be increased when inflation exceeds 2.5%. Contributions are levied on the actual professional income. No contributions are levied on the portion of the professional income which exceeds five times the minimum wage. This ceiling does not apply to old age care which is levied on all assessable income.

## J. INHERITANCE TAX

Inheritance tax is due in Luxembourg if immovable property located in Luxembourg is concerned or if the deceased has been a resident in Luxembourg (no matter where the heirs are resident). In the latter case, inheritance tax is due on all net assets allocated to the heirs, except on real estate property located abroad. Inheritance tax rates vary depending on the degree of relationship existing between the deceased and the heirs:

| Transfer | Base rate applicable to the Legal Portion |
|---|---|
| In direct line between descendants and ancestors | Exempt |
| Between spouses with/without living descendants | Exempt |
| Between siblings | 6% |
| Between uncles or aunts and nephews or nieces, between adopter and the adoptee (in simple adoptions) | 9% |
| Between granduncles or grandaunts and grandnephews or grandnieces, between the adopter and the descendants of the adoptee (in simple adoptions) | 10% |
| Between other relatives and non-related persons | 15% |

The base rate applicable to the part exceeding the legal portion ranges between 2.5% (i.e. direct line subject to conditions) and 44.8% (i.e. other relatives and non-related persons).

## K. GIFT TAX

Gift tax may be levied on gifts made during an individual's lifetime. Gift tax is due if the gift is made through a notarial deed before a Luxembourg notary or if the gift is made before a foreign notary where the transfer takes place in Luxembourg (e.g. donation of immovable property located in Luxembourg). In addition, gift tax may also be due on disguised donations, indirect donations and gifts by hand – performed without any written deed – when such transfer is mentioned in any registered deed. The gift tax rates range from 1.8% to 14.4% depending on the degree of relationship between the donor and the donee. For gift tax purposes, the fiscal residence of the beneficiary and the donor is irrelevant.

## L. MISCELLANEOUS

### AUTOMATIC EXCHANGE OF INFORMATION

Since 2013, Luxembourg has been actively engaged in the automatic exchange of information with EU Member States and certain Non-EU Member States.

Luxembourg has been applying the automatic exchange of information with respect to income from employment, director's fees, pensions, life insurance products immovable property (so-called DAC 1 –based reporting) since 2013.

The scope of this directive been extended to cross-border tax rulings and advance pricing arrangements, and Luxembourg complies with those AEOI items.

Luxembourg also follows the Common Reporting Standard ("CRS"), developed by the OECD, whose objective is to achieve tax transparency through an automatic exchange of information related to financial accounts (interest, dividends, or other income generated by financial accounts) between states having adopted the same standard.

Luxembourg adheres to the Foreign Account Tax Compliance Act ("FATCA"). As a consequence thereof, the Luxembourg tax authorities automatically exchange information with the IRS on financial assets owned by US citizens or US tax residents with Luxembourg financial institutions. The information being exchanged is collected by the Luxembourg tax authorities from Luxembourg financial institutions.

As a result of Luxembourg complying with the so-called "DAC4" implementing the Country–by-Country reporting obligations, Luxembourg companies, which are part of a multinational group, may under certain circumstances be required to file a Country-by-Country report with the Luxembourg Tax Authorities. If a Luxembourg company belongs to a multinational group that exceeds the thresholds for Country-by-Country reporting, it will be required to notify the Luxembourg tax authorities which entity of the multinational group will be the reporting entity.

DAC 6 provisions have been transposed in Luxembourg by a law dated 25 March 2020 to strengthen tax transparency via an automatic exchange of information on certain cross-border tax arrangements. Further to the adoption of the amending law dated 24 July 2020, the deadlines for the entry into force of the new legislation were postponed due to the COVID-19 crisis.

DAC 6 provisions are now fully in force and provide for mandatory reporting within 30 days for all arrangements set up as from 1 January 2021.

Financial service providers as well as other service providers (so-called “intermediaries” in DAC 6) are obliged to report cross-border transactions falling under certain specific hallmarks, which could be indicators of aggressive tax planning put in place by the taxpayer. Under certain circumstances, the obligation may fall back on the concerned taxpayer.

Certain functions (lawyers, chartered accountants, auditors, etc.) subject to professional secrecy rules in Luxembourg are relieved from the obligation to prepare DAC 6 reporting. They would, however, still have the obligation to prepare notifications for the other intermediaries and/or potentially for the taxpayer concerned by the cross-border arrangements.

## ADVANCE TAX CLEARANCE

Under specific circumstances, it is possible to obtain a confirmation from the Luxembourg Tax Authorities for the interpretation of specific provisions of the Luxembourg tax law. Since 1 January 2015, the advance tax clearance or tax ruling practice is formalised in Luxembourg tax law. In order to be valid, the advance tax clearance request must contain certain minimum information. Advance tax clearances are available for both companies and individuals. An advance tax clearance will be valid for a maximum period of 5 years.

Advance tax clearances requested for a company will be reviewed and commented upon by an advance tax clearance commission. The request of an advance tax clearance, if related to corporate taxation, triggers a non-refundable fee payable to the Luxembourg Tax Administration which ranges between EUR 3,000 and EUR 10,000 depending on the volume and the technical complexity of the request. An anonymous executive summary of the advance tax clearance may be published in the annual report of the Direct tax authorities.

Subject to certain conditions, companies carrying out an intra-group financing activity may continue to obtain Advance Pricing Agreements confirming the remuneration to be realised on the considered financing activity. The advance pricing agreements follow the same rules as the advance tax clearance. Luxembourg tax authorities also exchange information on cross-border advance tax clearances and advance pricing agreements with foreign tax authorities (through a specific 777E form).

## ISLAMIC FINANCE

A circular issued by the Luxembourg tax authorities provides guidance regarding the tax treatment of certain Islamic finance instruments. A circular has also been issued by the Luxembourg VAT Administration. Special Purpose Vehicles incorporated in the framework of “murabaha” and “ijara” contracts qualify as taxable persons for VAT purposes.



## ABUSE OF LAW

Under the abuse of law provisions, the tax authorities may challenge fictitious or abnormal transactions and schemes that are entered into for the main purpose or one of the main purposes of obtaining a tax advantage.

These provisions are based on ATAD provisions, in particular the “non-authentic arrangement” definition, and focus on three principal elements:

- A misuse of forms and institutions of private and commercial law;
- The aim of this legal path being to obtain a circumvention or reduction of the tax burden in contradiction to the object or the purpose of the tax law;
- The non-authentic character of the legal path used (i.e. the absence of valid commercial reasons reflecting the economic reality).

The burden of proof lies with the tax authorities. However, this burden is shifted to the taxpayer to the extent that the tax authorities are in a position to make plausible that an economic reason is lacking.

These general anti-abuse provisions are a matter of general domestic tax law applicable to any corporate or individual taxpayer to any type of tax and to intra-UE and extra-UE situations.

## EXIT TAXATION

In case of transfer of registered office/assets by a Luxembourg company/Luxembourg permanent establishment to another EU Member State or an EEA state (subject to conditions), the tax due upon such exit may be performed by instalments over maximum 5 years (upon request). Such installed payment may be terminated prematurely in specific cases.

## MULTILATERAL INSTRUMENT

Luxembourg considers the Multilateral Instrument (MLI), along with the reservations and notifications made by Luxembourg, to be an innovative and unique instrument. Its main objective is to assist its users to understand the effects of the MLI on individual tax treaties, bearing in mind that the authentic texts of the treaties and the MLI remain applicable legal texts and need to be read in combination.

In this context, the Luxembourg Tax Authority provides users with consolidated texts of the treaties amended by the MLI on its website. The purpose of such consolidated text is to present a single document for each Luxembourg tax treaty covered by the MLI. The consolidated texts are published as and when the consultation formalities with the competent authorities concerned are completed. By the end of 2021, 39 summary texts had been published on the Luxembourg Tax Authority website.

## MALAYSIA

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Kuala Lumpur/Kelantan Penang/Sabah/Perak | Lim Ai Chen | +603 6203 1888 aichen@pkfmalaysia.com |
| Kuala Lumpur/Kelantan Penang/Sabah/Perak | Owen Tan | +603 6203 1888 owen.tan@pkfmalaysia.com |

### BASIC FACTS

| | |
|---|---|
| Full name: | Federation of Malaysia |
| Capital: | Kuala Lumpur |
| Main languages: | Malay (official), English, Chinese |
| Population: | 32.9 million (2022 estimate) |
| Monetary unit: | 1 Malaysia Ringgit (MYR) = 100 Sen |
| Internet domain: | .my |
| Int. dialling code: | +60 |

### KEY TAX POINTS

- Taxable income of companies is generally subject to corporate tax at the rate of 24%. To simplify and ease the administrative burden under the previous tax imputation system, a single-tier tax system has been introduced with effect from Year of Assessment (YA) 2008. Under this new system, income tax imposed on a company's chargeable income is a final tax and dividends distributed are exempted from tax in the hands of the shareholders.
- Income tax in Malaysia is imposed only on income. Capital gains are not taxed, except those arising from transactions in real property or shares in Real Property Companies.
- A resident is taxed on income accrued in or derived from Malaysia. However, a resident company carrying on a business of banking, insurance or sea or air transport is also taxed on income derived from outside Malaysia and received in Malaysia. With effect from 1 January 2022, income derived from outside Malaysia (foreign-sourced income) and received in Malaysia by tax residents will be subject to tax. A concession is granted whereby foreign-sourced dividend income of a tax resident company or a limited liability partnership and foreign-sourced income of a tax resident individual will continue to be exempted until 31 December 2026.
- Tax incentives are given for Malaysian resident companies carrying on certain favoured activities including energy conservation services and the managing of Islamic funds.
- All manufacturers and importers are subject to sales tax. The basic rate of 10% applies to all goods not specifically exempted or taxed under a reduced (5%) or increased (15%) rate. Sales tax has been abolished and replaced by Goods and Services Tax (GST) with effect from 1 April 2015. However, GST has been repealed and Sales tax has come into effect again on 1 September 2018.
- Service tax is levied on prescribed goods and services provided by certain businesses, including hotels, restaurants, legal, accounting and insurance businesses. Service tax has been abolished and replaced by GST with effect from 1 April 2015. However, GST has been repealed and Service tax has come into effect again on 1 September 2018.
- With effect from 1 January 2008, under the single-tier system all dividends distributed by the company are exempted from tax in the hands of shareholders at all levels.
- Resident companies within a group of companies may enjoy group relief incentive. Up to 70% of the adjusted loss may be surrendered to companies within the group upon commencement of business subject to certain conditions.
- Under Section 140A of the Income Tax Act 1967 (the Act), the Director General of Inland Revenue (DGIR) is empowered to make adjustments based on arm's length principle as set out under the Malaysian Transfer Pricing Guidelines revised in July 2017 on the transfer prices in relation to related party transactions.
- With effect from 1 January 2019, Earning Stripping Rules (ESR) have been introduced in Malaysia to be in line with BEPS Action 4: Limiting Base Erosion Involving Interest Deductions and Other Financial Payments to address base erosion and profit shifting by way of interest.
- There is no withholding tax on dividends paid by Malaysian resident companies. There is withholding tax on payments of interest, royalties and technical fees made to non-residents, although there are exemptions for certain types of interest payment.

### TAXES PAYABLE

Malaysian taxation is territorial in scope, whereby income derived from sources in Malaysia is subject to tax. Income received in Malaysia by any person other than a resident company carrying on the business of banking, insurance, sea or air transport derived from sources outside Malaysia is exempted from tax. With effect from 1 January 2022, income derived from outside Malaysia (foreign-sourced income) and received in Malaysia by tax residents will be subject to tax. A concession is granted whereby foreign-sourced dividend income of a tax resident company or a limited liability partnership and foreign-sourced income of a tax resident individual will continue to be exempted until 31 December 2026.

Malaysia currently adopts a Self-Assessment tax regime (SAS) whereby taxpayers have the responsibility to assess the extent of their tax liability and bear the onus of disclosure and representation of information. Under the SAS, the tax authorities will conduct

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tax audits on taxpayers to ensure proper compliance in respect of returns submitted, failing which penalties will be imposed on tax adjustments made.

## CORPORATE TAX

Resident and non-resident companies in Malaysia are generally subject to corporate tax at the rate of 24% with effect from YA 2016. However, if a resident company meets the requirements of a small and medium enterprise (SME), it will enjoy a lower tax rate on its first MYR 500,000 of chargeable income. With effect from YA 2019, the income tax rate on the first MYR 500,000 of chargeable income applicable only to SMEs is reduced by 1% from 18% to 17%. With effect from YA 2020, the first chargeable income that is subject to the concessionary income tax rate of 17% for SMEs has been increased from MYR 500,000 to MYR 600,000. The summary of tax rates is as follows:

| | **Corporate Tax Rates YA 2020 onwards** | **Corporate Tax Rates YA 2022 only** |
|---|---|---|
| SMEs[2] (resident company[1]): | | |
| - First MYR 600,000 of chargeable income | 17% | 17% |
| - Chargeable income > MYR 600,000 | 24% | 24% |
| Non-SMEs and non-resident companies[3] | | |
| - First MYR 100,000,000 of chargeable income | 24% | 24% |
| - Chargeable income > MYR 100,000,000 | 24% | 33% |

Notes:

1. A company is tax resident in Malaysia if the management and control is exercised in Malaysia. Management and control are normally considered to be exercised at the place where directors' meetings are held.
2. To qualify as an SME (i) the paid-up capital of the resident company in respect of ordinary shares must be not more than MYR 2.5 million at the beginning of the basis period (ii) it cannot be part of a group of companies where any of its related companies has a paid-up capital in ordinary shares of more than MYR 2.5 million at the beginning of the basis period (iii) it cannot have gross business income of more than MYR 50 million from one or more sources for the relevant YA.
3. For YA 2022 only, Cukai Makmur (Prosperity Tax) is applicable on chargeable income of non-SMEs exceeding MYR 100 million.

Under the SAS, every company is required to provide an estimate of its tax payable for a YA, 30 days before the beginning of the basis period. The estimate submitted for a particular YA cannot be less than 85% of the estimate/revised estimate of tax payable for the immediate preceding YA. Exemption for filing of tax estimate is only applicable under the following circumstances:

- For a period of 2 years beginning from the YA in which the company commences operation on the conditions that the SME must be a tax resident and incorporated in Malaysia.
- A company commencing operation in a YA is not required to furnish estimate of tax payable if the basis period the YA in which the company commences operation is less than 6 months.

The company is required to pay the estimated tax payable in equal monthly instalments according to the number of months in its basis period. The balance of tax payable by a company based on tax return submitted after deduction of tax estimate is due to be paid by the due date for submission of tax return.

All companies must file the annual corporate tax returns within 7 months from the close of the accounting period. It is mandatory for companies to submit tax returns via e-filing and the said return must be based on audited financial statements certified by the approved accountants, with the exception of non-audited Financial Statements that are prepared in accordance with the Companies Act 2016.

The following are some of the key aspects of the Malaysian income tax system and administration:

## SINGLE TIER DIVIDEND SYSTEM

To simplify and ease the administrative burden under the previous tax imputation system, a single tier dividend system has been introduced with effect from YA 2008 and the old tax imputation dividend has been fully phased out by 31 December 2013. Under this new single tier dividend system, income tax imposed on a company's chargeable income is a final tax and dividends distributed are exempted from tax in the hands of the shareholders.

## ADVANCE RULING

With effect from 1 January 2007, a taxpayer may request for an advance ruling from the DGIR on the interpretation and application of any provision of the Act to a particular type of arrangement or transaction.

## GROUP RELIEF FOR NON-SME COMPANIES

With effect from YA 2006, group relief is made available to non-SME resident companies to allow their current year losses to be utilised by their related company within the group, subject to certain conditions. Under this provision, a company may elect irrevocably to surrender up to 70% of its current year tax losses to offset against the chargeable income of its related company. The following are some of the key conditions to be met in order to claim group relief:

- Both claimant and surrendering companies must be locally incorporated companies and have the same accounting period;
- Has paid up capital of more than MYR 2.5 million at the beginning of the basis period; and
- 70% direct/indirect shareholding requirements.

Effective from YA 2019, the eligibility to claim group relief is restricted on commencement of business as follows:

- The surrendering company is restricted to a company which newly commenced operations; and
- The adjusted loss surrendered is limited to 3 consecutive years of assessment.

The 3 consecutive years of assessment commence:

- Immediately following the basis period the surrendering company first commences operations (i.e. second year of assessment) if the basis period for the first year of assessment consists of a period of 12 months; or
- Immediately following the second basis period the surrendering company first commences operations (i.e. third year of assessment) if the basis period for the first year of assessment does not make up 12 months and the basis period for the second year of assessment consists of a period of 12 months.

Group relief shall not apply to a company for any basis period for a year of assessment during which that company has unutilised investment tax allowance or adjusted loss from a pioneer business under the Promotion of Investments Act 1986.

## TRANSFER PRICING REGULATION

In line with the introduction of transfer pricing legislation in 2009, Transfer Pricing Guidelines 2012 have been issued by the DGIR on 20 July 2012 to replace the Transfer Pricing Guidelines issued on 2 July 2003. The Transfer Pricing Guidelines 2012 have also been revised in July 2017. Specific provisions have been established to empower the DGIR to make adjustments based on the arm's length principle as set out under the Organization for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines on transfer prices in relation to related party transactions.

## COUNTRY-BY-COUNTRY REPORTING

Malaysia has legislated the rules in respect of the requirements for filing a Country-by-Country Reporting (CbCR) and other related requirements, in line with the recommendations of OECD base erosion profit shifting (BEPS) Action Plan 13. The rules cover, among others, the conditions that require a multinational corporation group to perform CbCR, the details that should be reported in a CbCR, filing obligations, a deadline for filing as well as use and confidentiality of the CbCR information. The threshold for furnishing CbCR in Malaysia is set at a total group revenue in the financial year preceding the reporting financial year of at least MYR 3 billion. The abovementioned rules came into effect on 1 January 2017. CbCR shall be filed no later than 12 months after the last day of the reporting financial year.

## ADVANCE PRICING ARRANGEMENTS

Advance Pricing Arrangements Guidelines 2012 were introduced by the DGIR on 20 July 2012 to explain the manner in which a company may apply for an Advance Pricing Arrangement (APA) from the DGIR via a prescribed form. This represents an agreement between the company and the DGIR that establishes the transfer pricing methodology to ascertain the prospective arm's length transfer prices in relation to related party transactions between the company and its foreign affiliates under specific terms and conditions. The period covered under an APA is a minimum of 3 years and a maximum of 5 years of assessment. A rollback of an APA can be requested.

## EARNING STRIPPING RULES

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Earning Stripping Rules (ESR) that have a similar objective to control excessive deduction on interest expenses between associated persons have been introduced to be in line with the proposals under the OECD's report on BEPS Action 4 – Limiting Base Erosion Involving Interest Deductions and Other Financial Payments to address base erosion and profit shifting by way of interest. Under the Income Tax (Restriction on Deductibility of Interest) Rules 2019 that came into effect on 1 July 2019, the interest deduction on loans between related companies within the same group are limited to 20% of a company's tax-Earnings Before Interest, Tax, Depreciation, and Amortisation (tax-EBITDA). Interest expenses in excess of the deductible amount will be allowed to be carried forward to be utilised in the subsequent YAs, subject to certain conditions.

## REAL PROPERTY GAINS TAX

Malaysia does not impose capital gains tax on disposal of capital assets or related transactions, except for the disposal of real property or shares in Real Property Companies which fall within the ambit of Real Property Gains Tax Act 1976. With effect from 1 January 2022, the RPGT rates on the gains from disposal of real properties and shares in real property companies were revised as follows:

| Date of Disposal | Real Property Gains Tax Rates | | |
|---|---|---|---|
| | Companies[2] | Individual (Citizen & Permanent Resident)[1] | Individual / Executor of the Estate (Non-Citizen & Non-Permanent Resident)[3] |
| Within 3 years from date of acquisition | 30% | 30% | 30% |
| In the 4th year | 20% | 20% | 30% |
| In the 5th year | 15% | 15% | 30% |
| In the 6th year and subsequent years | 10% | 0% | 10% |

1. RPGT exemption is given to Malaysian citizens for the disposal of residential homes at a price of MYR 200,000 and below.
2. Effective 1 January 2022, these rates shall apply to a company incorporated in Malaysia, a trustee of a trust and a body of persons registered under any written law in Malaysia.
3. Effective 1 January 2020, these rates shall also apply to a company not incorporated in Malaysia.

## STAMP DUTY

Stamp duty is chargeable on certain instruments or documents. The rate of duty (either fixed rate or ad valorem) varies according to the nature of the instruments or documents and transacted value. The following are rates of stamp duty for some common instruments and documents:

- Properties (other than shares or marketable securities)

| Value (MYR) | Rate |
|---|---|
| On the first 100,000 | MYR 1 per MYR 100 or part of |
| On the next 400,000 | MYR 2 per MYR 100 or part of |
| On the next 500,000 | MYR 3 per MYR 100 or part of |
| Above 1,000,000 | MYR 4 per MYR 100 or part of |

The rate of stamp duty on instruments of transfer of property valued at more than MYR 1 million is to be increased from 3% to 4% effective 1 January 2019.

- Shares

  MYR 3 for every MYR 1,000 or any fraction thereof based on consideration or value, whichever is greater. The Stamp Office generally adopts one of 3 methods for the valuation of ordinary shares for purposes of stamp duty:
  - price earnings ratio;
  - net tangible assets; or
  - sales consideration.
- Service Agreements and Loan Agreements

  Stamp duty of 0.5% on the value of the services/loans. However, stamp duty may be exempted or stamp duty in excess of 0.1% may be remitted for the following instruments:

1. Service agreement

<table>
<tr><th colspan="2"></th><th>Stamp duty</th></tr>
<tr><td colspan="2">All service agreements (one tier)</td><td>Ad valorem rate of 0.1%</td></tr>
<tr><td colspan="3">Multi-tier service agreement:</td></tr>
<tr><td rowspan="2">a) Non-government contract (i.e. between private entity and service providers)</td><td>First level</td><td>Ad valorem rate of 0.1%</td></tr>
<tr><td>Subsequent level(s)</td><td>Up to MYR 50</td></tr>
<tr><td rowspan="3">b) Government contract (i.e. between Federal / State Government of Malaysia or State / local authority and service providers)</td><td>First level</td><td>Exempted</td></tr>
<tr><td>Second level</td><td>Ad valorem rate of 0.1%</td></tr>
<tr><td>Subsequent level(s)</td><td>Up to MYR 50</td></tr>
</table>

2. Loan agreement / loan instrument

   Ringgit Malaysia loan agreements generally attract stamp duty at 0.5%. However, a reduced stamp duty liability of 0.1% is available for MYR loan agreements of MYR loan instruments without security and repayable on demand or in single bullet repayment.

Certain disposals of assets between family members or within a group of companies may qualify for relief or exemption, subject to certain conditions.

## INDIRECT TAXES

Service tax and sales tax have been abolished and replaced by GST with effect from 1 April 2015. On 1 September 2018, GST has been repealed and replaced with Service Tax and Sales Tax, which have come into effect again in Malaysia from 1 September 2018.

## SALES TAX AND SERVICE TAX (SST)

- Basis of taxation and liability to be registered: A taxable person means a registered manufacturer/person or a manufacturer/ person who is liable to be registered under S. 12 of the Sales Tax Act 2018 and Service Tax Act 2018.
- Sales tax shall be charged and levied on all taxable goods:
  - Manufactured in Malaysia by a registered manufacturer and sold, used or disposed of by him; or
  - Imported into Malaysia by any person.

  The sales tax registration threshold is MYR 500,000.
- Service tax shall be charged and levied on:
  - Any taxable services provided in Malaysia by a registered person in carrying on his business; or
  - Any imported taxable services.

  The term “taxable services” refers to supplies of services that are liable to service tax, outlined in the First Schedule of the Service Tax Regulations 2018. On the other hand, the term “imported taxable service” refers to any taxable service acquired by any person in Malaysia from any person who is outside Malaysia. Service tax will be imposed on digital products and services imported by consumers (B2C) from 1 January 2020, where foreign suppliers who provide such services to consumers in Malaysia are required to register and charge service tax.
- Sales tax is imposed on taxable goods, unless otherwise exempt, at the rate of 5%,10% or a specific rate.

| Categories | Description |
|---|---|
| Exempt | • Meat, seafood, vegetables, coffee, tea, rice, fruit, spice, flour, salt, sugar, milk, bread, sausages, etc.<br>• Textbook, exercise book, folder, notebook, etc.<br>• Badminton racket, balls, etc.<br>• Truck, motorcycle, etc.<br>• Exportation of goods (to be substantiated by Customs Form No. 2)<br>• Building materials<br>• Bricks, blocks, tiles, etc. |
| 5% | • Fruit and certain foodstuffs<br>• Ham, smoked fish, butter, honey, potatoes, etc.<br>• Strawberries, etc. |
| 10% | • All taxable goods which are not otherwise prescribed |
| Specific rate | • Benzene, petroleum, diesel, etc. |

*(The above list is not exhaustive)*

The rate of service tax in Malaysia is fixed at 6%. A specific rate of MYR 25 is imposed upon issuance of principal or supplementary credit card or charge card services.

- Compulsory registration

  The sales tax registration threshold is MYR 500,000, while the service tax registration threshold ranges from Nil to MYR 500,000 or MYR 1,500,000. The threshold applies in the following ways if a person has begun making taxable supplies:

  - o Retrospectively – at the end of any month, where the total sale value of all his taxable goods/services in that month and the eleven months immediately preceding that month has exceeded the prescribed amount.
  - o Prospectively – at the end of any month, where there are reasonable grounds for believing that the total sale value of all his taxable goods/services in that month and the eleven months immediately succeeding that month will exceed the prescribed amount.

  Any taxable person who is liable to be registered shall apply to the Director General for registration as a taxable person in SST-01 Form, not later than the last day of the following month in which he is liable to be registered. Every form for registration shall be submitted to the Director General by way of electronic service.

- Registration before effective date for foreign service provider

  A foreign service provider who provides digital services before 1 January 2020 must register if the total value of his digital services at the end of January 2020 and the eleven months immediately following that month will exceed the prescribed amount of MYR 500,000.

  Any such foreign service provider shall apply to the Director General to be registered as a foreign registered person and the application shall be made 3 months before 1 January 2020 (i.e. 1 October 2019).

- Voluntary registration

  If a taxable person has not yet made taxable supplies or if the value of its taxable supplies is below the registration limit, the taxable person may register for SST voluntarily. Upon receipt of the voluntary registration application, the Director General may approve the registration from such date as he may determine subject to conditions he deems fit. Voluntary registration is not applicable for service tax on digital services.

- Branch registration

  Branch registration is only applicable to service tax, where any business of a taxable person is carried on by one or more branches or divisions, the taxable person may apply to the Director General, in the SST-01 Form, for any branches or divisions to be registered in the name of the branch or division.

  The Director General may approve an application made, subject to such conditions as he deems fit if he is satisfied that the registered person has met the following requirements:

  (a) It is likely to cause genuine difficulty for the registered person to submit a single return in respect of all the branches or divisions but for the separate registration;

  (b) Each branch or division maintains a separate account in respect of its activities;

  (c) Each branch or division is separately identifiable by reference to the nature of the activities carried on by or the location of the branch or division; and

  (d) Each branch or division has the same taxable period.

  A taxable person that registers for service tax under the branch registration must remain registered for at least two years. Branch registration is not applicable for service tax on digital services.

- Exemption from registration for sales tax

  Any person whose manufacturing operations are conducted solely in any one of those specified in Schedule A of the Sales Tax (Exemption from Registration) Order 2018 are exempted from sales tax registration, irrespective of the total sale value of taxable goods in the period of twelve months.

  Alternatively, the Minister may exempt any class of persons from sales tax registration, by order published in the Official Gazette. Approval is subject to conditions as the Minister deems fit. However, any person may still apply to be registered as a registered manufacturer and the provisions of the Sales Tax Act 2018 would still apply, notwithstanding that any person is exempted by the Minister.

- Persons exempted from payment of sales tax

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The following persons are exempted from sales tax, in accordance with the Sales Tax (Persons Exempted from Payment of Tax) Order 2018:

- o Schedule A: Class of persons, e.g. State Ruler, Federal or State Government Department, Local Authority, Inland Clearance Depot, Duty Free Shop.
- o Schedule B: Manufacturer of specific non-taxable goods – exemption of tax on the acquisition of raw materials, components, packaging to be used in manufacturing activities.
- o Schedule C: Registered manufacturer – exemption of tax on the acquisition of raw materials, components, packaging to be used in manufacturing of taxable goods.

- Intragroup treatment for service tax

  Where a company in a group of companies provides any taxable service specified in item (a), (b), (c), (d), (e), (f), (g), (h), (i) or (l) in column (2) in Group G to any company within the same group of companies, such service shall not be a taxable service.

  With effect from 14 May 2020, where a company that is a foreign registered person providing any digital service to any company in Malaysia within the same group of companies with the foreign registered person, such digital service shall not be subject to service tax for digital services purposes.

  Two or more companies are eligible to be treated as companies within a group of companies if one company controls each of the other companies.

  Where a company provides any taxable service as mentioned above to another person outside the group of companies, if the value of taxable services provided to a third party outside the same group of companies does not exceed 5% of the total value of services provided by the company within a period of 12 months, the above group exemption would remain applicable.

  Pursuant to the Service Tax (Amendment) Regulations 2019, where a company in a group of companies acquires any professional services specified under Group G, First Schedule of the Service Tax Regulations 2018 (except employment and private agency services) from any company within the same group of companies outside Malaysia, such service shall not be an imported taxable service, with effect from 1 September 2019.

- Business-to-Business (B2B) Exemption

  An exemption from service tax is applicable to a service tax registered person who acquires the same taxable service as provided by him, from another service tax registered person.

  Specifically, the B2B exemption will only apply to professional services under Group G (except employment and private agency services) and advertising services under Group I, First Schedule of the Service Tax Regulations 2018.

  With effect from 1 January 2020, the B2B exemption has been expanded to include services acquired from foreign registered persons (for digital services) and any person who is outside Malaysia (for professional services under Group G (except employment and private agency services) and advertising services under Group I, First Schedule of the Service Tax Regulations 2018, subject to conditions.

- Deregistration

  A taxable person shall cease to be liable to be registered at the end of any month where the Director General is satisfied that the total sale value of all his taxable goods/services in the period of 12 months, does not exceed the prescribed threshold. The taxable person shall make a written request to cancel his registration within 30 days from the date of cessation.

- SST Due

  Sales tax is chargeable at the time the taxable goods are sold, disposed of otherwise than by sale, or first used otherwise than as materials in the manufacturing of taxable goods, by the taxable person.

  Service tax is chargeable at the time when payment is received for the taxable service provided to the customer by the registered person. Where the whole or ay part of the payment for any taxable service provided by the registered person is not received from the customer within a period of 12 months from the date of invoice for the taxable service provided, service tax shall be due on the day following that period of 12 months.

  Service tax on importation of taxable service shall be due at the time when the payment is made or an invoice is received for the service, whichever is the earlier.

## IMPORT DUTIES

- Import duties are levied on goods that are subject to import duties and imported into the country.
- Import duties are generally levied on an ad valorem basis but may also be imposed on a specific basis.
- The rate of import duty on dutiable goods is dependent on the classification of the goods under the Customs Duties Order 2007. Malaysia adopts a coding or classification system commonly referred to as the Harmonised System which was established under the International Convention on the Harmonised Commodity Description and Coding System. Malaysia may enjoy preferential rates of duty under the relevant free trade agreements.
- Qualifying goods originating from China, Japan, Korea, Pakistan, Australia, New Zealand, India, Chile and ASEAN countries imported into Malaysia may enjoy preferential rates of duty under the relevant free trade agreements.
- The ad valorem rates of import duties range from 2% to 60%. Raw materials, machinery, essential foodstuffs, pharmaceutical products and certain tourism related and daily use products are generally non-dutiable or subject to duties at lower rates.
- Subject to certain exclusions, goods can be brought into or provided in free zones without payment of custom duties.

## EXPORT DUTIES

- Export duties are generally imposed on the country's main commodities. The ad valorem rates of export duty range from 0% to 20%.
- The rate of export duty on dutiable goods is dependent on the classification of the goods under the Customs Duties Order 2007.
- For the purposes of computing export duty, the value of the goods is the price which an exporter would receive for the goods calculated to the stage where such goods are released by Customs at the place of export.

## EXCISE DUTIES

- In Malaysia, excise duties are imposed on a selected range of goods manufactured in Malaysia and selected imported goods, including motor vehicles.
- Unless exempted from licensing, a manufacturer of tobacco, intoxicating liquor or goods subject to excise duties must have a licence to manufacture such goods. A warehouse licence is required for storage of goods subject to excise duty.
- Goods which are subject to excise duty include:
  - o Beer, stout and other intoxicating liquors (e.g. cider and perry, rice wine, mead, brandy, whisky, rum and tafia, gin).
  - o Cigarettes containing tobacco.
  - o Motor vehicles.
  - o Playing cards.
- As a general rule, duty is payable at the time the goods leave the place of manufacture or any other place under excise control.
- No excise duty is payable on dutiable goods that are exported.

## B. DETERMINATION OF TAXABLE INCOME

## CAPITAL ALLOWANCES

With effect from YA 2000 (current year basis), capital allowances for qualifying capital expenditure incurred by taxpayers have been categorised as follows:

| Type of Assets | Initial Rate | Annual Rate |
|---|---|---|
| Heavy machinery and motor vehicles | 20% | 20% |
| Plant and machinery (general) | 20% | 14% |
| Others | 20% | 10% |
| Assets with a lifespan not exceeding two years | N/A | Replacement basis |
| Small value assets (of value less than MYR 1,000 each) | N/A | 100%[1] |

Industrial building allowances are available for certain types of qualifying industrial buildings at the following rates:

- Initial rates ranging from 0% to 10%; and
- Annual rates ranging from 3% to 10%.

Qualifying capital expenditures incurred for certain type of equipment are given accelerated capital allowances (ACA).

M

Notes:

1. Total capital allowance claim shall not exceed MYR 10,000 except for SMEs. However, with effect from YA 2015, the total value of each asset for the purpose of claiming special allowance for small value assets has been increased from MYR 1,000 to MYR 1,300. The maximum limit of total special allowance for small value assets claimable for each YA by a non-SME is increased from MYR 10,000 to MYR 13,000. Effective from YA 2020, the value of each asset has been increased from MYR 1,300 to MYR 2,000 and the maximum limit claimable has been increased from MYR 13,000 to MYR 20,000.

## INVESTMENT INCENTIVES

Malaysia offers a wide range of tax incentives for foreign and local investors to promote investments in selected industry sectors and/or promoted areas. Malaysia has today become an export-driven economy spurred on by high technology, knowledge-based and capital-intensive industries and the Economic Transformation Programme (ETP) has been introduced by the government to propel and transform Malaysia into a high-income nation by 2020. Hence, the investment incentives have been designed to focus on these areas particularly the 12 National Key Economic Areas (NKEAs) identified under the Malaysian Economic Transformation Programme (ETP). The major types of tax incentives available in Malaysia are Pioneer Status, Investment Tax Allowance and Reinvestment Allowance.

## PIONEER STATUS (PS)

- An income tax exemption ranging from 70% to 100% (depending on the type of promoted products and/or activities) on a company's statutory income for a period of five years.
- The PS is generally favourable for companies expecting to generate large profits within a short time upon commencement of production of promoted products and/or activities.
- The exemption period may be extended for another further five years depending on the type of promoted products and/or activities.

## INVESTMENT TAX ALLOWANCE (ITA)

- The ITA is an alternative incentive to PS which is preferable for capital intensive projects involving promoted products and/or activities.
- The ITA is accorded to the qualifying person in addition to the normal capital allowances available on the same asset.
- Generally, the rate of the ITA is 60% on the qualifying capital expenditure incurred on qualifying plant and machinery and can be used to offset up to 70% (or 100% in certain promoted products and/or activities) of the statutory income.
- The exemption period may be extended for a further five years depending on the type of promoted products and/or activities.
- PS and ITA are mutually exclusive.

## REINVESTMENT ALLOWANCE (RA)

- RA is available for manufacturing companies that reinvest their capital to embark on:

- o Expansion of existing production capacity;
- o Modernisation or automation of production facilities;
- o Diversification into related products.

- RA is also available to companies engaged in agricultural projects (e.g. cultivation of rice, maize, fruits, vegetables, tubers and roots, livestock farming, spawning, breeding or culturing aquatic products, etc.).
- The RA is accorded to the qualifying person in addition to the normal capital allowances available on the same asset.
- Generally, the rate of the RA is 60% on the qualifying capital expenditure incurred on factory, plant or/and machinery and can be used to offset up to 70% (or 100% in certain circumstances) of the statutory income. Strict interpretation of types of "qualifying capital expenditure" need to be observed by the taxpayer in claiming the benefit accorded under this tax incentive.
- RA will only be given to a company which has been operating for not less than 36 months and is not applicable to an asset purchased by a company from a related company within the group.
- The incentive period is 15 years from the first year of claim and the RA is mutually exclusive to both PS and ITA as well as various tax incentives in Malaysia. Effective from YAs 2016 to 2018, companies whose RA incentive period has expired will be allowed a special claim of RA on qualifying capital expenditure.
- Special RA incentive period re-introduced for another 3 years from YAs 2020 to 2022 and will be granted for all manufacturing projects and selected agricultural activities as defined in Schedule 7A of the Income Tax Act, 1967. The Special RA incentive period was further extended for another 2 YAs until YA 2024 for existing manufacturing companies in Malaysia that have exhausted the RA and special RA period.
- RA claimed by any qualifying person will be clawed back if the qualifying asset is disposed of within five (5) years from the date of acquisition.

## OTHER INDUSTRIES WHICH MAY QUALIFY FOR TAX INCENTIVES IN MALAYSIA

- Biotechnology industries;
- Venture capital companies;
- Operational headquarters;
- International procurement centres;
- Regional distribution centres;
- Real estate investment trusts;
- Treasury management centre;
- Tun Razak Exchange (TRX) (formerly known as Kuala Lumpur International Financial District);
- New 4 and 5 Star Hotels in Peninsular Malaysia and Sabah and Sarawak;
- Profit Oriented Private Schools and International Schools;
- Provider of industrial design services in Malaysia;
- Business Trust;
- Child care centres and pre-school education;
- Angel investor;
- Global incentive for trading programme;
- Medical tourism;
- Research and development (R&D) sector;
- Establishment of independent conformity assessment bodies (ICAB).

## EXTENSION OF TAX INCENTIVES

- Foreign institutional investors, in particular pension funds and collective investment funds, and other non-corporate investors including resident and non-resident individuals receiving profit distribution from Real Estate Investment Trusts (REITs) listed on Bursa Malaysia are subject to final withholding tax at a rate of 10%. This was extended for another 3 years from 1 January 2017 until 31 December 2019, and further extended for another 6 years until YA 2025.
- Tax exemption on income from managing Shariah-Compliant funds has been extended by another 3 years until YA 2023.
- Tax incentive for venture capital industry has been extended by 4 years as a result of which the qualifying investment period will now run until 31 December 2026.
- Extension of tax exemption on income derived from managing Sustainable and Responsible Investment (SRI) Fund to YA 2023.

## C. WITHHOLDING TAXES

Certain types of payments to non-residents are subject to withholding tax at the following rates:

| Type of Payment | Rates |
|---|---|
| Special classes of income[1] | 10% |
| Interest | 15% |
| Royalties | 10% |
| Contract payments[2] | 10% + 3% |
| Other income [Section 4(f)][3] | 10% |
| Withdrawal of contribution made to a PRS[4] | 8% |
| Dividends | NIL |
| Public entertainer | 15% |

Notes:

1. Special classes of income (Section 4A) include:
   - Amounts paid in consideration of services rendered by the person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from such person;
   - Amounts paid in consideration of any advice, assistance or services rendered in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;
   - Rent or other payment, made under any agreement or arrangement for the use of any moveable property.

   Payments on advice, assistance or services rendered overseas will not be liable to withholding tax. However, for the period from 16 January 2017 to 5 September 2017, payments on technical advice, assistance or services rendered are not limited to services performed in Malaysia. According to Public Ruling 11/2018, disbursements and reimbursements incurred for non-residents are also subject to withholding tax except for disbursements on hotel accommodation in Malaysia.
2. The 10% withholding tax is for non-resident contractors' tax liabilities while the 3% is for the tax of employees of the non-resident contractor. Withholding tax for contract payments is not the final tax.
3. Section 4(f) income refers to gains and profits not specifically provided for under Section 4 of the Act, including commissions and guarantee fees.
4. Where withdrawal of contributions from a Private Retirement Scheme (PRS) by an individual is made before the age of 55 (other than by reason of death or permanent departure from Malaysia), the PRS scheme provider (as approved under Section 139Q of the Capital Markets and Service Act 2007) is required to apply the withholding tax mechanism in remitting 8% tax to the Malaysian tax authority.

With effect from 1 January 2011 for the YA 2011 and subsequent YAs, in addition to the late payment penalty, the DGIR is empowered to impose a penalty for incorrect returns under Section 113(2) of the Act if a tax deduction on the expenses subject to withholding tax is claimed and such withholding tax and penalty are not paid by the due date for submission of the tax return that relates to such expenses.

With effect from 1 January 2022, commission payments (in the form of cash) to a resident individual agent, dealer or distributor arising from sales or transactions carried out are subject to withholding tax at the rate of 2%. This requirement is only applicable to agents, dealers or distributors receiving total commission payments of more than MYR 100,000 (in both monetary and non-monetary form) in the immediate preceding year.

## D. PERSONAL TAX

Tax residency status of an individual person in Malaysia is generally determined by the number of days the individual is present in Malaysia during a particular calendar year. Generally, an individual is a tax resident in Malaysia if the individual is present in Malaysia for 182 days or more during a particular calendar year. An individual tax resident is entitled to several tax reliefs, tax rebates, scaled tax rates and exemptions, as set out below.

| | YA 2020 | YA 2021 | YA 2022 | |
|---|---|---|---|---|
| **Tax Reliefs** | **MYR** | **MYR** | **MYR** | |
| Taxpayer | 9,000 | 9,000 | 9,000 | |
| Husband/wife/alimony payments | 4,000 | 4,000 | 4,000 | (Limited)[1] |
| Disabled taxpayer | 6,000 | 6,000 | 6,000 | (Further deduction) |
| Disabled wife/husband | 3,500 | 5,000 | 5,000 | (Limited)[7] |
| Child relief (<18 years old per child) | 2,000 | 2,000 | 2,000 | |
| Child aged 18 years old and above, not married and pursuing diploma or above qualification in Malaysia/ bachelor degree or above outside Malaysia (per child) | 8,000 | 8,000 | 8,000 | |
| Disabled child | 6,000 | 6,000 | 6,000 | |
| Medical expenses for parents | 5,000 | 8,000 | 8,000 | (Limited)[8] |
| Medical expenses for serious diseases | 6,000 | 8,000 | 8,000 | (Limited)[9] |
| Basic supporting equipment for disabled | 6,000 | 6,000 | 6,000 | (Limited) |
| Life insurance premiums and Employees Provident Fund (EPF) | 7,000 | 7,000 | 7,000 | (Limited)[6] |
| Private Retirement Scheme and annuity premium (YA 2012 to YA 2025) | 3,000 | 3,000 | 3,000 | (Limited) |
| Insurance premiums for education or medical benefits | 3,000 | 3,000 | 3,000 | (Limited) |
| Fee expended for any course of study up to tertiary level other than a degree at Masters or Doctorate level, undertaken for the purpose of acquiring law, accounting, Islamic financing, technical, vocational, industrial, scientific or technological skills or qualifications or any course of study for a degree at Masters or Doctorate level undertaken for the purpose of acquiring any skill or qualification | 7,000 | 7,000 | 7,000 | (Limited)[13] |
| Purchase of books, journals, magazines and publications | -- | -- | -- | (Limited)[3] |
| Purchase of computer (once every 3 years) | -- | -- | -- | (Limited)[3] |
| Net savings in Skim Simpanan Pendidikan Nasional | 8,000 | 8,000 | 8,000 | (Limited)[2] |
| Purchase of sports equipment | -- | -- | -- | (Limited)[3] |

| | YA 2020 | YA 2021 | YA 2022 | |
|---|---|---|---|---|
| **Tax Reliefs** | **MYR** | **MYR** | **MYR** | |
| Parental care relief (until YA 2020):<br>- father<br>- mother | <br>1,500<br>1,500 | <br>1,500<br>1,500 | <br>1,500<br>1,500 | |
| Contribution to Social Security Organisation Scheme (SOCSO) | 250 | 250 | 350 | (Limited)[14] |
| Lifestyle | 2,500 | 2,500 | 2,500 | (Limited)[3] |
| Breastfeeding equipment | 1,000 | 1,000 | 1,000 | (Limited)[4] |
| Fees paid to children centres and kindergartens | 3,000 | 3,000 | 3,000 | (Limited)[5] |
| Purchase of handphones, notebooks or tablets | 2,500 | 2,500 | 2,500 | (Limited)[10] |
| Qualifying domestic travel expenses | 1,000 | 1,000 | 1,000 | (Limited)[11] |
| Purchase of sports equipment, rental/entry fees for sport facilities and registration fees in sports competition | -- | 500 | 500 | (Limited)[12] |
| Payment of installation, rental, purchase including hire purchase of equipment or subscription fees for use of electronic vehicle (EV) charging facility | -- | -- | 2,500 | (Limited) |

| **Tax Rebates (Effective YA 2009)** | **MYR** |
|---|---|
| Rebate given to taxpayer with chargeable income not exceeding MYR 35,000 | 400 |
| Additional rebate for spouse with no income and elects for combined assessment | 400 |
| Zakat, Fitrah and any other Islamic religious dues | Full rebate |

Notes:

1. With effect from YA 2017, the existing relief of MYR 4,000 will not apply if the husband or wife has an income derived from sources outside of Malaysia and the gross income from such sources exceed the amount of relief provided for. However, the legislation would not be applicable to husband or wife who is disabled.
2. The relief of up to MYR 8,000 is given for amounts deposited into Skim Simpanan Pendidikan Nasional established under the Perbadanan Tabung Pendidikan Tinggi Nasional Act 1997 for his or her child. This is presently applicable from YA 2012 to YA 2020. This relief has been extended for another 2 years from YA 2021 to YA 2022.
3. With effect from YA 2017, the tax relief for purchase of reading materials, purchase of sports equipment, purchase of computer and subscription of broadband internet will be replaced with a new relief of MYR 2,500, which will include the following scope:
    - Purchase of books, journals, magazines, printed daily newspapers and other similar publications (excluding banned publications);
    - Purchase of sports equipment for sports activities as defined under the Sports Development Act 1997;
    - Purchase of computer, smartphone or tablet;
    - Subscription of broadband internet; and
    - Gymnasium membership fee.
4. With effect from YA 2017, relief of up to MYR 1,000 is given for the purchase of breastfeeding equipment. This relief is applicable to working women with child aged up to 2 years and can be claimed once every two years.
5. With effect from YA 2017, relief of up to MYR 1,000 is given for individual taxpayers who enrol their child up to 6 years of age, in child care centres or kindergartens registered with the Department of Social Welfare or the Ministry of Education. This tax relief can be claimed by either parent of the child. With effect from YA 2020, this relief is increased to MYR 3,000 and this increment is only applicable for YAs 2020 and 2021.
6. With effect from YA 2019, tax relief for contributions to approved provident funds and life insurance premiums is now separated. Relief up to MYR 4,000 is given to contributions to approved provident fund such as EPF. In addition, payments for takaful or life insurance premiums is eligible for a tax relief of up to MYR 3,000. The total relief for the above should not exceed MYR 7,000.

    With effect from YA 2022, this relief is extended to include voluntary contributions (e.g. from self-employed individuals and retired public sector employees).
7. With effect from YA 2021, the additional relief for disabled spouse is increased to MYR 6,000.
8. With effect from YA 2021, this relief is increased to MYR 8,000.
9. With effect from YA 2021, this relief is increased to MYR 8,000 and includes an increase in complete medical examination of up to MYR 1,000. Further, the scope of tax relief for medical treatment expenses is also expanded to include vaccination expenses of up to MYR 1,000 for taxpayer, spouse and child. The vaccines eligible for the tax relief are as follows:
    - Pneumococcal;
    - Human Papillomavirus (HPV);
    - Influenza;
    - Rotavirus;
    - Varicella;
    - Meningococcal;
    - TDAP combination (tetanus-diphtheria-acellular pertussis); and
    - Coronavirus Disease 2019 (Covid-19).

    With effect from YA 2022, the scope of relief for medical examination is expanded to include Covid-19 detection tests (including purchase of Covid-19 self-detection test kits and mental health examination or consultation.
10. Special tax relief of up to MYR 2,500 is given for purchase of smartphones, personal computer or tablet (not being used for own business) for taxpayer's own use or for the use of the spouse or child in addition to the existing lifestyle relief. This additional relief is available for purchases made from 1 June 2020 to 31 December 2021 and purchases made during YA 2022, provided that the total amount claimed under the special tax relief has not been claimed under lifestyle tax relief.

11. The relief of MYR 1,000 is given for the payment of the following expenditures made by resident taxpayers on or after 1 March 2020 but no later than 31 December 2021:
    - accommodation at premises registered with the Commissioner of Tourism under the Tourism Industry Act 1992; and
    - entrance fees to a tourist attraction.

    This relief is applicable for YAs 2020 and 2021, and has been extended to YA 2022. The scope of this relief is expanded to include the purchase of domestic tour packages from travel agents registered with the Commissioner of Tourism made on or after 1 January 2021 but no later than 31 December 2022.
12. An additional relief limited to MYR 500 is given to a resident individual taxpayer for taxpayer's own use or for the use of his spouse or child for the following:
    (a) cost of purchasing sports equipment for any sports activity as defined under the Sports Development Act 1997;
    (b) rental or entrance fees to any sports facilities; and
    (c) registration fees for any sports competitions where the organiser is approved and licensed by the Commissioner of Sports under the Sports Development Act 1997.

    The taxpayer is allowed to claim this relief in addition to the existing lifestyle relief, provided that the total amount claimed under this relief has not been claimed under the existing lifestyle tax relief.
13. With effect from YA 2021, this relief is expanded to cover fees for any course of study undertaken for the purpose of up-skilling and self-enhancement. The course must be conducted by a body recognised by the Director General of Skills Development under the National Skills Development Act 2006. This relief is limited to MYR 1,000 for YA 2021.

    With effect from YA 2022, the relief for up-skilling and self-enhancement courses is increased to MYR 2,000.
14. With effect from YA 2022, this relief is expanded to include employee's contribution to Employment Insurance System (EIS).

Non-residents are not eligible to claim relief and rebates and are subject to a tax of 28% (the tax rate has been changed to 30% with effect from YA 2020) on their taxable income.

The chargeable income band exceeding MYR 2,000,000 has been introduced in YA 2020 and the tax rate for resident individual taxpayers for chargeable income exceeding MYR 2,000,000 has been increased by 2%. The progressive income tax rates for resident individuals as from YA 2020 are as follows:

| Taxable income (MYR) | Tax on lower amount (MYR) | Rate on excess (%) |
|---|---|---|
| Up to 5,000 | 0 | 0 |
| 5,001 – 20,000 | 0 | 1 |
| 20,001 – 35,000 | 150 | 3 |
| 35,001 – 50,000 | 600 | 8 |
| 50,001 – 70,000* | 1,800 | 14 |
| 70,001 – 100,000 | 4,600 | 21 |
| 100,001 – 250,000 | 10,900 | 24 |
| 250,001 – 400,000 | 46,900 | 24.5 |
| 400,001 – 600,000 | 83,650 | 25 |
| 600,001 – 1,000,000 | 133,650 | 26 |
| 1,000,001 – 2,000,000 | 237,650 | 28 |
| Over 2,000,000 | 517,650 | 30 |

*With effect from YA 2021, the tax rate is reduced by 1% for chargeable income band from MYR 50,001 to MYR 70,000.

## E. TREATY AND NON-TREATY WITHHOLDING TAX RATES

There is no withholding tax levied on dividends distributed to non-resident companies while interest and royalties are in principle subject to a 15% and 10% withholding tax rate respectively.

| | Interest (%) | Royalties (%) | Technical fees (%) | S. 4(f) income[2] (%) |
|---|---|---|---|---|
| **Domestic rates** | | | | |
| Companies | 15 | 10 | | |
| Individuals | 15 | 10 | | |
| **Treaty countries:** | | | | |
| Albania | 10 | 10 | 10 | 10 |
| Armenia | 15 | 10/15 | 10 | 10 |
| Australia | 15 | 15 | 0[3] | 10 |
| Austria | 15 | 10/15 | 10 | 10 |
| Azerbaijan | 15 | 10/15 | 10 | 10 |
| Bahrain | 5 | 8 | 10 | 10 |
| Bangladesh | 15 | 0/15 | 10 | 10 |
| Belarus | 15 | 10/15 | 10 | 10 |
| Belgium | –/10 | 10 | 10 | 10 |
| Bosnia and Herzegovina | 10 | 8 | 10 | 10 |
| Brunei | 10 | 10 | 10 | 10 |
| Cambodia | 10 | 10 | 10 | 10 |
| Canada | 15 | 0/15 | 10 | 10 |
| Chile | 15 | 10 | 5 | 10 |
| China | 10 | 10/15 | 10 | 10 |

| | Interest (%) | Royalties (%) | Technical fees (%) | S. 4(f) income[2] (%) |
|---|---|---|---|---|
| Croatia | 10 | 10 | 10 | 10 |
| Czech Republic | 12 | 12 | 10 | 10 |
| Denmark | – | 10 | 10 | 10 |
| Egypt | 15 | 15 | 10 | 10 |
| Fiji | 15 | 15 | 10 | 10 |
| Finland | 15 | 0/15 | 10 | 10 |
| France | 15 | 10 | 10 | 10 |
| Georgia | 15 | 10/15 | 10 | 10 |
| Germany | 10 | 7 | 7 | 0 |
| Hong Kong | 10 | 8 | 5 | 10 |
| Hungary | 15 | 15 | 10 | 10 |
| India | 10 | 10 | 10 | 10 |
| Indonesia | 10 | 10 | 10 | 10 |
| Iran | 15 | 10 | 10 | 10 |
| Ireland | 10 | 8 | 10 | 10 |
| Italy | 15 | 15 | 10 | 10 |
| Japan | 10 | 10 | 10 | 10 |
| Jordan | 15 | 15 | 10 | 0 |
| Kazakhstan | 10 | 10 | 10 | 10 |
| Korea (South) | 0/15 | 0/10/15 | 10 | 10 |
| Kuwait | 10 | 10/15 | 10 | 10 |
| Kyrgyzstan | 10 | 10 | 10 | 10 |
| Laos | 10 | 10 | 10 | 10 |
| Lebanon | 10 | 8 | 10 | 10 |
| Luxembourg | 0/10 | 8 | 8 | 10 |
| Malta | 15 | 15 | 10 | 10 |
| Mauritius | 15 | 15 | 10 | 10 |
| Moldova | 15 | 10/15 | 10 | 10 |
| Mongolia | 10 | 10 | 10 | 10 |
| Montenegro | 15 | 10 | 10 | 10 |
| Morocco | 10 | 10 | 10 | 10 |
| Myanmar | 10 | 10 | 10 | 10 |
| Namibia | 10 | 5 | 5 | 10 |
| Netherlands | 10 | 0/8 | 8 | 10 |
| New Zealand | 15 | 0/15 | 10 | 10 |
| Norway | – | 0 | 10 | 10 |
| Pakistan | 15 | 0/15 | 10 | 10 |
| Papua New Guinea | 15 | 10 | 10 | 10 |
| Philippines | 15 | 0/15 | 10 | 10 |
| Poland | 15 | 15 | 10 | 10 |
| Qatar | 5 | 8 | 8 | 10 |
| Romania | 15 | 0/12 | 10 | 10 |
| Russia | 15 | 10/15 | 10 | 10 |
| San Marino | 10 | 10 | 10 | 10 |
| Saudi Arabia | 5 | 8 | 8 | 10 |
| Seychelles | 10 | 10 | 10 | 10 |
| Singapore | 10 | 8 | 5 | 10 |
| Slovak Republic | 10 | 10 | 5 | 10 |
| South Africa | 10 | 5 | 5 | 10 |
| Spain | 10 | 7 | 5 | 10 |
| Sri Lanka | 10 | 10 | 10 | 10 |
| Sudan | 10 | 10 | 10 | 10 |
| Sweden | 10 | 8 | 8 | 10 |
| Switzerland | 10 | 10 | 10 | 10 |
| Syria | 10 | 12 | 10 | 10 |
| Taiwan | 10 | 10 | 7.5 | 10 |
| Thailand | 15 | 0/15 | 5[1]/10 | 10 |
| Turkey | 15 | 10 | 10 | 10 |

| | Interest (%) | Royalties (%) | Technical fees (%) | S. 4(f) income[2] (%) |
|---|---|---|---|---|
| Turkmenistan | 10 | 10 | 0[3] | 0 |
| Ukraine | 15 | 10/15 | 10 | 10 |
| United Arab Emirates | 5 | 10 | 10 | 10 |
| United Kingdom | 10 | 8 | 8 | 10 |
| Uzbekistan | 10 | 10 | 10 | 10 |
| Venezuela | 15 | 10 | 10 | 10 |
| Vietnam | 10 | 10 | 10 | 10 |
| Zimbabwe | 10 | 10 | 10 | 10 |

Notes:

1. JDA (Joint Development Area) art. 12A of the treaty provides for a 50% reduction from the standard 10% rate.
2. Section 4 (f) income refers to gains and profits not specifically provided for under Section 4 of the Income Tax Act, 1967. Such income includes commissions and guarantee fees.
3. Based on Practice Note No. 2/2017 issued by the Malaysian Inland Revenue Board on 23 June 2017, where an Australian or Turkmenistan resident renders technical services in Malaysia, payments for such services are not subject to withholding tax if the non-resident has no permanent establishment in Malaysia.

## MALI

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Bamako | Aliou Badara Toure | +223 4490 1926/1927<br>atoure@sec-exafi.com |

### BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Mali |
| Capital: | Bamako |
| Main languages: | French, Arabic, Fulani, Mandinka |
| Population: | 21.4 million (2022 estimate) |
| Monetary unit: | West African CFA Franc (XOF) |
| Internet domain: | .ml |
| Int. dialling code: | +223 |

### KEY TAX POINTS

- The standard corporate income tax rate is 30%.
- The standard VAT rate is 18%.
- Losses can be carried forward for 3 years. Losses cannot be carried back.
- Dividends paid to a non-resident company are subject to a 10% final withholding tax on the gross amount.
- Interest paid to a non-resident company is subject to a final withholding tax ranging between 3% and 18%.
- Royalties paid to a non-resident company are subject to a 30% withholding tax reduced by 50%, giving rise to an effective final withholding tax of 15%.
- Service fees, including technical services, and management fees paid to non-resident companies are subject to a final 15% withholding tax on the gross payments.

### A. TAXES PAYABLE

### COMPANY TAX

Mali has a source based taxation system in terms of which both residents and non-residents are subject to tax on income from a source in Mali.

The tax code does not specifically define the concept of residence but establishes a principle of territorial taxation according to which corporate income tax is chargeable on all profits realised in Mali by companies exercising their activities in Mali.

Resident companies and permanent establishments of foreign companies are subject to corporate income tax at the rate of 30%.

A minimum lump-sum tax (*impôt minimum forfaitaire, IMF*) applies to companies that are subject to corporate income tax and the tax due must be at least 1% of annual turnover.

Small businesses (i.e. businesses with an annual turnover lower than XOF 50 million) are not subject to the standard corporate income tax rate. A 3% synthetic tax (*impôt synthétique*) is levied on turnover.

### CAPITAL GAINS TAX

Capital gains realised by resident companies are subject to the standard corporate income tax rate. Rollover relief is available for capital gains on the alienation of business fixed assets, subject to certain conditions.

## BRANCH PROFITS TAX

In addition to the corporate income rate, irrespective of whether the profits are actually repatriated, a branch profit tax is levied at a rate of 10%.

## VALUE ADDED TAX (VAT)

- VAT is levied on all supplies of goods and services made in the course of a business activity.
- The standard VAT rate is 18% while a reduced rate of 5% applies for computer hardware and solar energy equipment.
- Effective 1 January 2017, the VAT registration threshold is turnover exceeding XOF 50 million. Importers are subject to VAT regardless of their turnover.

## B. DETERMINATION OF TAXABLE INCOME

Mali adopts a territorial taxation system, whereby resident and non-resident companies are subject to tax on income derived from their operations within Mali and on any income attributed to Mali by a double tax treaty.

All types of business income fall under one category. Corporate income tax is levied on the total net income of various sources of business income, including capital gains realised on the transfer of business assets, but excluding exempt income.

The determination of the net taxable income is based on profit or loss reported on the profit and loss account adjusted for corporate income tax purposes.

For business accounting purposes, Mali has, like other OHADA member states, adopted since January 2001 the OHADA accounting system provided for by the OHADA Uniform Act Relating to Accounting *(Acte uniforme relatif au droit comptable et à l'information financière)*. Under this act, companies operating in Mali are obliged to keep their local accounts and to prepare their domestic corporate income tax returns according to the OHADA accounting system.

## DISALLOWED EXPENSES

Expenses related to exempt income are non-deductible. Also, luxury expenses, including entertainment expenses, acquisition and maintenance costs of luxury residences and boats are not deductible. Fines and penalties resulting from the infringement of legal provisions are not deductible from the taxable base.

The deduction of royalties, interest expense, and service fees paid to non-resident persons is limited to 3.5% of the taxpayer's annual revenue, although this limitation does not apply in respect of payments to companies that are not directly or indirectly participating in the management or share capital of the Malian taxpayer.

## DEPRECIATION

Depreciation is generally allowed in respect of tangible assets (except for land) which are subject to normal wear and tear. Intangible assets which do not irreversibly diminish in value, e.g. goodwill and trademarks, are not depreciable.

The tax code allows any of the following three methods of depreciation: the straight-line method, accelerated depreciation and the reducing balance method.



## INTEREST DEDUCTIONS

For thin capitalisation purposes, the maximum accepted debt-equity ratio is 1:1.

Interest paid on shareholder loans is deductible subject to the following conditions:

- the company's capital has been fully paid up;
- the cumulative amounts contributed do not exceed the share capital; and
- the interest rate does not exceed the BCEAO discount rate plus 3%.

## LOSSES

Losses can be carried forward for 3 years. Losses cannot be carried back.

## C. FOREIGN TAX RELIEF

No unilateral double taxation relief is granted under domestic tax law in respect of foreign tax. However, double tax relief is provided under tax treaties concluded by Mali.

## D. CORPORATE GROUPS

- There is no tax consolidation regime in Mali.
- There are no CFC rules in Mali.
- However, a participation regime applies for resident companies under which 95% of dividends received is not taxable at parent company level, subject to certain conditions.

## E. PERSONAL TAX

Employment income is subject to a monthly withholding tax and to annual personal income tax at the following rates.

| Taxable annual income (XOF) | Rate |
|---|---|
| Up to 330,000 | 0% |
| 330,001 – 578,400 | 5% |
| 578,401 – 1,176,400 | 12% |
| 1,176,401 – 1,789,733 | 18% |
| 1,789,734 – 2,384,195 | 26% |

| Taxable annual income (XOF) | Rate |
|---|---|
| 2,384,196 – 3,494,130 | 31% |
| Over 3,494,130 | 37% |

## F. WITHHOLDING TAX

- Dividends paid to a non-resident company are subject to a 10% final withholding tax on the gross amount. A reduced 7% withholding tax rate applies on dividends distributed by Mali resident companies listed on a stock exchange within the WAEMU approved by the CREPMF.
- Interest paid to a non-resident company is subject to a final withholding tax ranging from 3% to 18%.
- Royalties paid to a non-resident are subject to a 30% withholding tax reduced by 50%, giving rise to an effective final withholding tax of 15%.
- Service fees, including technical services, and management fees paid to non-resident companies are subject to a 15% final withholding tax on the gross payments.

## G. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-treaty countries** | | | |
| Companies | 7/10 | 0/3/6/9/13/15/18 | 30[10] |
| Individuals | 7/10 | 0/3/6/9/13/15/18 | 30[10] |
| **Treaty countries:** | | | |
| France | --[1] | --[1] | 0[2] |
| Monaco | 10 | 0/6[3] | 15 |
| Morocco | 5/10[4] | 0/10[5] | 10 |
| Russia | 10/15[6] | 15 | 0 |
| Tunisia | 0/5[7] | 0/5[8] | 10 |
| WAEMU[9] | 10 | 15 | 15 |

Notes:

1. The domestic withholding tax rate applies.
2. Royalties paid for the use of immovable property or for the working of mines, quarries or other natural resources shall be taxable only in the Contracting State in which such property, mines, quarries or other natural resources are situated.

   Copyright royalties and proceeds or royalties from the sale or grant of licences for the use of patents, trademarks, secret processes and formulae paid in Mali to a person having his fiscal domicile in France shall be taxable only in France, including payments made for the hire of or for the right to use cinematographic films, similar remuneration for the provision of information concerning industrial, commercial or scientific experience and rent received for the use of or for the right to use industrial, commercial or scientific equipment (except where such equipment constitutes immovable property, in which case the right to taxation is granted to Mali).
3. The 0% reduced rate applies if interest is paid (i) to the Government of Monaco (ii) in respect of a loan directly or indirectly financed or guaranteed by a bank established in Monaco or any other company in charge of international loans and investments (iii) to a financial institution owned by the Government of Monaco and approved by mutual agreement between the competent authorities of the Contracting States.
4. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
5. The 0% reduced rate applies if interest is borne and paid by the Mali Government or its Central Bank to the Morocco Government or Central Bank.
6. The 10% reduced rate applies if the value of the holding is at least FRF 1 million.
7. The 0% reduced rate applies if the beneficial owner holds at least 25% of the capital of the dividend-paying company.
8. Interest arising in Mali shall be exempt from withholding tax if it is paid to the State of Tunisia, or a local authority or the Central Bank thereof.
9. West African Economic and Monetary Union (French acronym: UEMOA): member countries of the WEAMU are Benin, Burkina Faso, Guinea-Bissau, Ivory Coast, Mali, Niger, Senegal and Togo.
10. Royalties paid to a non-resident are subject to a 30% withholding tax reduced by 50%, giving rise to an effective final withholding tax of 15%.

# MALTA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Birkirkara | PKF Malta | +356 21 484373<br>info@pkfmalta.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Malta |
| Capital: | Valletta |

| | |
|---|---|
| Main languages: | Maltese, English |
| Population: | 443,701 (2022 estimate) |
| Monetary unit: | 1 Euro (EUR) = 100 cents |
| Internet domain: | .mt |
| Int. dialling code: | +356 |

## KEY TAX POINTS

- Malta's tax system is based on UK principles, and enjoys the approval of the EU Commission and Code of Conduct Group following Malta's EU accession.
- Malta operates a full imputation system where dividends paid by a Maltese company carry a tax credit equivalent to the tax paid by the company on the distributed profits.
- Shareholders are taxed on the gross dividend but are entitled to tax credits of the tax paid by the company on the profits so distributed.
- Malta has an inheritance tax referred to as *Causa Mortis*, relating to a succession of an immovable property from the deceased.
- Taxpayers (both individuals and companies) who are ordinarily resident and domiciled in Malta are subject to income tax in Malta on their worldwide income and certain capital gains.
- Malta operates the "remittance basis" of taxation. Taxpayers who are either not ordinarily resident or are not domiciled in Malta are subject to tax on income arising in Malta and on foreign income only if that is received in Malta. In such case, foreign capital gains are not taxable in Malta even if received in Malta.
- Malta does not impose withholding tax on payment of dividends, interest or royalties, although there are some exceptions.

## A. TAXES PAYABLE

### COMPANY TAX

A company incorporated in Malta is deemed to be both domiciled and resident in Malta from the date of incorporation. A company not incorporated in Malta is considered resident in Malta if the management and control of its business is exercised in Malta. Companies which are resident and domiciled in Malta are subject to income tax on their worldwide income at a flat rate of 35%. In certain circumstances, depending upon the business activity from which the profit has been generated, recipients of dividend income may become entitled to refunds of company tax paid.

Companies that are either resident or domiciled are taxable in Malta on the remittance basis. Therefore, income and taxable chargeable gains arising in Malta and on foreign income received in Malta. Foreign capital gains are not taxable, regardless of whether received in Malta. Companies that are neither not resident nor domiciled (i.e. incorporated) in Malta are only chargeable to tax in Malta in respect of income and gains arising in Malta.

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As from 1 January 2019, Maltese law provides for the following anti-tax avoidance measures:

1. When interest and similar borrowing costs of a company exceed interest receivable, the maximum tax deduction that can be claimed in a tax period in respect of the excess costs will be 30% of earnings before interest, tax, depreciation and amortization.
2. A change of residence of a company, or the movement of its assets or of its business to another territory will be treated as a taxable exit event. No exit tax will be chargeable in the case of a temporary movement of assets that is linked to certain financial transactions as long as the assets are returned within 12 months.
3. An entity will be considered a Controlled Foreign Company where it is subject to more than 50% control by a parent company that is tax resident in Malta and its associated enterprises and the tax paid on its profits is less than half the tax that would have been paid had the income been subject to tax in Malta.
4. EU Anti-Tax Avoidance Directive (ATAD) 2 – Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 regarding hybrid mismatches with third countries – replaces ATAD 1. It is implemented in Malta by Legal Notice (L.N.) 411 of 2018 and as amended by Legal Notice 348 of 2019 and 29 of 2020. The transposition of ATAD 2 was implemented by S.L. 123.187 of the Laws of Malta which was amended by Legal Notices 348 of 2019 and 29 of 2020, to meet the deadlines set out in the directive (1 January 2020 and 1 January 2022). The ATAD 2 sets out five key anti-avoidance measures to counter-act some of the most common types of aggressive tax planning. The first three measures to be implemented are: i) Controlled Foreign Company (CFC) rule, deterring profit shifting to no or low tax countries, ii) Interest limitation, discouraging companies from creating artificial debt arrangements designed to minimise taxes, and iii) General Anti-Abuse Rule, counter-acting aggressive tax planning when other rules do not apply.
5. At OECD level, countries agreed on a Base erosion and profit shifting (BEPS) Multilateral Instrument to implement key BEPS recommendations relating to bilateral tax treaties. Malta signed the Multilateral Instrument in June 2017.
6. Transposition of the Directive on Administrative Cooperation (DAC) 6 - Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU regarding mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements – was implemented by L.N. 342 of 2019 on 17 December 2019, within the deadlines set out in the Directive (1 January 2020). Following the adoption of the Common Reporting Standard (CRS) which introduced the automatic exchange of tax and financial information on a global level, DAC 6 is responding to Action 12 of the OECD's BEPS project, looking at cross-border arrangements and the disclosure of actual transactions undertaken.
7. EU Dispute Resolution Mechanism (DRM) Directive - Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union – was implemented by S.L 123.191 of the Laws of Malta on 1 July 2019.
8. The Government will move forward with the introduction of a new patent box regime that complies with the EU Code of Conduct (Business Taxation) and the OECD proposals on preferential intellectual property regimes (the so-called Modified Nexus Approach).

## COMPANY ADMINISTRATION AND COMPLIANCE

### Tax Year

The default tax year for a company is 31 December, that is a calendar year. A company may apply to the Commissioner of Inland Revenue to adopt a financial year other than 31 December.

### Filing of Tax Returns and Payment

The directors of every company are required to furnish the shareholders annually at a general meeting with a set of financial statements. Financial statements submitted to shareholders may be in accordance with IFRS as adopted by the EU. Notice 289 of 2015 introduced the General Accounting Principles for Small and Medium-Sized Entities (GAPSME) which replaced GAPSE. GAPSME is effective for financial reporting periods commencing on or after 1 January 2016. The annual financial statements, together with the director's report and auditors' report must be approved by the Board with the Registrar of Companies within ten months from the end of the financial year. The financial statements must be approved by at least two directors for companies.

Companies are bound to make three provisional tax payments computed by reference to the amount of tax chargeable in previous year. The provisional tax is payable in three instalments: 20% by 30 April, 30% by 31 August and 50% by 21 December. Provisional tax payments are on account of the final tax liability. A tax return must be filed within nine months from the year end or 31 March of the following year, whichever is later. Penalties are imposed for failure to file a return on time or submitting an incorrect tax return. A final tax payment is due by the date the tax return is submitted. Interest is payable at the rate of 0.54% per month or part thereof on any unpaid balances and outstanding refunds.

### Exemptions

In certain circumstances, a company may qualify for an exemption from paying provisional tax payments and final tax payment is due within 18 months after the year end.

## BRANCH PROFITS TAX

A branch of an overseas company (the business of which is managed and controlled outside Malta) would be taxable in Malta only on income arising in Malta and on income arising outside Malta but received in Malta. The income of the branch would be taxed at the same rate as that of a Maltese company. Non-resident shareholders of overseas companies may qualify for refunds of tax, provided that the relevant conditions are satisfied. Malta does not impose branch remittance tax.

## CAPITAL GAINS TAX

Capital gains are subject to tax if they are derived from the transfer (including any alienation under any title) of:

- Immovable property;
- Securities, defined as shares and stock and such like instruments that participate in any way in the profits of the company and whose return is not limited to a fixed rate of return, units in a collective investment scheme and units and such like instruments relating to linked long term business of insurance;
- Business, goodwill, business permits, copyright, patents, trademarks and trade-names;
- Beneficial interest in a trust;
- Interest in a partnership; and,
- Market value of shares through a change in the issued share capital or voting rights of a company.

Legal Notice 379 of 2017 re-introduced a tax exemption on capital gains, realised through the sale of shares to the public of shares listed on the Malta Stock Exchange. Similarly, an exemption was introduced with respect to the sale of shares to the public through a listing on an alternate trading platform. The benefit in the latter case may be determined by the percentage of shareholding offered to the public.

No tax is payable by non-residents on capital gains arising on transfers of company shares or securities except where such gains are derived from the transfer of shares or securities in companies whose assets consist wholly or principally of immovable property situated in Malta.

## VALUE ADDED TAX (VAT)

VAT is imposed on importation of goods into Malta, on every intra-Community acquisition into Malta and on every supply of goods and services made in Malta for a consideration in the course of business. The standard VAT rate in Malta is 18%. A reduced rate of 7% VAT applies to the supply of hotel accommodation and sports facilities and 5% on certain supplies including electricity, confectionery, medical accessories and printed matters, items for the exclusive use of disabled and works of arts, collectors' items and antiques.

Also, certain supplies are zero-rated (known as exempt with credit supplies). These include exports and export-related services, the transfer of goods placed or while they are placed under a customs duty suspension regime, international transport of person, the supply and repair of commercial aircraft and vessels, food (excluding confectionery and food supplied in the course of catering), pharmaceuticals and intra-Community supplies of goods to persons registered for VAT purposes in another EU state.

Other exemptions are termed exemptions without credit. When the activity of the business consists of or includes exempt without credit supplies, the input tax relating to those supplies is not recoverable. Exempt without credit supplies include: the transfer and the letting of immovable property (excluding inter alia commercial letting and hotel accommodation), insurance services, credit, banking and certain investment services, health and welfare, cultural services, education and lotto and lotteries including certain remote gaming. As from 1 January 2018, certain remote gaming supplies which were previously exempt from VAT are now taxable in Malta. The table below provides a general summary of supplies relating to gambling which shall remain exempt from VAT and those which shall attract VAT:

| Exempt | Taxable |
|---|---|
| Event betting (including betting exchanges) | Casino type games not on a device |
| Lotteries and lottery type games | P2P games (example poker) |
| Bingo | Games of skills |
| Casino games of chance on devices (land based) including live casino | Class 4 type of services and other supplies in relation to the above |
| Qualifying supplies in relation to the above | |

(Guidelines on Item 9 of Part Two of the Fifth Schedule to the Value Added Tax Act)

### VAT on Intra-Community acquisitions

When a taxable person makes an intra-Community acquisition in Malta, i.e. he receives a supply of goods from a person who is registered in another EU State where such goods are transported from one EU State to another, he will be liable for the payment of VAT in Malta on that transaction, unless the goods are exempt from VAT. Acquisition VAT is also imposed on any other person (other than a private individual) who makes an intra-Community acquisition of goods with a value exceeding EUR 10,000. Such persons may also opt to account for and pay such VAT if their intra-Community acquisitions do not exceed this amount.

### VAT on imports

VAT is imposed at the rate of 18% (and at 5%/7% in respect of the goods subject to a reduced rate of VAT mentioned in the preceding paragraph) of the taxable value of the goods that are not in free circulation in the EU and that are imported into Malta. It is collected by the Comptroller of Customs on behalf of the Commissioner of VAT at the time of the release of the goods together with any duties payable on the imports. A number of importations are exempt from VAT.

### Place of Supply of telecommunications, broadcasting and electronically supplied services

As of 1 January 2015, the place of supply of telecommunications, broadcasting and electronically supplied services is the place of the customer meaning that Maltese operators are obliged to account for and charge the tax of the Member States of the European Union where their customers are founded which could be a compliance burden if the supplier as customers established in different Member States of the European Union. Therefore, operators have two options for complying with this legal obligation- register and comply with the VAT rules of all the Member States of The European Union where their customers are located; or register under the MINI One Stop Shop (MOSS) which is a simplification measure which the EU Commission proposed to ease compliance.

### VAT for SMEs

Since 2020, small and medium enterprises (SMEs) have been allowed not to charge VAT. In turn, they are not able to claim any VAT paid by them. The capping of EUR 20,000 turnover per annum was increased to EUR 30,000.

(Item 8 of Part One of the Sixth Schedule to the VAT Act, Chap 406 of the Laws of Malta)

### Sustainability in the financial services and gaming sector

Legal Notice 162 of 2018 – Value Added Tax (Registration as a Single Taxable Person) Regulations, 2018 – introduced the concept of VAT Grouping for the regulated financial services and gaming sectors. Legal independent entities established in Malta and having financial, economic and organizational ties between them can register as a single person for taxation purposes. As a result, members of the group benefit from VAT exemptions and acquisitions.

### VAT Treatment of Certain Commercial Maritime Transactions

By the end of 2019, Malta boasted the largest shipping register in the EU, with more than 8,000 ships, totalling a combined gross tonnage of 82 million, flying the Maltese flag. Certain specific cases of commercial maritime transactions may qualify for VAT treatment in accordance with the place of supply of service rules, i.e. where the effective use and enjoyment of the product in question is outside the EU, and the same can be sustainably and properly evidenced to the satisfaction of the VAT Commissioner, the supply of such service may not be subject to VAT. Applications are reviewed on a case by case basis, in order to ensure fair taxation and adherence to all applicable EU laws.

### VAT Treatment of Certain Commercial Aviation Transactions

Aviation is a fast-growing sector of the Maltese economy. Malta is presently expanding its modest yet sturdy 500 strong aircraft register and increasing AOC registrations, currently circling around the 33 figure. Certain specific cases of commercial aviation transactions may qualify for VAT treatment in accordance with the place of supply of service rules. That is, where the effective use and enjoyment of the product in question is outside the EU, and the same can be sustainably and properly evidenced to the satisfaction of the VAT Commissioner, the supply of such service may not be subject to VAT. Applications are reviewed on a case by case basis, in order to ensure fair taxation and adherence to all applicable EU laws.

Additionally, VAT will be refunded in the following scenarios:

- Eligible expenses incurred by private schools for the construction of new buildings;
- On the acquisition of new cars provided they satisfy certain criteria relating to size and emissions;
- On the acquisition of a new bicycle (capped at EUR 400); and,
- On the cost of sports equipment acquired by sports associations recognised by the Malta Sports Council.

## OIL BUNKERING TAX

A flat rate of tax per metric ton is charged on the bunkering of certain fuel oils used for ships and their machinery and supplied free from customs and other duties. The payment of the tax is due immediately upon the release of the fuel from the bonded installation, marine terminal or marine facility on the quantity of fuel measured or calculated by Customs as having been released.

## STAMP DUTY

A duty is levied on documents relating particularly to transfers of property, marketable securities (including shares), insurance policies, and auction sales. Duty on transfers of immovable property is at the rate of 5% of which 1% provisional tax is paid upon the entering of a promise of sale agreement. The rate of duty of the transfer of shares in Property Company is 5%, and, otherwise reduced to 2% on market value. Family businesses which are passed from one generation to another through an act of donation are taxed at a reduced rate of 1.5% rather than 5%. These reduced income tax and duty rates on the inter vivos transfer of immovable property of 5% and 1.5% respectively for the first EUR 400,000 and the reduction from 8% to 5% on those selling the property will continue also on promises of sale agreement registered by 31 March 2021, provided that the contract is entered into by 31 December 2021. This duty applies to immovable and movable property making up the business, which must have been held as a family business for three years prior to the donation and must be retained as a family business for three years following the donation. This scheme will be renewed for the year 2022.

A number of limitations and exemptions apply, including an exemption from duty on transfers of immovable property between companies forming part of the same group, transfers of shares upon certain restructuring of holdings within a group of companies, a reduced rate of duty on the acquisition of property to be used as one's ordinary residence as well as division of immovable property between co-owners. The first time buyers' scheme has proved a great success since its introduction in July 2015, and the exemption to first time property buyers is being extended once again in 2022, as a result of which no duty is charged on the first EUR 200,000 increased from EUR 175,000 provided the buyer did not previously own or hold immovable property in Malta directly or indirectly.

In the budgetary measures for 2022 the following were included:

- Stamp Duty and Final Withholding Tax for buyers and vendors respectively, will be waived on the first EUR 750,000 if the property purchased was built more than 20 years ago and has been vacant for at least seven years: if the property is situated within an Urban Conservation Area (UCA); if the property has been recently constructed to reflect traditional Maltese architecture and design;
- Individuals who sell their home to acquire another residential property are eligible to a refund on stamp duty of up to EUR 3,000 (or EUR 5,000 for persons with special needs) provided that they do not own any other property at the time. This measure has been extended until the end of 2022;
- Stamp duty exemption for first time buyers on the first EUR 200,000 has been extended until the end of 2022. This is equivalent to a maximum saving of EUR 7,000;
- Anyone passing on a family business to a relative will pay 1.5% stamp duty, down from 5%.

### Acquiring Property in Gozo

The incentive introduced by the Government in 2017 in view of property purchased in Gozo, whereby a reduction in stamp duty from 5% to 2% is applicable has been extended for the year 2022. Moreover, stamp duty will be reduced to 1.5% on the first EUR 400,000 until the end of June 2022.

### Preservation of Historical Premises Heritage

Capital gains tax and stamp duty will no longer be due on the first EUR 750,000 of the sale price, for properties that were built more than twenty years ago and have been vacant for more than seven years, for properties that are in a UCA, and for new properties that are built in a typical traditional Maltese style and architecture. This measure applies also where a promise of sale has been entered into, but the sale contract is yet to be concluded. In addition, first-time buyers of such properties in Malta will receive a grant of EUR 15,000.

## WEALTH AND CAPITAL TAXES

No taxes are levied on net wealth as such. In the case of corporations, no tax is levied on the basis of the capital of the business, but an annual registration fee, which may reach a maximum of EUR 2,250 (paper submission) or EUR 1,900 (electronic submission), is charged by reference to the company's authorised share capital.

## GAMING TAX

The Malta Gaming Authority has issued specific licence fees which apply to (Business-to-Customer) and (Business-to-Business) operations in Malta. The former account for a Gaming Service Licence whilst the latter is in relation to the Critical Gaming Supply Licence. A fixed annual licence fee of EUR 25,000 per annum is applied in the case of B2C operations. This annual licence fee is somewhat reduced with regards to those operators offering controlled skill games under a B2C Type 4 license to EUR 10,000. With regards to B2B operators, the annual license fee varies depending on the annual revenue of the operator. For B2B operators providing the supply and management of material elements of the game (such as platform providers for instance), the annual fee ranges from EUR 25,000 to EUR 35,000. In the case of those operators who only supply and manage gaming software, the annual fee ranges from EUR 3,000 to EUR 5,000 depending on the revenue.

Malta iGaming Companies are subject to the payment of remote gaming tax in Malta based on their activities. If the gaming service being offered is a distance communication or remote gaming, the determination of tax will not be based on the physical presence of the service provider, but rather, will focus on whether the player is established and his permanent address or residence in Malta.

5% Gaming Tax is applied on Gaming Revenue generated from Malta based players. Determination of taxability is whether the player is established, has his permanent address and/or usually resides in Malta.

Furthermore, on 29 March 2018, the MGA published a consultation document on a Sandbox Environment for Distributed Ledger Technology (DLT) and Virtual Currencies which provides guidance on the use of Distributed Ledger Technology and on the acceptance of Virtual Currencies through the implementation of a Sandbox Environment.

## MALTA FREE ZONES ACT

On 31 May 2019 the Malta Free Zones Act was enacted, by virtue of which areas or parts of Malta designated by the Minister responsible for Customs as Free Zones shall, for all intents and purposes of this Act and of any other law, be designated for use as Free Zones in terms of the applicable provisions of the Import Duties Act and of the Union Customs Code or any substituting or supplementing legislation as may be applicable from time to time.

Where the Authority is satisfied that, in the case of an undertaking determined as authorised to operate in a Free Zone, it would be consistent with the aims and objectives of the policy under which that Free Zone was constituted to do so, the Authority may provide for the undertaking, industrial buildings, structures and land owned directly or indirectly by the Government in a Free Zone, including, on such terms as may be agreed, industrial buildings and structures constructed or altered according to the requirements of the relative undertaking and this for a term which shall not extend beyond the term of the determination (original or extended) issued to the undertaking authorising it to carry on activities within the particular Free Zone. The provision of such buildings, structures and land shall take place subject to such charges as the Authority may determine, so however that in all cases such charges shall be established in accordance with market rates.

Undertakings shall only carry out in a Free Zone a trade or business being principally:

a) the production or manufacturing of any goods, materials, commodities, equipment, plant or machinery;
b) the assembly, testing, repair and/or maintenance of any goods, materials, commodities, equipment, plant or machinery;
c) the labelling, packaging, sorting, dividing, warehousing, storage, exhibition, assembly and related activities of or relative to any goods, materials, commodities, equipment, plant or machinery, including where such goods are acquired in bulk and are to be processed within a Free Zone in preparation for their eventual sale or distribution;
d) any activity involving the provision of services relative to or concerning logistics as may be approved by the Authority;
e) the carrying out of any activities as may be approved by the Authority during such time as goods are being held in a Free Zone or in preparation for their eventual transhipment;
f) any activity concerned solely with the conduct of a Free Zone including, but not limited to, stevedoring, wharfage, operation of terminals and container handling;
g) the rendering of services analogous or complementary to the activities referred to in the above paragraphs; and
h) the carrying out of such industrial, commercial or service activity as may be prescribed by the Authority through guidelines issued thereby.

The status as an authorised undertaking shall be evidenced by the issue of a document for this purpose. The granting of the status of authorised undertaking to any undertaking shall be notified by the Authority to the Commissioner as soon as such status is approved and in any case prior to commencement of operations by the authorised undertaking.

## VIRTUAL FINANCIAL ASSETS

On 1 November 2018 the Virtual Financial Assets (VFA) Act, 2018 and the Virtual Financial Asset Regulations (Legal Notice 357 of 2018) came into force as amended by Legal Notice 106 of 2021 and Act XLVI of 2021.

Proceeds from raising finance in an initial coin offering (ICO) or token generation event is not be treated as income of the issuer and the issue of new tokens is not to be treated as a transfer for capital gains tax purposes. Proceeds from raising finance in an initial offering or token generation event should not be treated as income of the issuer and the issue of new tokens should neither be treated as a transfer for capital gains tax purposes. Where, however, the tokens issued at ICO stage would give rights to identified goods or services for a specified consideration, a chargeable event would arise and the rules applicable to utility/financial tokens, should be followed.

Returns derived from financial tokens (DLT Assets exhibiting qualities that are similar to equities, debentures, etc.), whether received in fiat or in cryptocurrency or in kind, should be treated as income. In the transfer of tokens, the tax treatment is to depend on whether the transfer is a trading transaction or is a transfer of a capital asset. Trading profits are taxable whilst capital gains are only taxable in so far as the token meets the definition of ‘securities’ in the Income Tax Act. In the case of financial tokens (DLT Assets whose utility, value or application is restricted solely to the acquisition of goods or services issued simply to raise capital, the issue would not give rise to any VAT implications.

Profits realised from the business of exchanging (virtual currency) coins should be treated in the same manner as profits derived from the business of exchanging fiat currency and hence subject to income tax whilst coins should fall outside the scope of taxation of capital gains. The exchange of cryptocurrencies for other cryptocurrencies or for fiat money where such exchange constitutes a supply of services for consideration is to be exempt from VAT.

Digital wallet providers requiring the payment of fees for allowing coin users to hold and operate a cryptocurrency and hence create rights and obligations in relation to the means of payment in question is to be VAT exempt. Instead a mere technological service would be taxable.

Gains or profits from mining of cryptocurrency represent income. Where mining constitutes a service for which compensation arises in the nature of newly minted coins falls outside the scope of VAT. Where miners receive payment for other activities a chargeable event for VAT purposes would be triggered.

Providers of exchange platforms realising profits from the provision of the platform, should be treated like normal companies and hence chargeable to tax under the normal rules and principles applicable to Malta corporate entities.

## SOCIAL INSURANCE CONTRIBUTIONS

Social insurance contributions in respect of an employed person are payable equally by the employer and by the employee. The rate is, in each case, equivalent to 10% of the basic wage payable by each of the employee and employer. However, this is subject to a maximum and minimum rate. Currently the minimum weekly contribution stands at EUR 17.58 (or 10% of basic weekly wage if this is lower but the employer continues to pay the said minimum). The maximum weekly contribution varies depending on the age of the employee. In respect of an employee born before 1 January 1962, the maximum weekly contribution stands at EUR 35.70 whereas in the case of an employee born on or after 1 January 1962, the maximum weekly contribution stands at EUR 46.53.

The Maternity Fund Employers’ Contribution has come into force on 6 July 2015 by means of Legal Notice 257 of 2015 (Trust and Trustees Act CAP. 331) and Legal Notice 258 of 2015 (Social Security Act CAP. 318). The Maternity Fund is earmarked for employers in the private sector entitled to a reimbursement of the salary of 14 weeks maternity leave paid to their employees. These contributions are payable monthly by the employer to the Inland Revenue Department on the new FS5. The Maternity Fund Contribution is to be declared annually on the new FS3 and FS7.

People born before 1962 will now be able to count work done as 16 and 17-year olds towards their social insurance contributions.

## B. DETERMINATION OF TAXABLE INCOME

The audited financial statements of the company will normally form the basis of the tax computation, but adjustments will be necessary in order to arrive at the company's income chargeable to tax. The general rule is that tax deductions are allowed only with respect to expenses incurred wholly and exclusively in the production of the income but the law contains special rules on various items. No deduction shall be allowed in respect of expenditure unless that person is in possession of a tax invoice or other document issued in accordance with the VAT Act.

Adjustments would typically include the write-back of depreciation and a deduction for statutory capital allowances, the write-back of provisions and of expenses that do not satisfy the tax deduction rules, and the application of other special income tax rules such as those relative to the determination of income from the letting of immovable property and of capital gains.

## CAPITAL ALLOWANCES

A taxpayer is not allowed to claim accounting depreciation as a deduction but may claim the statutory capital allowances on fixed assets used in the production of his income. The assets that qualify for capital allowances are:

- Plant and machinery, including machinery, equipment, fixtures, motor vehicles and similar fixed assets; and,
- Industrial buildings and structures, including hotel buildings but excluding the cost of land. In 2016, the term industrial building was extended and now includes office.

The rules specify the minimum number of years over which the cost of the industrial buildings and various categories of plant and machinery may be written off. In the case of industrial buildings an initial deduction of 10% and 2% annual deduction of the cost of the acquisition of the asset is available. All wear and tear allowances are computed on the straight-line method. Capital allowances may only be deducted from income derived from the activity in which the respective assets are used. The rules allow for proportional deduction where the asset is used partly in the production of income and partly for other purposes.

When an asset that qualified for capital allowances is sold, transferred, destroyed, or otherwise put out of use, a balancing statement is to be prepared. If the tax written down value is higher than the value on disposal, the difference is allowed as a further capital allowance (balancing allowance). If the tax written down value is lower, the difference represents a balancing charge, but the charge cannot exceed the total capital allowances granted on that asset. The balancing charge is either added to the taxpayer's chargeable income or, at the option of the taxpayer and subject to specific conditions, deducted for capital allowances purposes from the cost of acquisition of any fixed asset replacing the asset that has been disposed of.

## TAXATION OF DIVIDENDS: PARTICIPATION EXEMPTION

With effect from 1 January 2007, income and gains derived by a company registered in Malta from a participating holding or from the transfer of such holding are 100% exempt from tax. A participating holding is found where a company resident in Malta holds equity shares in another entity and the former:

(a) Holds directly at least 10% of the equity shares of the company invested in, which holding confers an entitlement to at least any two of the following rights:
  (i) Right to vote;
  (ii) Right to profits available for distribution;
  (iii) Right to assets available for distribution on a winding up; or,
(b) Is an equity holder which holds an investment of a minimum sum of EUR 1,164,000 (or the equivalent sum in another currency) and the investment is held for an uninterrupted period of not less than 183 days; or,
(c) Is an equity shareholder and is entitled to purchase the balance of the equity shares or has the right of first refusal to purchase such shares or is entitled to sit as, or appoint, a director on the Board; or,
(d) Holds the shares or units for the furtherance of its own business and the holding is not held as trading stock for the purpose of a trade.

Malta's participation exemption is also extended to holdings in other entities, such as a Maltese limited partnership (the capital of which is not divided into shares), a non-resident body of persons (with similar characteristics to the Maltese limited partnership) or a collective investment vehicle that provides for limited liability of investors, provided the above conditions for the application of the participation exemption are satisfied.

The participation exemption is also available to branch profits, and the following income is exempt from tax:

- Income attributable to a permanent establishment (including a branch) of a Maltese company where the permanent establishment is situated outside Malta; and,
- Gains derived from the transfer of such permanent establishment.

The Maltese CIR issued a guideline clarifying that income received from a debt instrument that includes characteristics of both equity and debt shall be recognised as interest and taxed accordingly.

### Other Conditions for Application of the Exemption

With respect to dividends, the participation exemption is applicable if the entity in which the participating holding is held:

a. Is resident or incorporated in a country or territory which forms part of the European Union; or,
b. Is subject to tax at a rate of at least 15%; or,
c. Has 50% or less of its income derived from passive interest or royalties; or,
d. Is not a portfolio investment and it has been subject to tax at a rate of at least 5%.

The conditions for the application of the participation exemption with respect to dividends do not apply in the case of gains derived from the alienation of a participating holding. Such gains are therefore exempt with no further conditions. Where the participating holding relates to a non-resident company, an alternative to the participation exemption is the full (100%) refund. The relative dividends and capital gains will be taxed in Malta (subject to double tax relief), however, upon a dividend distribution, the shareholders are entitled to a full refund (100%) of the tax paid by the distributing company.

Following changes to the Parent Subsidiary Directive in October 2015, the Participation Exemption shall only apply to the extent that such profits are not deductible by the relevant subsidiary in the EU Member State related to a situation of hybrid instruments.

## INTEREST DEDUCTIONS

Sums payable by such person by way of interest upon any money borrowed by the taxpayer, where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income is deductible.

## CAPITAL AND TRADING LOSSES

Trading and Capital Losses incurred in a trade or business may be carried forward indefinitely. Losses may not be set-off against income that stands to be allocated to the final tax account. This is in line with the general rule that the set-off of trading losses is only allowed if the losses would have been subject to tax had they instead been profits. Alternatively, rather than carrying the loss forward to future periods, the Income Tax Act allows a company to surrender a trading loss to another company if that other company forms part of the same “group”. The carry back of losses is not allowed.

## NOTIONAL INTEREST DEDUCTION (NID) RULES

On 2 February 2018, the Notional Interest Deduction (NID) Rules, 2018 entered into force by virtue of Legal Notice 37 of 2018, replacing the Notional Interest Deduction Rules, 2017 which were originally published by means of Legal Notice 262 of 2017. With effect from year of assessment 2018, the NID rules are aimed towards achieving equal tax treatment in Malta between equity and debt financing by reducing tax disadvantages between the two. To this end, Malta companies and partnerships, as well as Malta permanent establishments of foreign companies or partnerships, are entitled to claim deductions of sums that are deemed to be payable by way of notional interest on “risk capital”.

The entitlement to a deduction applies only in respect of profits which stand to be allocated to the company’s Foreign Income Account or Maltese Taxed Account , or in the case of partnerships, sums that would have been allocated to the accounts had the undertaking been a company. The deduction is optional and may only be claimed subject to the approval of the shareholders or partners of the undertaking in respect of the particular year of assessment.

The interest on risk capital is calculated as follows: Y = A X B, where:

- “Y” represents the interest on risk capital that an undertaking is entitled to claim in the relevant year of assessment;
- “A” represents the reference rate, meaning the risk-free rate set by reference to the yield to maturity on Malta Government Stocks with a remaining term of approximately 20 years plus a premium of 5%;
- “B” represents the risk capital of the undertaking for the accounting period ending in the year preceding the year of assessment less any risk capital directly employed in the form of securities, interest in a partnership, contributions and any other loans or debts that do not bear interest that the undertaking holds in or provides to any person that is:
  - (i) not employed by the undertaking in producing any income in the year, which if produced could have been exempt from income tax; or
  - (ii) employed in producing income for the year which is exempt from income tax.

NID is capped at 90% of the undertaking’s eligible profits for the year, meaning that where the interest on risk capital exceeds 90% of the undertaking’s chargeable income, for any year period to taking into account such deduction, the amount of such excess shall not be available for deduction against the profits for the said year, but may, at the discretion of the undertaking, be carried forward to be deducted against future taxable profits.

Where NID is claimed, the undertaking’s shareholder or partner will be deemed to have received notional interest income in the same amount. Where the shareholder or partner of the undertaking does not have Malta residence, the deemed interest will be exempt from tax in Malta provided certain conditions are met. Dividend distributions made out of the profits relieved from tax pursuant to a NID claim will not be subject to further taxation in Malta at shareholder or partner level.

## TAX ON TRANSFER OF IMMOVABLE PROPERTY

With effect from 1 January 2015, a taxpayer may no longer opt to be taxed at 35% on the capital gain. A final withholding tax of 8% (previously 12%) of the property’s value will apply on all transfers of immovable property subject to two exceptions and a transitional measure as follows:

- A final withholding tax of 10% of the property’s value will be applicable on transfers of property which was acquired prior to 1 January 2004;
- A final withholding tax of 5% of the property’s value will be applicable on transfers of property which is transferred not later than five years from the date of acquisition where the transferor is an individual who does not habitually trade in property.

During 2021, all profits derived from the assignment of rights on a promise of sale relating to immovable property were taxed at a final tax rate of 15% (previously applicable on the first EUR 100,000; currently on all profits) and has been extended until the end of 2022.

Some transactions are exempt from being subject to property transfer tax. These include donations made by a person to his relatives or to a philanthropic institution, transfers of property that had been owned and occupied by the transferor for a period of three consecutive years immediately preceding the year of transfer, assignment property between spouses consequent to a judicial or consensual separation, or a divorce among others.

With effect from 20 March 2020, the disposal of immovable property made within five years from the date of acquisition, which is not the transferor’s sole ordinary residence and on which any construction works for which a development permission is required have been carried on orders given by the transferor, will not benefit from the reduced rate of 5%.

### Transfer of Inherited Property

As from 2017, there has been an evening out of measures whereby all properties acquired causa mortis before 25 November 1992, or where the acquisition causa mortis happened on or after 25 November 1992 and the property is transferred by court auction, will be taxed at a final rate of 7% on the transfer value.

## RENTAL MARKET

### Tax on Rental Income

In 2015 the Government introduced the option to landlords to be taxed at the flat rate final withholding tax of 15% on the gross income from rented property rented out for both residential and commercial purposes without the possibility for any deductions. This is being introduced as an incentive to regularise the local rent market.

New and renewed rental agreements (if longer than 3 months) where the rental income is taxed at the above beneficial rate need to be registered with the Inland Revenue Department. The onus of registration lies with either the lessor or lessee. Otherwise, the lessor will be subject to penalties.

### Rent Benefits

The Private Residential Leases Act, Chapter 604 of the Laws of Malta was enacted on 1 January 2020. The measures only apply to residential tenancies and hence do not impact leases for commercial use, short lets or tourist lets. The Act states that:

- contracts should cover an established period;
- the registration of rent contracts should be obligatory;
- a minimum notice period for both property owners and tenants should be established;
- there shall be more enforcement against irregularities and abuse, as well as more efficiency when it comes to resolving disputes.

There are two criteria for eligibility in how financial aid is given to make rent more affordable. The first is the gross family income. The second is that the existing rent paid exceeds the benchmark for that family. The applicant will be eligible if they fall under both criteria. Financial aid ranges from EUR 3,000 to a maximum of EUR 5,000 per year.

## SUPPORT MEASURES – MICRO INVEST SCHEME

Investment aid primarily takes the form of tax credits. Eligible enterprises will benefit from tax credits calculated as a percentage of the value of the investment project and wages costs. A tax credit equivalent to 45% of the costs incurred may be approved for enterprises operating from Malta and a further 20% additional bonus is applicable to those operating from Gozo. Costs claimed must not be assisted (even partly) through other incentive measures.

Changes to the Micro Invest and the Business Start schemes were announced in 2018. In view that many businesses will not be generating a profit or in any case will have a lower turnover than their projections due to the restrictions caused by the COVID-19 pandemic, the Corporation shall upon request of beneficiaries that have certificates which expire in years of assessment 2021, 2022 and 2023, extend such certificates to expire in years of assessment 2024, 2025 and 2026 respectively. The Micro Invest scheme is being extended to undertakings which employ 50 full-time employees or less. Furthermore, the maximum eligible tax credit under the Micro Invest scheme has been increased from EUR 30,000 to EUR 50,000 for Malta-based industries, whilst for enterprises based in Gozo, the monetary assistance will increase to EUR 70,000 from the former EUR 50,000. In addition, businesses having women holding the majority of the shares and in the case where a woman is self-employed, the assistance has been increased from EUR 50,000 to EUR 70,000.

(Malta Enterprise Incentive Guidelines Micro Invest)

## SCHEMES TO ASSIST BUSINESSES AND STEER ECONOMIC ACTIVITY

The Government's economic development agency Malta Enterprise is continuously improving existing incentives and launching several new business oriented schemes to cater for both current and future business needs. Among these is a scheme offering financial assistance to disadvantaged individuals looking to set up sustainable businesses with the level of assistance capped at a maximum of EUR 25,000 per start-up. There is also to be a scheme of fiscal credit on research projects, with assistance varying between 25 and 45% of the outlay.

Government is committed to attract start-ups to Malta through the establishment of a Government fund to be invested in Venture Capital Funds in a bid to establish such an industry to Malta.

Malta Enterprise has continued to work on new initiatives on innovative sectors, such as those of disruptive technology and data management, green projects, new industrial technologies research and the life sciences sector. The digital gaming industry has been one such sector which benefitted from these initiatives, where the development of digital games with a cultural theme is concerned, with assistance to be afforded in the form of fiscal credit up to a maximum of 30% of costs.

As a temporary measure, for the year 2021 (year of assessment 2022) entities with unabsorbed capital allowances as a result of losses suffered due to the Covid-19 Pandemic may be surrendered to other group companies to be utilised.

Malta Enterprise will be introducing a tax benefit applicable to businesses which invest in eligible projects of that same business or investments in other businesses.

Rental costs for warehousing will be subsidised to lessen the impact of increasing international transportation costs.

With the aim of attracting further start-ups and entrepreneurs, Malta will be launching the Start-Up Visa. This new programme aims at generating investment opportunities for locals and foreigners by granting start-up investors a residence permit. Entrepreneurs with the objective to root themselves in Malta must present a successful entrepreneurial history together with a strong business objective and proof of success from the applicant's country of origin. At the moment, there is no set date when this will come into force, however, it is expected that Malta Enterprise will announce when this programme will come into force.

## ENVIRONMENT FRIENDLY INCENTIVES

The Government is committed to continue encouraging investment in electric and hybrid (plug-in) cars by individuals, NGOs, Local Councils and commercial companies.

### Incentives for the Purchase of More Environmentally-friendly Vehicles

Increase in grants to EUR 11,000 when buying new electric vehicles or plug-in-hybrids with an additional EUR 1,000 (rising to EUR 2,000 in Gozo) granted when scrapping a vehicle.

Investment in a stronger charging point infrastructure through the installation of around 1,200 charging points for electric vehicles around the country over a three-year period.

Continuation of the reduced flat rate for residential charging of electric vehicles during the off-peak period.

#### Investments directed to the Environment, Climate, and Digital Sector

Government will be allocating EUR 220 million which will be available in grants to businesses, as part of the Recovery and Resilience Facility for investments directed to the environment and climate, and also digital sector.

Extension of the Malta Development Bank SME Tailored Facility to provide finance for investments in sustainable and environmental projects by SMEs. The Malta Development Bank Act enables the Bank to offer five main types of facilities:

1. Loans
2. Guarantees
3. Equity Participation
4. Underwriting
5. Advisory Services

The Malta Development Bank has provided support to over half a billion euro in loans since the first scheme was launched back in late 2018, it said in a statement. These loans were taken up by close to 650 local businesses, operating across the local economic spectrum to invest in expanding their operations or to access working capital needed to ensure survival throughout the challenges of the Covid-19 pandemic. Micro, small or medium-sized enterprises represent 91% of all businesses assisted. The almost 650 businesses that benefitted from the guarantees made available by the MDB through the different schemes, are responsible for the employment of more than 40,000 employees, equivalent to more than 22% of total private sector employees in Malta.

Launching of a process whereby any surplus carbon credits generated by private and public entities investing in green projects may be voluntarily purchased by other private and public entities.

Malta Enterprise will be establishing the Blue Med Hub with the aim of attracting start-ups and SMEs, particularly from entities located in the Middles East and Africa. There is no set date yet when this will come into being.

#### Environmental Measures

The issue of "Green Bonds" by investors will be incentivised to finance renewable energy projects and projects aimed at decreasing air pollution.

A number of waste management projects aimed at improving the processing of waste, treating organic waste and completing the Waste-to-Energy facility will be undertaken.

The importation of single-use plastic products was discontinued from 1 January 2021 with the local sale and distribution prohibited as from 2022.

Five Eco-Intermodal Hubs to be installed around the island which will give the public access to information on transportation services, hiring of e-scooters and e-bikes, mobile charging and WIFI facilities.

The Government is eyeing to build renewable energy plants offshore.

A process will be introduced to enable public and private entities to invest in environmentally friendly projects to create carbon credits which would be available to be bought by other public or private entities with the aim to reach their carbon targets.

A carbon farming initiative will be launched, including a grant of up to EUR 80,000 to incentivise farmers who own agricultural land that is idle or out of production or used for low value production, to be converted in Agroforestry systems based on fruit trees.

The SME Tailored Facility is going to be extended to include ESG (Environmental, Social, and Governance) projects by the private sector.

Schemes for businesses to subsidise the cost of changing existing petrol or diesel engines to electric.

### REFUND OF TAX ON DIVIDENDS

As of 2017, shareholders in receipt of dividends on profits made after 1 January 2017 by companies listed on the Malta Stock Exchange, will be given refunds on dividends declared in their income tax returns, according to the applicable tax. This measure applies to those owning less than 0.5% of the nominal share capital and dividend rights.

### ADVANCE REVENUE RULINGS

Maltese tax law allows a taxpayer to apply for an advance revenue ruling. The ruling binds the tax position for five years and is renewable for a further five-year period unless there is a change in the law. If the law on the particular subject is changed during the operation of a ruling, that ruling remains binding either until the end of the relative five-year period or for two years following the amendment, depending on which is the shorter.

The advance rulings are available in a number of situations including whether a transaction constitutes tax avoidance, whether a holding qualifies as a participating holding and determining the tax treatment of a transaction that constitutes international business. Revenue rulings on matters not specified in the law are not legally binding.

### SPECIAL TYPES OF ENTITY

Maltese law provides for a favourable fiscal framework for the provision of financial services, and endeavours to establish Malta as an attractive, regulated international business centre.

#### (i) Collective Investment Schemes

A fundamental concept which was introduced under the Collective Investment Scheme rules is the classification between prescribed and non-prescribed funds. Such classification determines the tax treatment of the Collective Investment Scheme and its investors. A prescribed fund is a resident fund that has declared that the value of its assets situated in Malta at a particular date equals at least 85% of the value of its total assets.

Withholding tax on such funds varies between 10% and 15% depending on the type of income. Tax at 15% will be withheld on any capital gains realised by resident investors on disposal of non-prescribed funds (i.e. funds whose assets are non-Maltese). Dividends paid by a non-resident non-prescribed fund to a resident investor carry a final 15% withholding tax. Dividends paid to non-resident investors are exempt from withholding tax.

### (ii) Funds and Fund Managers

Fund Managers are taxed at 35%, as are Investment Services companies, but are entitled to claim an exhaustive list of reliefs such as a double deduction of salaries paid to Maltese personnel in the first ten years of commencement. Fund Managers may opt to be regulated by the Highly Qualified Persons Rules (see H. Personal Taxes below for more details).

Funds themselves which, if set up as a separate vehicle, may also be set up as a SICAV or unit trust, are exempt from income tax in Malta but may not benefit under any of the tax treaties.

It is proposed that the VAT exemption relating to fund management is extended to supplies of services consisting of the management of collective investment schemes licensed under the Investment Services Act.

### (iii) Captive Insurance Companies

Captive insurance companies (also known as affiliated insurance companies under Maltese law) are taxed as a normal company. With effect from July 2004, it has also been possible to set up a protected cell company. Both captives and protected cell companies are taxed as ordinary companies in Malta and are, therefore, entitled to the refunds stipulated above. Insurance contracts entered into by licensed entities are not subject to VAT while insurance contracts covering risks that are located outside of Malta are not subject to Stamp Duty.

Effective 20 March 2020, the definition of a company under the Income Tax Act has been amended to include that “every cell of a cell company and that part of a cell company in which non-cellular assets are held, shall each be deemed to be a separate company”.

### (iv) Trusts

A trust is an obligation which binds a person or persons (called the ‘trustees’) to deal with property over which they have control (called ‘the trust property’) for the benefit of persons (called the beneficiaries) or for a charitable purpose in accordance with the terms of the trust. The setting up of trusts in Malta is regulated by the Trusts and Trustees Act. In certain cases, trusts are considered to be transparent for tax purposes, in the sense that income attributable to a trust is not charged to tax in the hands of the trustee if it is distributed to a beneficiary. Also, when all the beneficiaries of a trust are not ordinary resident and domiciled in Malta and when all the income attributable to a trust does not arise in Malta, there is no tax impact under Maltese tax law. Beneficiaries are charged to tax on income distributed by the trustees. Income attributable to a trust that is not so distributed to beneficiaries is charged to tax in the hands of the trustee at the rate of 35%.

As the trust itself merely consists of property and/or other assets, there is no economic activity carried on and, therefore, it is outside the scope of VAT. Since the trustee’s services essentially consist of management and administration of assets, it is considered that any sums that the trustee is entitled to appropriate from the trust assets by way of remuneration do not constitute a consideration for services rendered. Therefore, no economic activity is deemed to be carried out, where such remuneration is specified under the terms of the deed of the trust. However, if the trustee exploits the property of the trust for a consideration, this exploitation is considered as an economic activity and, if such activity is taxable under Maltese VAT legislation, the trustee has to register for VAT in Malta.



### (v) Foundations

Under Maltese law foundations may be treated as companies for tax purposes and are subject to the normal corporate tax rate. Foundations may also opt to be taxed in the same manner as a trust. In such cases the relevant provisions governing taxation of trusts will apply.

### (vi) Shipping Activities

Income derived by licensed shipping companies from shipping activities is exempt from income tax in Malta, provided that (i) all registration fees and tonnage taxes have been duly paid and (ii) separate accounts have been kept clearly distinguishing the payments and receipts related to shipping activities from payments and receipts in respect of any other business.

Any income derived by a ship manager from ship management activities is also exempt. Furthermore, any gains /income derived from the transfer of a tonnage ship, and/or shares in the said tonnage ship, which is owned, chartered, managed, administered or operated by the shipping organization, are also exempt from tax.

Non-resident officers and employees of the shipping organization are exempt from paying social security contributions in Malta. Furthermore, there is no duty chargeable in respect of instruments involving the registration or transfer of general matters concerning shipping organizations.

Investment for the purpose of upgrading the Vessel Tracking System together with the system currently in place to register ships and vehicles, as well as digital investment in order to modernise the ship register.

### (vii) Aviation Companies

By virtue of Act LII of 2016 and XXXVII of 2021, promulgated on 29 November 2016 and on 6 July of 2021 respectively, the Aircraft Registration Act of 2010 was given a complete re-haul with the aim of providing better creditor protection and encouraging the aviation industry in Malta to continue to flourish. The main changes are summarised below:

- revised definitions of airframes and aircraft engines in order to make the distinction between the two in specific contexts more clear;
- updating of fees whereby an entire new fifth schedule was introduced detailing various fees formerly absent and certainly aimed at increasing the revenue generating potential of the growing industry and breathing new life into the industry in this sense. A certificate of registration is now issued at a fee depending on weight of the aircraft and a request for revised certificate of registration owing to for instance change in address now has a flat EUR 50 charge to it. Fees are also levied now for the reservation of customised registration marks (EUR 250) for the registration of a mortgage (EUR 500) and amendment to registered mortgage (EUR 250);
- allowing the registrar in Malta to cancel the registration of an aircraft, if the person who is registering same is no longer a qualified person or is no longer entitled to operate such aircraft under a temporary title, thus increasing the ambit within which the registrar can cancel registration of an aircraft, and the possibility to correct any accidental omissions or errors in the text of statutory mortgages which have been registered over the aircraft.

### Insolvency Issues.

New rules were introduced bettering the insolvency regime for 'aircraft companies'. Aircraft companies are defined as those companies whose centre of main interest is in Malta and their sole asset is an aircraft or an aircraft engine over a mortgage or an international interest is registered. Such holders of mortgages or international interests will receive supportive treatment in that they can act without interference from the insolvency processes and officers until such time as enforcement is complete. This novel section provides better creditor protection.

### NGOs

NGOs whose income does not exceed EUR 50,000 will be tax exempted.

### Enforcement Issues

The new law also seeks to improve the position of the mortgagee by buttressing remedies available to the same, through the introduction of a number of rights which the mortgagee can exercise in the case of an enforcement of a mortgage. One such remedy is that the mortgagee has the right, should there be an event of default, to take possession of the aircraft and lease or sell the aircraft and any amounts received from such sale or lease will be used to pay any outstanding amounts owed to the mortgagee.

Highlights of the aviation tax package include:

- Any income which is derived from the ownership, leasing or operation of aircraft or aircraft engines which is used for or employed in the international transport of passengers or goods is exempt from tax in Malta, since such income is deemed to arise outside Malta for Maltese income tax purposes;
- Capital allowances of the aircraft and other related objects for wear and tear spans, for instance a minimum of 6 years for an aircraft airframe;
- No withholding taxes on lease and royalty payments made by Maltese lessees to non-residents in respect of aircraft operated in the international transport of passengers or goods;
- No withholding taxes on interest payments made by Maltese lessees to non-resident financial lessors;
- Fringe benefit exemption: fringe benefits arising from the private use of aircraft by non-residents individuals who are shareholders, employees or officers of companies involved in the international transport of goods or passengers are not taxable.

With effect from 21 March 2016, Malta has been included in the list of countries qualifying for the Cape Town Convention discount. This discount applies to aircraft finance transactions which are supported by export credit agencies (the "ECAs") and which also satisfy the following cumulative conditions:

1. The ECA-supported financing relates to an "aircraft object" within the meaning of the Cape Town Convention;
2. The operator of the aircraft is situated in a country that appears on the list of states maintained by the OECD Secretariat for Cape Town Discounts; and
3. Such financing relates to an aircraft object that has been registered on the International Registry established pursuant to the Cape Town Convention.



## C. FOREIGN TAX RELIEF

Malta provides for four types of relief from international double taxation, namely:

- **Treaty relief**

  Treaty relief is available by way of credit for foreign tax paid on income from a territory with which Malta has concluded a double tax treaty. Treaty relief is generally provided in the form of an ordinary credit, limited to the amount agreed between Malta and the relevant foreign territory. The tax suffered in a relevant foreign territory applies on the basis of the ordinary credit method (based on a source-by-source and country-by-country basis). Malta has an extensive tax treaty network, with most treaties following the OECD Model.
- **Unilateral relief**

  Relief from double taxation is also possible on a unilateral basis where tax is suffered outside Malta on income received from a country with which Malta has not concluded a treaty Any tax suffered outside Malta, would, limitedly to the Malta tax charge on the income, be allowed as a credit against tax chargeable in Malta.
- **Relief in respect of Commonwealth income tax**

  Commonwealth Tax Relief is available in respect of income tax or tax of a similar nature charged under any law in any country of the Commonwealth, if the law of such Commonwealth country has provided for relief in respect of tax charged on income both in that country and in Malta.
- **Flat-rate foreign tax credit (FRFTC)**

  FRFTC takes the form of a notional tax credit of 25% for deemed foreign taxes incurred on qualifying income. This type of relief is only available to companies and on income allocated to the foreign income account and does not require evidence of the foreign tax actually paid.

## D. CORPORATE GROUPS

Two companies resident in Malta neither of which is resident for tax purposes in any other country shall be deemed to be members of a group of companies if one is the 51% subsidiary of the other or both are 51% subsidiaries of a third company resident in Malta. For the purposes of the group relief provisions, a company shall be deemed to be a 51% subsidiary of another company if:

- More than 50% of its ordinary share capital and voting rights are owned directly or indirectly by the parent company; and,
- The parent company is beneficially entitled either directly or indirectly to more than 50% of any profits available for distribution to the ordinary shareholders of the subsidiary company; and,
- The parent company would be beneficially entitled either directly or indirectly to more than 50% of any assets of the subsidiary company available for distribution to its ordinary shareholders on a winding up.

Companies which are resident for tax purposes in Malta but also in another tax jurisdiction will not benefit from Group Relief Provisions.

### Consolidation of Income Tax Option

Legal Notice 110 of 2019 has introduced the possibility of income tax consolidation in Malta. The said Legal Notice introduces the Consolidated Group (Income Tax) Rules, 2019, as subsidiary legislation to the Maltese Income Tax Act, Chapter 123 of the Laws of Malta.

As from year of assessment 2020 (for companies having accounting periods commencing in calendar year 2019), companies forming part of a group of companies (as defined) may elect to be treated as one single taxpayer (subject to the satisfaction of certain statutory conditions). This would be achieved by allowing a parent company to elect that its subsidiary/ies and itself will form a fiscal unit, resulting in the subsidiary/ies being treated as transparent.

As a result, upon successful registration, the parent company would be considered the 'principal taxpayer' of the fiscal unit, and the chargeable income of the members of the fiscal unit would be taxable solely in the hands of such principal taxpayer. Furthermore, transactions taking place between persons forming part of the fiscal unit (excluding transfers of immovable property situated in Malta subject to a final tax) are disregarded and fall outside the scope of Maltese income tax legislation.

The main conditions to be satisfied for a successful registration are that:

- the parent company holds at least a 95% shareholding in the subsidiary; and
- the accounting period of the members of the fiscal unit starts and ends on the same date.

The Legal Notice establishes further requirements that will need to be satisfied to establish a fiscal unit.

No person may be a member of more than one fiscal unit at the same time. Moreover, where the principal taxpayer holds less than a 100% shareholding in the subsidiary, approval from the minority shareholder/s would also need to be obtained for the subsidiary to join the fiscal unit, and thus become transparent.

## E. RELATED PARTY TRANSACTIONS

There is no specific transfer pricing legislation. Malta has a general anti-avoidance provision which gives the Commissioner of Inland Revenue (CIR) the right to disregard any artificial or fictitious scheme that reduces the amount of tax payable by the taxpayer. Additionally, where the sole or main purpose of the taxpayer is to obtain any advantage which has the effect of avoiding, reducing or postponing liability to tax, the CIR may determine the liability to tax.

## F. WITHHOLDING TAX

Malta does not impose withholding tax on dividends, interest and royalties except for a 15% withholding tax when untaxed profits are paid to a resident individual.

## G. EXCHANGE CONTROL

Malta does not have any exchange controls.

## H. PERSONAL TAX / BENEFITS

Personal income tax is paid on all income tax accruing in or derived from Malta and on income accruing in or delivered from abroad by persons domiciled and ordinarily resident in Malta. Income arising outside Malta to a person who is not ordinarily resident in Malta or not domiciled in Malta will be taxed only if it is received in Malta. Expatriate employees are not considered to be ordinarily resident in Malta if they do not work or reside in Malta for more than 183 days in any one-year.

The term income involves gains and profits from any trade, business, profession or vocation; gains or profits from any employment or office; dividends and interest; pensions, annuities or other annual payments; and rents, royalties or other profits derived from ownership of property.

### Personal Income Tax Rates for Basis Year 2022

The highest personal income tax rate of 35% applicable to individuals who earn up to EUR 60,000 is further reduced to 25% under the single, married and parent computations. Income over EUR 60,000 will remain taxable at 35% under all computations.

https://cfr.gov.mt/en/rates/Pages/TaxRates/Tax-Rates-2022.aspx

For individuals whose income is less than EUR 60,000, the government is extending the income tax refund for another year. This will increase to between EUR 60 and EUR 125 for single people and between EUR 65 and EUR 140 for married couples, with the highest refund to be provided to lower income earners.

| **Single** | | **Married** | | **Parent** | |
|---|---|---|---|---|---|
| Income | Benefit | Income | Benefit | Income | Benefit |
| 0 – 15,000 | 125 | 0 – 20,000 | 140 | 0 – 15,000 | 135 |
| 15,001 – 30,000 | 95 | 20,001 – 40,000 | 110 | 15,001 – 30,000 | 105 |
| 30,001 – 59,999 | 60 | 40,001 – 59,999 | 65 | 30,001 – 59,999 | 60 |

The tax-free bracket has been kept at EUR 9,100 for single computation rates, EUR 12,700 for married computation rates and EUR 10,500 for parent rates. However, persons earning only the minimum wage are not subject to tax on the whole amount (refer to table below). This also applies to pensioners whose pension does not exceed the minimum wage. The married rates of tax shall also be applicable to those persons joined under a civil union.

https://cfr.gov.mt/en/rates/Pages/TaxRates/Tax-Rates-2022.aspx

Pensioner couples who pay income tax on their married computation are now to be exempt from tax. Couples who both receive a pension and who apply married rates of tax shall have EUR 3,600 per annum worth of non-pension income exempt from income tax. It is an exemption with progressions. This measure seeks to give an individual an exemption but at the same time eating away at any other allowances that the person might have had.

| Rates[1] | Single Computation | Married Computation | Parent Computation |
|---|---|---|---|
| | Tax Bands | Tax Bands | Tax Bands |
| 0% | up to EUR 9,100 | up to EUR 12,700 | up to EUR 10,500 |
| 15% | EUR 9,101 – EUR 14,500 | EUR 12,701 – EUR 21,200 | EUR 10,501 – EUR 15,800 |
| 25% | EUR 14,501 – EUR 60,000 | EUR 21,201 – EUR 60,000 | EUR 15,801 – EUR 60,000 |
| 35% | Over EUR 60,000 | Over EUR 60,000 | Over EUR 60,000 |

1. Not applicable to dividend income which remains taxable at 35%.

### Cost of Living Adjustment

The Cost of Living Adjustment for next year will be EUR 1.75 per week.

(Malta Budget Speech 2022 s 3.2.1)

### Reduced taxes on income from overtime

Persons with less than EUR 20,000 annual income will now be taxed at the rate of 15% on the first EUR 10,000 received from overtime.

### Children's Allowance

Child Benefit is payable to each family residing in Malta having children under the age of 16. The benefit rate is calculated on the difference between EUR 25,318 and the total income of both parents (declared in the year prior to their application). If the total income exceeds EUR 25,318, a flat-rate is payable amounting to EUR 450 per year per child. Children over 16 qualify for a reduced rate if they are in full-time education or training or in unremunerated employment.

https://ec.europa.eu/social/main.jsp?catId=1121&langId=en&intPageId=4690

Foster care allowance shall increase by EUR 520 per child per annum as from January 2021.

A maximum of EUR 1,000 has been granted for local child adoptions since 2021.

### Self-employed Persons' Compensation in Case of Unemployment

Self-employed persons who for some reason have to cease their activity and start registering for work, will have the right to receive unemployment benefits according to the contributions that they have paid.

### Increase in Pensions

In 2022, 95,000 people who are in receipt of a retirement pension, a widows' pension, an invalidity pension or a non-contributory age pension will benefit from an increase of EUR 260 per year, or EUR 5 per week, of which EUR 1.75 will be the Cost of Living Adjustment (COLA) and EUR 3.25 is the additional increase.

(Malta Budget Speech 2022 s 2.1)

### Service Pensions

Service pensioners will once again receive another EUR 200 raise to their service pension amount, which is deducted from the social security pension, so that the total exempted will go up to EUR 3,066 (further EUR 200). Service pensioners who are over 72 years of age, or who will reach the age of 72 during the year, will benefit from a further improvement in their social security pension, as the portion commuted into a gratuity will not be taken into consideration at all in their pension calculation.

(Malta Budget Speech 2022 s 2.5)

### Tax Refunds for Children Attending Independent Schools

Tax deductions to increase to EUR 1,600 per year for each child that attends a kindergarten centre, EUR 1,900 per year for each child that attends primary school, and EUR 2,600 per year for each child attending secondary school.

(Article 14B Chap 123 Laws of Malta)

### Tax Rebates Pensioner Rules

As from 1 January 2017, by virtue of L.N. 22 of 2018, the Government has amended L.N. 42 of 2017 which had originally introduced new tax rebates for pensioners in line with what was announced in 2017. This new measure will ensure that pensioners whose pension income exceeds the tax free bracket will have an increased amount of their pension income which will not be subject to income tax.

Individuals who are in receipt of income from any pension chargeable to tax under article 4(1)(d) of the Income Tax Act and who were at least 61 years of age in the year when such pension was received are eligible to rebates of up to EUR 705 or EUR 495 or EUR 300, depending on which provision of the legislation the pertaining pension is regulated under. Rebates are not refundable and may not be carried forward.

### Fringe Benefits

Certain benefits such as use of cars for private purposes, rent, school fees, free meals as well as share options are added to the salaries of employees and taxed accordingly. All cash allowances paid to employees with the exception of cash allowances paid in respect of the use of employee-owned cars for business purposes are equally fully taxable. Employees are responsible for the disclosure of fringe benefits provided by third parties over which the employer has no control.

### Incentive for Investment Services Expatriates

Qualifying Expatriates who are employed in an Investment Services Company may opt for a 10-year exemption on certain fringe benefits, including accommodation expenses, use of a car, a subvention of EUR 600 a month and school fees for their children.

(Article 6 Chap 123 of the Laws of Malta)

### Highly Qualified Persons Rules

From 1 January 2010, subject to terms and conditions, an individual who is not an ordinary resident in Malta, and who derives income subject to tax in Malta, under a qualifying contract of employment received in respect of work or duties carried out in Malta, may elect for this income to be charged at a flat rate of 15%. The minimum employment income for basis year 2022 ought to be EUR 88,242 while any employment income over EUR 5 million is not subject to tax. Eligible employment includes certain classes of employment with licensed companies under the terms of the Financial Institutions Act, licensed gaming companies as well as with aviation companies.

On 13 August 2019, the Highly Qualified Persons, Qualifying Employment in Aviation (Personal Tax) and Qualifying Employment in Maritime Activities and the Servicing of Offshore Oil and Gas Industry Activities (Personal Tax) (Amendment) Rules, 2019 were issued.

These heralded a widening in scope to all qualifying employments across all qualifying sectors, to allow formerly disqualified persons to now be able to benefit.

Under the new version, persons whose employer receives some form of incentive/benefit under Malta enterprise schemes, formerly disqualified, can now also apply.

On 24 May 2016, S.L. 123.168 was promulgated by Legal Notice 177 of 2016, as amended by Legal Notice 1 of 2017, 378 of 2017, 209 of 2019 and 120 of 2020, focusing specifically on the aviation sector, entitled Qualifying Employment in Aviation (Personal Tax) Rules. The rules apply to income which is brought to charge from year of assessment 2017 (basis year 2016) onwards. The rules apply to individuals not domiciled in Malta, and have greatly widened the ambit of eligible offices within the aviation sector.

Individual income from a qualifying contract of employment qualifies under these rules when it is received by a beneficiary in an eligible office. Such income is subject to tax at a flat rate of 15% provided that the income amounts to at least EUR 75,000 annually. The 15% tax rate applies for a consecutive period of five years for European Economic Area (that is, EU countries as well as Norway, Iceland and Liechtenstein) and Swiss nationals and for a consecutive period of four years for third country nationals.

The four or five year period, as the case may be, commences from the year when the individual concerned first becomes taxable in Malta. In cases where the individual was taxable in Malta but not benefiting under this Scheme and subsequently becomes eligible under the Scheme, he/she can benefit only if the four or five year period has not elapsed; the benefit is then available for the years remaining from the date of eligibility under the Scheme until the said four or five year period from the date of first being subject to tax in Malta elapse.

An individual may benefit from the 15% tax rate if the person satisfies all of the relevant criteria. Income shall not be construed to be income from a qualifying contract of employment if it is paid by the employer who has received a benefit or benefits under business incentive laws or arrangement in terms of the business incentive laws or is paid by a person who is related to the employer who has received a benefit or benefits under any business incentive laws or arrangement in terms of business incentive laws.

The below list comprises all eligible offices in force under the aviation-specific regulations:

1. Chief Executive Officer;
2. Chief Operations Officer;
3. Chief Financial Officer;
4. Chief Risk Officer;
5. Chief Financial Officer;
6. Chief Technology Officer;
7. Chief Commercial Officer;
8. Chief Investment Officer;
9. Chief Insurance Officer;
10. Accountable Manager;
11. Deputy Accountable Manager;
12. General Manager;
13. Flight Operations Manager;
14. Nominated Person Flight Operations Training Manager;
15. Nominated Person Training;
16. Ground Operations;
17. Nominated Person Ground Operations;
18. Continuing Airworthiness Manager;
19. Nominated Person Continuing Airworthiness Compliance Manager;
20. Quality Systems Manager;
21. Safety Manager;
22. Flight Dispatch Manager;
23. Instructor Manager;
24. Head of Marketing;
25. Head of Public Relations;
26. Actuary;
27. Underwriting Manager;
28. Risk Management Officer;
29. Key account manager;
30. Product coordinator;

31. Material coordinator;
32. Engineering reporter;
33. Aeronautical engineer;
34. Head of Maintenance Operations;
35. Aviation Systems Developer;
36. Key Aviation Specialist.

On 2 April 2020, LN 120 of 2020 was issued effective 1 January 2020 and amending the Qualifying Employment in Aviation (Personal Tax) (Amendment) Rules, 2020 by introducing a new clause which states that the status of qualifying contract can be withdrawn immediately if the person staying in Malta is deemed to not be in the public interest.

It is possible for EU/EEA/Swiss nationals to extend the 5-year scheme to 10 years once, whereas non-EU/EEA/Swiss nationals may extend once the 4 year scheme to 8 years.

### The Global Residence Programme Rules (GRP)

These rules were introduced by L.N. 167 of 2013 and were revamped by L.N. 267 of 2014. Beneficiaries are those third-country nationals who have been granted special tax status in terms of these rules. Subject to satisfying the applicable rules in a continuous manner, the beneficiaries under this program benefits from a minimum amount of tax payable in respect of the income arising outside Malta of EUR 15,000 for any year of assessment. Such minimum amount is payable in full in both the year when the special tax status was granted and in the year when the individual ceases to possess the said special tax status.

### The Residence Programme Rules (RPR)

These rules were introduced by L.N. 270 of 2014. Beneficiaries are those EU, EEA or Swiss nationals but who are not Maltese nationals and who have been granted special tax status in terms of these rules. Subject to satisfying the applicable rules in a continuous manner, the beneficiaries under this program benefits from a minimum amount of tax payable in terms of these rules in respect of the income arising outside Malta of EUR 15,000 for any year of assessment. Such minimum amount is payable in full in both the year when the special tax status was granted and in the year when the individual ceases to possess the said special tax status.

### Under both GRP and RPR:

- All income other than that qualifying for the 15% rate is taxed at the standard full rates;
- An applicant is required to hold qualifying immovable property in Malta or Gozo as per the stipulated requirements;
- A beneficiary must also declare on an annual basis that he has not spent more than 183 days in any one jurisdiction outside of Malta.

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### Tax Status

a) Flat rate of Malta income tax of 15% on income remitted to Malta (as opposed to progressive personal tax rates of up to 35%) of main applicant and certain dependents and can claim double taxation relief;
b) Minimum tax payment of EUR 15,000 per annum (no additional minimum tax payment in respect of dependents;
c) Any other realised income including realised capital gains arising in Malta on the transfer of a capital asset (other than immovable property situated in Malta) chargeable to Malta income tax at 35%.

As from 1 January 2015, the final tax on transfers of immovable property acquired after 1 January 2004 will be reduced from 12% to 8% of the transfer value while the rate in respect of transfers of immovable property acquired before 1 January 2004 will be of 10%. It will no longer be possible to opt out of the final tax system and therefore to be taxed on the profit. Furthermore, no deduction of expenses will be allowed in arriving at the transfer value. The tax is payable on the date of the contract of sale.

Individuals who do not trade in immovable property and who transfer such property within 5 years from the date of acquisition will be taxed at 5% (instead of 8%) on the transfer value. Any realised capital gain arising outside of Malta falls outside the scope of Malta income tax in view of non-Malta domicile of individual and irrespective of whether remitted to Malta or not.

### Citizenship for Exceptional Services by Direct Investment

Following its launch in 2014, the Malta Individual Investor Programme reached its quota, hence, in 2020, the Government launched a new programme which sees the Granting of Citizenship for Exceptional Services by Direct Investment via L.N. 437 of 2020. This comes with a limit of 400 citizenships per annum, and a total of 1,500 for the period of the regulations. The process involves a 3-layer stage to which one must be subject (compared to the former 2-layer stage): being the Residency Stage, the Eligibility Stage and the final Citizenship Stage. The main new differences include increased due diligence fees and the addition of specific administrative fees. The actual investment amount required had also been incremented, as the amount to be invested depends on whether citizenship is applied after 36 months of residency or by exception after 12 months of residency.

The requirements for the Full Citizenship Application by Direct Investment are the following:

- Proof of residence for 12 months (contribution of EUR 750,000) or 36 months (contribution of EUR 600,000). An additional EUR 50,000 by way of contribution shall be obligatory for each additional dependent;
- Acquire real estate in Malta having a minimum value of EUR 700,000 or lease real estate in Malta at a minimum value of EUR 16,000 per annum. All property must be maintained for 5 years.

The investments in government bonds have been replaced with a EUR 10,000 donation to a registered NGO which delves in philanthropy, culture, arts, sports, science, or animal welfare. All additions make the overall application more expensive compared to when the Malta Individual Investor Program (MIIP) was in force.

The considerations vary on a case-by-case basis and must accordingly be treated as such.

### Malta Permanent Residence Programme (MPRP)

On 29 March 2021, by virtue of Legal Notice 121 of 2021, the Malta Residence and Visa Programme (MRVP) was replaced by a new programme: the Malta Permanent Residence Programme (MPRP). The MPRP is a straightforward residency-by-investment programme based on investments in property and government contributions. With the promise of a 4 to 6-month processing time from the submission of a complete and correct application, the Programme offers much value to clients wishing to make Malta their home away from home.

Beneficiaries:

- have the right to settle, stay and reside permanently in Malta;
- enjoy Visa-free travel across Schengen, 90 out of 180 days;
- penetrate Malta's affordable real estate market;
- may include up to four generations in an application.

To be eligible for the MPRP, applicants should:

- be third country nationals, non-EU, non-EEA and non-Swiss;
- not hail from sanctioned countries, as announced from time to time by the Agency;
- not benefit under other pertinent regulations and schemes;
- be in receipt of stable and regular financial resources, sufficient to maintain themselves and their dependants, without recourse to the social assistance system of Malta;
- show they have capital assets of not less than EUR 500,000, out of which a minimum of EUR 150,000 must be financial assets;
- be fit-and-proper individuals and have a clean criminal record;
- not pose any potential threat to the national security, public policy, public health or public interest.

To participate in the Programme, applicants must:

- submit an application via a Licensed Agent;
- pay a non-refundable administrative fee of EUR 40,000;
- rent a property for a minimum of EUR 10,000 in the South of Malta/Gozo or EUR 12,000 in the rest of Malta; or
- purchase a property for a minimum value of EUR 300,000 in the South of Malta/Gozo or EUR 350,000 in the rest of Malta;
- pay a Government contribution of EUR 28,000 if purchasing a property or EUIR 58,000 if leasing a property;
- pay an additional EUR 7,500 for each additional adult dependent (except for the spouse);
- hold the qualifying property for a minimum period of 5 years after which a residential address is required;
- make a donation of EUR 2,000 to a local philanthropic, cultural, scientific, artistic, sport or animal welfare NGO registered with the Commissioner of Voluntary Organisations;
- be in possession of a valid travel document;
- take out a sickness insurance policy of cover all risks across Malta;
- take out a travel insurance when travelling across Schengen.

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### The Nomad Residency Permit

On 2 June 2021, the Residency Malta Agency launched a new residence permit referred to as the Nomad Residence Permit intended to service remote workers who wish to live in Malta but legally work for an employer or their own business which is registered abroad.

Through this permit, third country nationals will have the opportunity to work remotely from Malta for a temporary period provided they confirm that they can work remotely from any location.

The applicant would, however, be required to confirm that they fall under one of the following categories:

- They are contracted to work remotely for an employer registered abroad; or
- They conduct business activity for a company registered abroad, and of which they are partners or shareholders; or
- They offer freelance or consulting services to clients whose permanent establishments are in a foreign country, and with whom the applicant has contracts.

Applicants must also prove they can work remotely, using telecoms.

In addition to the above, the applicant must reach a monthly income threshold of ERU 2,700 gross of tax and be able to provide a valid travel document, health insurance, a copy of their lease or purchase agreement in Malta and pass a background check.

The permit offers a six-month visa and an option of obtaining a one-year 'Nomad Residence Permit'. However, it may be renewed upon application at the discretion of Residency Malta, provided all eligibility criteria are still being met.

Application processing is expected to take up to 30 days following receipt of all required documentation.

The application fee is EUR 300 for the main applicant and EUR 300 for each dependant on the application. Fees are not refundable and exclude visa related fees.

Nomad Residence Permit holders will not be subject to personal income tax since their employment is already taxed at origin. Nonetheless, they will be subject to consumption tax like all other residents.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Malta has concluded various treaty agreements with over 70 countries so as to mitigate international double taxation. For detailed information, it is highly advisable to consult the relevant tax treaty.

Note that there is no withholding tax on dividends, interest and royalties (if not effectively connected with a permanent establishment in Malta) paid to non-residents. Therefore, in most cases, the applicable withholding tax rate will actually be 0%.

# MAURITANIA

## CORRESPONDENT FIRM

| City | Name | Contact Information |
|---|---|---|
| Nouackchott | Stefaan De Ceulaer | +44 20 3691 2511<br>stefaan.deceulaer@pkf.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Islamic Republic of Mauritania |
| Capital: | Nouackchott |
| Main languages: | Arabic and French |
| Population: | 4.89 million (2022 estimate) |
| Monetary unit: | Mauritanian Ouguiya (MRU) |
| Internet domain: | .mr |
| Int. dialling code: | +222 |

## KEY TAX POINTS

- The regular corporate income tax rate is 25%. The minimum tax *(impôt minimum forfaitaire or IMF)* is 2.5% of turnover with a minimum of MRU 750,000.
- Profits realised in Mauritania by branches of non-resident companies are deemed to be distributed and are therefore subject to a 10% branch remittance tax on after-tax income.
- Dividends distributed to non-resident shareholders are subject to a 10% final withholding tax rate on the gross amount, subject to the application of a double tax treaty.
- Interest paid to non-resident legal entities is subject to a 10% final withholding tax rate on the gross amount, subject to the application of a double tax treaty.
- Royalties are not subject to withholding tax, irrespective of the residence status of the recipient.
- Management fees paid to non-resident companies are not subject to withholding tax.
- Technical service fees are subject to a 25% withholding tax on the net amount and 15% on the gross amount where the operator has been operating in Mauritania for less than six months.
- The standard VAT rate is 16%. An increased 18% rate applies to petroleum products and telecommunications services. Exports are zero-rated.

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## A. TAXES PAYABLE

## CORPORATE TAX

Resident and non-resident entities are subject to corporate tax on income generated from activities carried out in Mauritania and on profits the taxation of which has been attributed to Mauritania under a double tax treaty.

The regular corporate income tax rate is 25%. The minimum tax *(impôt minimum forfaitaire or IMF)* is 2.5% of turnover with a minimum of MRU 750,000.

Companies realising an annual turnover of less than MRU 30 million are subject to a 3% flat tax rate on industrial, commercial, artisan and agricultural profits.

## CAPITAL GAINS TAX

Capital gains realised by resident companies on the disposal of business assets are considered ordinary income and are taxed at the general 25% corporate income tax rate. The tax may, however, be deferred if the proceeds are used to acquire new fixed assets in Mauritania in the subsequent three fiscal years.

## BRANCH PROFITS TAX

Branches of non-resident companies are subject to the same 25% corporate income tax rate as domestic companies.

Profits realised in Mauritania by branches of non-resident companies are deemed to be distributed and are therefore subject to a 10% branch remittance tax on after-tax income.

## VALUE ADDED TAX (VAT)

The standard VAT rate is 16%. An increased 18% rate applies to petroleum products and telecommunications services. Exports are zero-rated.

Taxpayers, with the exception of importers, with an annual business turnover not exceeding MRU 3 million are not liable to VAT.

## B. DETERMINATION OF TAXABLE INCOME

- An entity is taxed on the difference between its trading income and expenditure.
- A participation exemption is available for resident parent companies receiving dividends from their subsidiaries, where 10% withholding tax on such dividends was effectively withheld and paid by the subsidiaries.

## DISALLOWED EXPENSES

The following expenses are among others non-deductible:

- Expenses related to exempt income;
- Corporate income tax and IMF (see above);
- Head office expenses to the extent that they exceed 2% of annual turnover;
- Penalties, gifts and most liberalities;
- Donations exceeding 3% of taxable income.

## DEPRECIATION

Both the straight-line and declining balance methods are provided for in the Tax Code. Taxpayers may opt for the latter if (i) the assets are newly acquired and (ii) their normal useful life exceeds three years.

The applicable depreciation rates under the straight-line method are as follows:

| Asset | Rate (%) |
|---|---|
| Plant and machinery | 20 |
| Constructions for industrial use | 5 |
| Aircraft | 5 |
| Computer equipment | 10 |
| Industrial rolling stock | 25 |
| New fishing boats and equipment | 12.5 |

## LOSSES

Losses can be carried forward for up to 5 years. Loss carry-back is not allowed.

## C. FOREIGN TAX RELIEF

Foreign tax credits are not allowed. Income subject to foreign tax and not exempt from Mauritanian tax under the territoriality principle is subject to tax net of the foreign tax.

## D. CORPORATE GROUPS

There is no group taxation regime in Mauritania.



## E. ANTI-AVOIDANCE RULES

### Transfer pricing

The tax authority is allowed to levy tax on any enterprise in Mauritania that has carried out artificial transactions or appeared to have transferred profit to a related entity located abroad. A transaction may be considered artificial where it does not appear to have been carried out at arm's length.

TP regulations have been revamped in April 2019 introducing among other details regarding TP filing requirements for enterprises based in Mauritania:

- With an annual turnover (excluding taxes) or gross assets with a value of at least MRU 300 million (approximately EUR 7.3 million); or
- Holding at the end of the tax year, directly or indirectly, more than 50% of the capital or the voting rights of a company established in Mauritania or outside of Mauritania with an annual turnover (excluding taxes) or gross assets with a value of at least MRU 300 million (approximately EUR 7.3 million; or
- Of which more than 50% of capital or voting rights is held, directly or indirectly, at the end of the tax year by a company with an annual turnover (excluding taxes) or gross assets with a value of at least MRU 300 million (approximately EUR 7.3 million).

Deadline for filing is 31st March of the year following the relevant tax year-end (same deadline as filing CIT returns. The return should contain a general description of business activities undertaken and TP policy of the group, a list of intangible assets held by the group, a summary of operations undertaken with related parties, details about loans granted to or obtained from related parties and details about operations covered by a tax ruling or an APA.

### Controlled foreign companies (CFC)

There are no CFC regulations in Mauritania.

### Thin capitalisation

There are no thin cap rules as such in Mauritania. However, the tax authority will only allow interest payments made at the Central Bank of Mauritania rate plus 2%, as deductions under corporate tax. Furthermore, interest deductions are limited based on a 25:75 debt-to-equity ratio.

## F. WITHHOLDING TAX

- Dividends distributed to non-resident shareholders are subject to a 10% final withholding tax rate on the gross amount, subject to the application of a double tax treaty;
- Interest paid to non-resident legal entities is subject to a 10% final withholding tax rate on the gross amount, subject to the application of a double tax treaty;
- Royalties are not subject to withholding tax, irrespective of the residence status of the recipient.
- Management fees paid to non-resident companies are not subject to withholding tax;

- Technical service fees are subject to a 25% withholding tax on the net amount (when the non-resident service provider is operating in Mauritania for more than 6 months) and 15% on the gross amount where the operator has been operating in Mauritania for less than six months.

## G. PERSONAL TAX

As from 1 January 2013, wages and salaries are subject to a monthly withholding tax according to the following rates:

| Monthly employment income (MRU) | Tax rate (%) |
|---|---|
| Up to 9,000 | 15 |
| 9,001 – 21,000 | 25 |
| Over 21,000 | 40 |

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-treaty countries** | | | |
| Companies | 10 | 10 | 0 |
| Individuals | 10 | 10 | 0 |
| **Treaty countries:** | | | |
| Arab Maghreb Union[1] | --[2] | --[2] | --[2] |
| Algeria | 10 | 10 | 15 |
| France | --[2] | --[2] | --[3] |
| Senegal | --[2] | --[2] | --[3] |
| Tunisia[4] | --[2] | --[2] | --[2] |

Notes:

1. Member states: Algeria, Libya, Mauritania, Morocco and Tunisia.
2. The domestic withholding tax rate applies. No limitation under the treaty.
3. Royalties paid for the use of immovable property or for the working of mines, quarries or other natural resources shall be taxable only in the State in which such property, mines, quarries or other natural resources are situated.
4. The provisions of this treaty have been replaced by the Arab Maghreb Union multilateral tax treaty, which became effective on 1 January 1994.

M

# MAURITIUS

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Port Louis | Michael Lo | +230 208 0878<br>mlo@pkfmauritius.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Mauritius |
| Capital: | Port Louis |
| Main languages: | English, French, Mauritian Creole |
| Population: | 1.28 million (February 2022) |
| Monetary unit: | Mauritian Rupee (MUR) |
| Internet domain: | .mu |
| Int. dialling code: | +230 |

## KEY TAX POINTS

- A corporation resident in Mauritius is subject to tax on its worldwide income. A non-resident corporation is liable to tax on any Mauritius source income, subject to any applicable tax treaty provisions. Corporations are liable to income tax on their net income, currently at a flat rate of 15%. As from 1 July 2019, a company will not be considered tax resident in Mauritius if it is centrally managed and controlled outside of Mauritius.
- Value-Added Tax (VAT) is charged by VAT registered entities at the standard rate of 15% on goods and services supplied by them in Mauritius. Certain supplies are exempted or zero-rated.
- Certain local taxes apply including excise duty, land and property taxes and customs duties.
- Personal income tax is chargeable at a flat rate of 15% on an individual resident in Mauritius. As from the income year starting on 1 July 2019, individuals deriving an annual net income not exceeding MUR 650,000 pay income tax at the rate of 10% instead of 15%.There is neither capital gains tax nor inheritance tax.
- There is no stand-alone transfer pricing legislation, but the arm's-length requirement is applied to related party transactions.

- There is no specific thin capitalisation legislation. However, other anti-avoidance provisions may apply.
- Covid-19 levy payable by employers who signed up to the Government Wage Assistance Scheme in March 2020.

## A. TAXES PAYABLE

### FEDERAL TAXES AND LEVIES

The main income tax legislation in Mauritius is the Income Tax Act 1995 as amended by subsequent Finance Acts. Corporate and Personal Taxes are embodied under one heading of Income Tax and are payable by all resident companies and individuals on non-exempt income derived from Mauritius and from other sources. In the case of an individual, income derived from outside Mauritius is liable to income tax in Mauritius only where such income is received in Mauritius by him or on his behalf or is dealt with in Mauritius in his interest or on his behalf.

The profits of all Resident 'Sociétés' (Partnerships) are taxable in the hands of the partners in proportion to their profit-sharing ratio. For income tax purposes, non-resident sociétés are treated like companies. The following entities qualify as 'resident', in relation to an income year:

- A company which is incorporated in Mauritius or has its Central Management and control in Mauritius;
- An individual who:
  (a) Has his/her domicile in Mauritius unless his/her permanent place of abode is outside Mauritius; or
  (b) Has been present in Mauritius in that income tax year for a period of, or an aggregate period of, 183 days or more, or has been present in Mauritius in that income year and the two preceding income years for an aggregate period of 270 days or more;
- A société which has its seat (or *siège*) in Mauritius and includes a société which has at least one partner resident in Mauritius;
- A Trust which is administered in Mauritius and a majority of the trustees are resident in Mauritius, or where the settlor of the trust was resident in Mauritius at the time the instrument creating the trust was executed. Up to 30 June 2021, a trust of which the settlor is a non-resident or holds a Global Business Licence (GBL) or of which all the beneficiaries appointed under the terms of the trust are, throughout an income year, non-residents or holds a GBL or which is a purpose trust under the Trusts Act 2001 and whose purpose is carried out outside Mauritius, could deposit a declaration of non-resident for a given income year in order to be exempt from income tax for that income year. This is no longer the case. However, a cooling-off period of up to assessment year 2024-25 (up to income year ending 31 December 2024) has been granted to trusts set-up before 30 June 2021 to benefit from the exemption from tax subject to certain conditions;
- A Foundation which is registered in Mauritius, or has its Central Management and control in Mauritius. A foundation of which the founder is a non-resident or holds a Global Business Licence (GBL) and all the beneficiaries appointed under the terms of a charter or a will are, throughout an income year, non-resident or hold a GBL could deposit a declaration of non-resident for a given income year in order to be exempt from income tax for that income year. This is no longer the case. However, a cooling-off period of up to assessment year 2024-25 (up to income year ending 31 December 2024) has been granted to foundations set-up before 30 June 2021 to benefit from the exemption from tax subject to certain conditions;
- Any other association or body of persons which is managed or administered in Mauritius.



### CORPORATE TAXATION

The rate of tax applicable to all companies is 15% on the companies' chargeable income, being their net profit from business/trading activities including any passive income.

A reduced tax rate of 3% is applicable to companies involved in the exporting of goods. Where the company is involved in several trades, the 3% tax rate will apply on the chargeable income attributable to exports, using a prescribed formula. A similar tax rate of 3% applies to companies in the freeport zone. Please refer to section 'Companies in the Freeport Zone' in section B.

**Global Business Companies**

- **<u>Prior to 1 January 2019</u>**

Corporations holding a Category 1 Global Business Licence (GBC1) paid tax at a rate of 15%.

Pursuant to the Income Tax (Foreign Tax Credit) Regulations 1996, a GBC1 which does not pay tax in a foreign jurisdiction on its foreign income earned outside Mauritius, is presumed to have paid tax elsewhere and can claim a tax credit of 80% of its income resulting in an effective tax rate of 3% only.

Corporations holding a Category 2 Global Business Licence (GBC2) were exempt from tax and were not tax resident in Mauritius for treaty purposes.

- **<u>As from 1 January 2019</u>**

As from 1 January 2019, following amendments brought to the fiscal laws, the concept of categories concerning global businesses has been revoked and henceforth there exists only one type of licence for global businesses, i.e. Global Business Licence (GBL). Under the new tax regime, the presumed tax credit previously granted to GBC1 companies has been abolished. In order to avoid an abrupt change which would otherwise adversely impact existing GBC1 companies and offshore banks, certain transitional provisions have been introduced to cater for a smooth transition.

As of 1 January 2019, existing GBC1 companies have been renamed GBL companies whilst GBC2 companies have been abolished. Companies conducting business with their place of central management outside of Mauritius are now required to apply to be registered as an Authorised Company with the Financial Services Commission. Similar to a GBC2 company, an Authorised Company will be treated as a non-resident for tax purposes in Mauritius and it will not avail of the network of Double Tax Treaties that Mauritius has with other countries. Authorised companies must however file tax returns with the Mauritius Revenue Authority (MRA) within 6 months of their year-end date and declare any income derived from Mauritius.

***Transitional period***

In this respect, GBC1 companies issued with a licence on or before 16 October 2017 have been given the option of claiming the 80% presumed tax credit on their foreign source income up to 30 June 2021. For GBL companies issued with a licence after

16 October 2017, the partial exemption regime will apply to them as from 1 January 2019. Concurrently, all resident companies (global and domestic companies alike) may now claim the 80% exemption from their foreign source income. This means that all companies are now treated on the same footing.

Similarly, existing GBC2 companies issued with a licence issued on or before 16 October 2017 will still be exempt from tax up to 30 June 2021 as under the previous regime subject to certain exceptions. Offshore banks will continue to benefit from the presumed foreign tax credit up to the year of assessment commencing on 1 July 2019 on their transactions with non-residents and corporations holding Global Business Licences.

***Partial exemption regime***

The deemed foreign tax credit (FTC) regime has been replaced with an 80% partial exemption whereby a GBL/domestic company in Mauritius may qualify for 80% exemption from tax on the following income streams, subject to prescribed substance conditions being met:

a) foreign source dividends;
b) interest income derived by a company other than a bank; a non-bank deposit taking institution; a money changer; a foreign exchange dealer; an insurance company; a leasing company; or a company providing factoring, hire purchase facilities or credit sales facilities;
c) profits attributable to a permanent establishment of a resident company in a foreign country;
d) interest derived from money lent through a peer-to-peer lending platform;
e) income derived by a CIS, closed end fund, CIS manager, CIS administrator, investment adviser or asset manager;
f) income derived by companies engaged in ship and aircraft leasing;
g) income derived by a company from reinsurance and reinsurance brokering activities;
h) income derived by a company from leasing and provision of international fibre capacity; and
i) income derived from the sale, financing, arrangement, asset management of aircraft and its spare parts and aviation advisory services related thereto.

Effective date for item d) is 1 July 2019 whilst for items g), h) and i), the effective date is 1 July 2020. For all other income streams, the effective date is 1 January 2019.

Where partial exemption has been claimed, the company will not be able to apply the actual foreign tax credit on its foreign source income.

***Enhanced substance requirements***

In order for the GBL companies to be eligible for the Partial Exemption Regime, they must satisfy the additional enhanced substance requirements below, on top of the existing substance conditions:

- the GBL must carry out their core income generating activities (CIGA) in Mauritius;
- employ directly or indirectly an adequate number of suitably qualified persons to conduct their CIGA (as per issued guidelines); and
- the GBL must incur a minimum expenditure proportionate to their level of activities.



**Real Estate Investment Trust (REIT)**

To promote the development of REIT in Mauritius, the REIT scheme was introduced and is effective as from 1 July 2020.

REIT is a collective investment scheme or a closed-end fund authorised as a REIT by the Financial Services Commission (FSC).

A REIT will not be liable to income tax and Corporate Social Responsibility (CSR) tax, subject to meeting certain prescribed conditions. Every beneficiary or participant to a REIT will instead be liable to tax on his share of distribution. The first MUR 50,000 of the amount receivable by an individual in an income year from a REIT is exempt from tax.

**Controlled Foreign Companies (CFC)**

A CFC is defined as a company not resident in Mauritius; and in which more than 50% of its total participation rights are held directly or indirectly by a resident company in Mauritius or together with associated enterprises; and includes a permanent establishment of the resident company. A CFC also includes a permanent establishment of the resident company.

CFC rules will apply to a CFC where in an income year, it satisfies the following criteria:

- accounting profits are at least EUR 750,000 and non-trading income is at least EUR 75,000;
- accounting profits are at least 10% of its operating costs of the tax period, or
- the tax rate in the country of residence of the CFC is not more than 50% of the tax rate in Mauritius.

CFC rules are applicable as from 1 July 2020.

The CFC rules would apply where a resident company carries on business through a controlled foreign company and the MRA considers that the non-distributed income of the CFC arises from non-genuine arrangements designed for the purpose of obtaining tax benefits. Where this is deemed so, there is a risk that the MRA may include the non-distributed income of the CFC within the chargeable income of the Mauritian resident company and tax it.

The chargeable income of the CFC to be included in the resident company will be:

- limited to amounts generated through assets and risks which are linked to significant people functions carried out by the controlling company;
- calculated in accordance with the arm's length principle;
- determined in accordance with the Mauritian tax law, as if the CFC has been tax resident in Mauritius during the foreign tax year;
- translated to Mauritian rupees at the average conversion rate during the foreign tax year;
- pro-rated based on the resident company's holding (direct/indirect) in the CFC; and
- included in the tax return of the resident company in respect of the income year in which the tax year of the CFC ends.

Any distribution of profits from the CFC to the resident company included in the chargeable income of the resident company, will be deducted from the chargeable income when calculating the amount of tax on the distributed profits.

The resident company should also be able to claim tax credit for any tax paid by the CFC.

### Due dates for payment of tax

Mandatory electronic filing of tax return by companies and payments of income tax online not later than six months from the end of the month in which the accounting period ends.

### Advance Payment System (APS)

Companies, unit trust schemes, collective investment schemes, cells of a protected cell company, Foundations, resident/non-resident trusts, non-resident sociétés, any company centrally managed and controlled outside Mauritius and any société holding a Global Business Licence and having opted to be liable for income tax, must submit an APS Statement on a quarterly basis (the first quarter commencing the first day of the accounting year) and pay any tax in accordance with the APS Statement within three months from the end of that quarter. APS is applicable where the gross income for the preceding accounting year exceeded MUR 10 million and during which the company had a chargeable income.

### Statute of limitations

While there is no statutory time limit for recovering tax already assessed, the MRA is barred from making an assessment for a period beyond 3 years preceding the current tax year.

## EXEMPTIONS FROM CORPORATE TAX

The Income Tax Act provides for the following exemptions:

### Tax Holidays

- Income derived by a company licensed under the Captive Insurance Act 2015 is exempt from corporate tax during a period not exceeding 10 years as from 29 January 2016, subject to substance conditions being met.
- The income of a corporation, holder of a Global Headquarters Administration Licence on or after 1 September 2016, granted by the Mauritius Financial Services Commission (‘FSC’) is exempt subject to certain requirements and conditions being met throughout the exemption period. The exemption shall be for a period of 8 income years as of the income year in which the corporation was granted its licence.
- Similarly, the income of a corporation issued with the following licences on or after 1 September 2016 by the Mauritius FSC is exempt for a period of 5 income years as of the income year in which the corporation was granted its licence. This is also subject to certain substance requirements and conditions being met throughout the 5-year period.
  - a Global Treasury Activities Licence;
  - a Global Legal Advisory Services Licence;
  - an Overseas Family Office (single) Licence; or
  - an Overseas Family Office (multiple) Licence.

  Corporations holding an Investment Banking Licence are no longer exempt from tax with effect from 9 August 2018.
- Income derived by a company wholly owned by a non-citizen investing not less than USD 25 million in the company will be exempt from tax for a period of 5 successive income years from the income year in which the investment was made, provided that the terms and conditions as the Board of Investment may approve are complied with.
- Income derived from fishing activities by an industrial fishing company incorporated on or after 1 September 2016 and approved by the Board of Investment is exempt for a period of 8 years starting as from the income year in which the company starts its operation.
- Companies, set up on or after 1 July 2017, involved in innovation-driven activities for intellectual property (IP) assets developed in Mauritius on or after 10 June 2019, may avail of an income tax exemption for a period of 8 tax years, starting from the year in which it starts its innovation-driven activities subject to prescribed conditions being met.
- Similar tax exemptions have been introduced for income derived from the manufacture of pharmaceutical products, medical devices and high-tech products by companies which have started their operations on or after 8 June 2017. A tax holiday period of 8 years will be available to the company from the tax year in which it starts operation.
- Tax holiday period of 8 years on income derived from the exploitation and use of deep ocean water for providing air conditioning installations, facilities and services by a company from the income year in which the company starts its operations. The company may also have double deduction for expenditure incurred on deep ocean water air conditioning in that tax year. The deduction will be allowed for 5 consecutive tax years, starting from the year in which the expenditure is incurred.
- Tax holiday of 8 tax years on income derived from food processing activities by a company incorporated under the Companies Act on or after 8 June 2017 and holding a registration certificate issued by the Economic Development Board to operate a food processing plant from the tax year in which the company starts its operations. This is effective as from 1 January 2018.
- Tax holiday period of 5 succeeding years on the income derived by a company carrying out activities as a project developer or project financing institution in collaboration with the Mauritius Africa Fund for the purpose of developing infrastructure in the Special Economic Zones. This will be applicable from the income year in which the activities started. This is in effect from 9 August 2018.
- Tax holiday period of 8 successive years on income derived by a person from any activity under the sheltered farming scheme, set up by the Food and Agricultural Research and Extension Institute as from the income year in which the person starts the activity. This is in effect from 9 August 2018.
- Tax holiday period of 8 successive years on income derived by a company registered with the Economic Development Board, engaged in the manufacturing of automotive parts as from the income year in which the company starts the activity. This is in effect from 9 August 2018.

- Tax holiday period of 8 years for a company set up on or after 10 June 2019 and engaged in the development of a marina; starting from the income year in which the company starts its operations.
- Tax holiday period of 5 successive income years to companies set up on or before 30 June 2025 on income derived from setting up and operating an e-commerce platform in Mauritius, as from the income year in which the activities are started. The Company must also be a holder of an e-Commerce certificate from the Economic Development Board ("EDB") and meet the satisfying substance conditions by the EDB.
- Tax holiday period of 5 years on income derived from the operation of a Peer-to-Peer lending platform, operated under a licence issued by the FSC, subject to satisfying prescribed conditions.
- Tax holiday of 8 successive income years on income derived from inland aquaculture in Mauritius, by a company which has started its operations on or after 4 June 2020, from the income year in which the company has started its operations.
- Tax holiday of 8 successive income years on income derived by a company which has started its operations in Mauritius on or after 4 June 2020 and approved by the Higher Education Commission as being a branch campus of an institution which ranks among the first 500 tertiary institutions worldwide at the time of registration, from the income year in which the institution has started its operations. This is effective from 7 August 2020.
- Tax holiday of 8 successive income years on income derived from the manufacturing of nutraceutical products by a company which started its operations on or after 4 June 2020, from the income year in which it has started its operations. This is effective from 7 August 2020.
- Tax holiday period of 4 years on income derived from bunkering of low Sulphur Heavy Fuel Oil for a company starting from the income year ending 30 June 2019 or for a company set up after 1 July 2019; 4 succeeding years as from the income year in which it starts its operations.

## CAPITAL GAINS TAX

There is no Capital Gains Tax in Mauritius.

## BRANCH PROFITS TAX

There is no Branch Profits Tax in Mauritius. Tax rates on branch income are the same as on corporate profits. No tax is withheld on the remittance of profits by way of dividend to a head office.

## VALUE ADDED TAX (VAT)

VAT is charged on taxable supplies (both goods and services) made or consumed in Mauritius at a standard rate of 15%. Certain items such as basic foodstuffs and medical and educational services are exempted while exports are zero rated. The threshold for VAT registration is a turnover of taxable supplies exceeding MUR 6m per year. VAT Registration is compulsory, irrespective of the annual turnover, for persons engaged in certain business or profession.



## FRINGE BENEFITS TAX

Employees receiving any advantage in money or money's worth are taxed thereon. However, a payment by an employer:

- to provide a pension or retiring allowance for the employee or his dependents;
- to a scheme duly approved by the tax authorities to provide against medical expenses for the employee or his dependents;

does not constitute a taxable benefit.

## LOCAL TAXES

All taxes are on a 'national' basis but municipal and district councils are empowered to levy property tax, entertainment tax and certain licences.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income is determined by ascertaining the assessable income and then deducting any expenditure or loss in the income year to the extent to which it is exclusively incurred in the production of gross income (other than 'emoluments'). For emoluments, the expenditure must be wholly, exclusively and necessarily incurred in performing the duties of an office or employment.

The unauthorised deductions are:

- Investment, expenditure or loss of a capital, private or domestic nature, fines and penalties;
- Any expenditure or loss incurred in the production of exempt income;
- Any reserve or provision of any kind;
- Expenditure or loss incurred in the production of exempt income or which is recoverable under a contract of insurance or indemnity;
- Income tax or foreign tax or special levy on banks;
- Any expenditure incurred in providing business entertainment or gifts; and
- Any expenditure or loss of a private or domestic nature.

## CAPITAL ALLOWANCES

Annual allowances are available on capital expenditure incurred exclusively in the production of gross income. The rate of annual allowance varies from 5% to 100% depending on the type of asset and is calculated on the base value or on cost.

**Additional investment allowance to companies affected by COVID-19** – where a company has, during the period 1 March 2020 to 30 June 2020, incurred capital expenditure on the acquisition of new plant and machinery, it will, in addition to annual allowances, be allowed a deduction of 100% of the capital expenditure so incurred by way of investment allowance in the income year the expenditure is incurred. Plant and machinery do not include motor cars.

The grant of the additional investment allowance is subject to the MRA being satisfied that the company has been adversely affected by COVID-19. This is effective from 7 August 2020.

## DIVIDEND PAID BY RESIDENT COMPANIES

Dividends paid by resident companies are exempt from income tax.

## ROYALTIES

As from 1 January 2019, royalties paid to a non-resident by a company out of its foreign source income are exempt from tax.

In other cases, a Tax Deduction at Source ("TDS") of 10% and 15% is payable on the payment of royalties by a company to a resident and a non-resident respectively. Some special tax rates are applicable where a Double Tax Treaty is in place.

## INTEREST DEDUCTIONS

The following interests are exempt from tax. Interest payable on:

- A balance maintained in a bank by an individual who is not resident in Mauritius;
- Savings and fixed deposit account held by an individual, a société or a succession with any bank or a non-bank deposit taking institution under the Banking Act;
- Government securities, debentures and sukuks quoted on the stock exchange and Bank of Mauritius Bills held by an individual, a société or a succession;
- Bonds and sukuks quoted on the stock exchange held by a non-resident company;
- Interest derived by individuals and companies from debentures, bonds or sukuks issued by a company to finance renewable energy projects, approved by the MRA;
- Interest paid to a non-resident not carrying on any business in Mauritius by:
  (a) a GBL company out of its foreign source income; or,
  (b) a bank holding a banking licence under the Banking Act in so far as the interest is paid out of gross income derived from its banking transactions with non-residents and corporations holding Global Business Licence under the Financial Services Act.

As from 1 January 2019, interest on call and deposit accounts held with any bank under the Banking Act by GBL companies are liable to income tax. An 80% partial exemption will be available to GBL companies on such interest, subject to meeting prescribed conditions.

## LOSSES

Losses can be carried forward (but not back) for set off against income derived in the five succeeding income years provided that there is continuity, i.e., that 50% in nominal value of the allotted shares and not less than 50% of the paid-up capital of the company was held by or on behalf of the same person.

If a company engaged in manufacturing activities is taken over by another company or two or more companies engaged in manufacturing activities merge into one company, any unrelieved loss of the acquiree may be transferred to the acquirer in the income year in which the takeover or merger takes place on such conditions relating to safeguard of employment of the companies and meeting satisfying conditions. Losses arising from annual allowance on capital expenditure incurred on or after 1 July 2006 can be carried forward indefinitely.

Effective from 1 July 2018, companies facing financial difficulty can also carry forward unrelieved accumulated tax losses upon more than 50% change in ownership of the company, subject to meeting the conditions imposed by the Minister of Finance and Economic Development.

## FOREIGN SOURCE INCOME

Income derived from outside Mauritius by an individual resident in Mauritius is taxable if:

- it is received in Mauritius by him or on his behalf; or
- it is dealt with in Mauritius in his interest or on his behalf.

In case the foreign source income has been subject to foreign tax, credit for foreign tax is allowable thereon. Furthermore, if the income is from a country with which Mauritius has signed a double tax treaty, then treaty benefit may apply on that income.

## TAX INCENTIVES

Presently, most incentives have been removed. The exceptions are:

(a) Deduction of twice the emoluments paid to a disabled person;
(b) Transfer of loss of a manufacturing company to another company on takeover or merger;
(c) Additional investment allowance on capital incurred on the acquisition of state-of-art technological equipment by a manufacturing company;
(d) Deduction from the net income of the interest paid by an individual on a housing loan, subject to conditions;
(e) Amount invested by an individual in a solar energy unit or a rainwater harvesting system by deduction from the net income;
(f) A maximum amount of MUR 30,000 from the net income of individuals employing household workers.
(g) Deduction for the cost of acquiring a fast charger for electric car from the net income of individuals owning electric cars.
(h) Additional investment allowance to companies affected by COVID-19 of 100% of expenditure incurred on plant and machinery during the period 1 March 2020 to 30 June 2020.
(i) Relief for contributions to the COVID-19 Solidarity Fund during the income year commencing 1 July 2019 or 1 July 2020, by way of deduction from net income of the individual. Any unrelieved amount may be carried forward to be deducted against future net income for a maximum of 2 income years.
(j) Double deduction on medical R&D expenditure carried out in Mauritius provided neither capital allowance nor deduction claimed, as from 1 July 2021 and in respect of every subsequent year of assessment.

(k) Double deduction of expenditure incurred on patents and franchises in respect of the acquisition of patents and franchises; and costs to comply with international quality standard and norms, in the income year when incurred. This is provided that no annual allowance has been taken in respect of those patents and franchises.

## RESEARCH AND DEVELOPMENT (R&D) EXPENDITURE

Where during the period from 1 July 2017 to 30 June 2022, a person who has incurred any qualifying expenditure directly related to his existing trade or business, he may deduct twice the amount of the expenditure in the income year the qualifying expenditure was incurred, subject to the research and development being carried out in Mauritius and no annual allowances have been claimed in respect of the same. Qualifying expenditure means any expenditure relating to R&D, including expenditure on innovation, improvement, or development of a process, product, or service, as well as staff costs, consumable items, computer software directly used in R&D, and subcontracted R&D.

Also refer to double deduction on expenditure incurred on medical R&D in point (j) under the section 'Tax Incentives'.

## CORPORATE SOCIAL RESPONSIBILITY (CSR)

Every year, a company/resident société is required to spend 2% of its chargeable income of the preceding year to set up a CSR fund. The CSR fund shall be spent as follows:

- At least 50% of the CSR fund set up on or after 1 January 2017 up to 31 December 2018 should be remitted to the Mauritius Revenue Authority ('MRA');
- At least 75% of the CSR fund set up on or after 1 January 2019 should be remitted to the MRA.

In respect of the CSR fund set up before 1 January 2019, the remaining amount of the CSR fund shall be used to implement a CSR programme in accordance with the company's own CSR framework. For the CSR fund set up on or after 1 January 2019, the remaining amount shall be used to implement a CSR programme or finance a non-governmental organisation implementing a CSR programme in the priority areas of intervention as specified.

No CSR money shall be spent by a company on the following activities:

- Activities discriminating on the basis of race, place of origin, political opinion, colour, creed or sex;
- Any activity promoting alcohol, cigarettes or gambling;
- Activities targeting shareholders, senior staff, or their family members;
- Contribution to any Government department or parastatal body;
- Contribution to natural disasters mitigation programme;
- Activities that are against public safety and national interest;
- Religious/spiritual, political, trade union, self-financing, staff welfare, training of employees and marketing activities.

Where a company is required to submit an Advance Payment System (APS) statement, it should remit 75% of the CSR amount to be remitted to the MRA together with the APS statements, and the final 25% is to be remitted on the submission of the final return.

As from 1 July 2019, the MRA may raise an assessment on a company which has neither spent the CSR fund as required by the law nor remitted the same to the MRA.

**For the purpose of CSR, "company" does not include:**

(a) A company holding a GBL Licence;

(b) A bank holding a banking licence under the Banking Act in respect of its income derived from its banking transactions with non-residents or corporations holding Global Business Licence;

(c) An Integrated Resort Scheme (IRS) Company;

(d) A non-resident société, a Foundation, a trust or a trustee of a unit trust scheme;

(e) A company issued with a certificate as a freeport operator or private freeport developer, in respect of income derived from export activities; and

(f) A REIT.

## COVID-19 LEVY

During the Covid-19 period, the government came up with the Wage Assistance Scheme (WAS) to safeguard employment. The Covid-19 levy was subsequently introduced to recoup the whole or part of the WAS from entities which are profitable. The levy is calculated at 15% of the company's gross income less allowable deductions except any loss brought forward from previous years or the actual WAS paid, whichever is lesser. No levy is payable if an employer taking the WAS is not liable to tax in the years of assessment ("YOAs") 2020/21, 2021/22 and 2022/23.

The levy is applicable for the YOA 2020/21, 2021/22 and 2022/23:

- For a company having an accounting year-end between 1 May 2020 and 31 December 2020, the levy is payable in YOA 2020/21. For accounting year-end from 1 May 2021 to 31 December 2021, the levy is payable in YOA 2021-22, after deducting the levy paid during the previous YOA.
- For a company having an accounting year-end between 1 January 2021 and 30 April 2021, the levy shall be payable in YOA 2021/22. For accounting year-end 1 January 2022 to 30 April 2022, the levy is payable in YOA 2022/23, after deducting the levy paid in the previous YOA.

The levy is payable to the MRA by the employer in his respective return of income.

## GLOBAL BUSINESS ENTITIES

Global business entities (companies, trusts, sociétés) have special fiscal regimes and incentives such as customs duty remission and concessionary income tax rates for expatriates.

## OFFSHORE TRUSTS

- Resident trusts are taxed at 15%.
- Non-resident trusts and their non-resident beneficiaries are exempt from taxes on their foreign source income but have the obligation to file a tax return.

## SOCIETE (PARTNERSHIP)

Every partner of a société holding a GBL Licence is liable to income tax in respect of its share at the rate of 15%.

## COMPANIES IN THE FREEPORT ZONE

As from 9 August 2018, Freeport operators and private Freeport developers are no longer exempted from income tax. Transitional provisions are in place for Freeport licences issued on or before 14 June 2018; they will continue to benefit from the previous tax exemption regime until 30 June 2021.

As from 1 July 2020, Freeport operators or private Freeport developers engaged in the manufacture of goods meant for the local market in whole or in part, will be liable to tax at 3% on their chargeable income from the sale on the local market, provided certain substance conditions are met.

Freeport operators will also be liable to CSR on chargeable income derived from local sales, as calculated by the prescribed formula.

## C. FOREIGN TAX RELIEF

Unilateral relief is provided for in the Income Tax Act. In the event of double taxation, relief is by way of an ordinary credit. The taxpayer may elect to claim the credit on aggregate foreign-source income or on a source-by-source basis.

## D. CORPORATE GROUPS

The general rule is that no group relief is allowed except in a few special cases.

## E. RELATED PARTY TRANSACTIONS

The tax authorities may adjust the tax liability of a taxpayer where they consider that a transaction has not been entered into or carried out by that taxpayer at arm's length and the sole purpose of which is for tax avoidance or reduction of liability to tax. The MRA has indicated that the arm's length provision will be amended to remove any doubt or uncertainty about its application. This is expected to come out as a Regulation to the Income Tax Act.

## F. WITHHOLDING TAX

Mauritius does not levy withholding tax on dividends paid by resident companies. No withholding tax on interest paid to resident companies.

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The rates for withholding taxes are as follows:

| Description | Residents | | Non-residents | |
|---|---|---|---|---|
| | Companies | Individuals | Companies | Individuals |
| Interest (except from banks) | 0% | 15% | 15% | 15% |
| Royalties | 10% | 10% | 15% | 15% |
| Rent | 5% | 5% | 10% | 10% |
| Contractors/Sub-contractors | 0.75% | 0.75% | 10% | 10% |
| Specific services | 3% | 3% | 10% | 10% |
| Management fees | 5% | 5% | 10% | 10% |
| Payments made by central government or local authority for procurement of goods/services | 1 – 3% | 1 – 3% | 10% | 10% |
| Commissions | 3% | 3% | 10% | 10% |

## G. PERSONAL TAX

Income tax is payable by resident individuals on non-exempt income derived from Mauritius less allowable deductions including interest on housing loan, subject to conditions. Income derived by individuals from foreign sources is taxable in Mauritius only if this income is actually received in Mauritius or dealt with in their interest or on their behalf in Mauritius.

Employers deduct income tax from each salary payment of non-exempt individual employees. For that purpose, a cumulative method of tax calculation exists whereby the employer takes into account an Income Exemption Threshold for each employee based on an Employee Declaration Form which the employee submits to him.

As of 1 July 2018, the tax rate of 15% was reduced to 10% on annual net income derived by an individual of up to MUR 650,000. Net income derived above MUR 650,000 will be taxed at 15%.

### Additional tax - Solidarity Levy

Individuals who are resident in Mauritius with leviable income exceeding MUR 3 million in a tax year will be subject to an additional tax called solidarity levy. Leviable income consists of the chargeable income of the individual and any dividends received from resident companies (including dividends paid as share of income through sociétés). As from 1 July 2020, the solidarity levy is applicable at 25% on any excess above MUR 3 million, subject to a cap of 10% on the sum of net income and local dividends received by the individual.

Where employees have emoluments exceeding MUR 230,769 in a month, the employer will withhold an additional tax on the amount exceeding MUR 230,769 at the rate of 15%, provided that the additional tax withheld does not exceed 10% of total emoluments. This is effective from 1 July 2020.

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends[1] | | Interest[2] (%) | Royalties[3] (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 0 | 0 | 0/15 | 0/15 |
| Individuals | 0 | -- | 0/15 | 0/15 |
| **Treaty countries:** | | | | |
| Bangladesh | 10 | 10 | --[4] | --[4] |
| Barbados | 5 | 5 | 5 | 5 |
| Belgium | 10 | 5 | 10 | 0 |
| Botswana | 10 | 5 | 12 | 12.5 |
| Cabo Verde | 0/5 | 0/5 | 0/10 | 7.5 |
| China | 5 | 5 | 10 | 10 |
| Congo (Rep.) | 5 | 0 | 5 | 0 |
| Croatia | 0 | 0 | 0 | 0 |
| Cyprus | 0 | 0 | 0 | 0 |
| Egypt | 10 | 5 | 10 | 12 |
| Estonia | 7 | 0 | 0/5 | 0/7 |
| Eswatini (formerly Swaziland) | 7.5 | 7.5 | 0/7 | 7.5 |
| France | 15 | 5 | --[4] | 15 |
| Germany | 15 | 5 | 0 | 10 |
| Ghana | 7 | 7 | 7 | 8 |
| Guernsey | 0 | 0 | 0 | 0 |
| India | 15 | 5 | 0/7.5 | 15 |
| Italy | 15 | 5 | --[4] | 15 |
| Jersey | 0 | 0 | 0 | 0 |
| Kuwait | 0 | 0 | 0 | 10 |
| Lesotho | 10 | 10 | 10 | 10 |
| Luxembourg | 10 | 5 | 0 | 0 |
| Madagascar | 10 | 5 | 10 | 5 |
| Malaysia | 15 | 5 | 10 | 15 |
| Malta | 0 | 0 | 0 | 0 |
| Monaco | 0 | 0 | 0 | 0 |
| Mozambique | 15 | 8/10 | 8 | 5 |
| Namibia | 10 | 5 | 10 | 5 |
| Nepal | 15 | 5/10 | 15 | 15 |
| Oman | 0 | 0 | 0 | 0 |
| Pakistan | 10 | 10 | 10 | 12.5 |
| Qatar | 0 | 0 | 0 | 5 |
| Rwanda | 10 | 10 | 10 | 10 |
| Senegal | 0 | 0 | 0 | 0 |
| Seychelles | 0 | 0 | 0 | 0 |
| Singapore | 0 | 0 | 0 | 0 |
| South Africa | 10 | 5 | 0/10 | 5 |
| Sri Lanka | 15 | 10 | 10 | 10 |
| Sweden | 15 | 0 | 0 | 0 |
| Thailand | 10 | 10 | 15 | 5/15 |
| Tunisia | 0 | 0 | 2.5 | 2.5 |
| Uganda | 10 | 10 | 10 | 10 |
| United Arab Emirates | 0 | 0 | 0 | 0 |
| United Kingdom | 0/15 | 0/15 | --[4] | 15 |
| Zambia | 15 | 5 | 10 | 5 |
| Zimbabwe | 20 | 10 | 10 | 15 |

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Notes:

1. Dividend distributions from resident companies to non-resident companies are not subject to withholding tax.
2. Interest payments to non-resident companies are subject to a 15% final withholding tax, subject to certain exemptions, among others:
   - interest paid to a non-resident by a corporation holding a GBL under the FSA, out of its foreign-source income;
   - interest paid to a non-resident by a company holding a GBC1 issued on or before 16 October 2017, in which case the exemption will be valid until 30 June 2021;
   - interest paid to a non-resident by a bank holding a banking licence under the Banking Act 2004 in so far as the interest is paid out of gross income derived from its banking transactions with non-residents and corporations holding a GBL under the FSA.
3. Royalties paid to non-resident companies are subject to a 15% final withholding tax or to a lower rate under a tax treaty, whichever is lower.

   Royalties paid to a non-resident person by a company holding a GBC1 issued on or before 16 October 2017 is exempt from tax until 30 June 2021.

   Royalties paid by a resident company out of its foreign source income to a non-resident company is exempt from withholding tax.
4. No limitation under the tax treaty. The domestic rate will be applicable.

**Six treaties are awaiting ratification:** Gabon, Comoros Islands, Kenya, Morocco, Nigeria and Russia.

## MEXICO

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Guadalajara | Jimy Cruz Camacho | +52 33 3122 2081<br>jimy.cruz@pkf.com.mx |
| Monterrey | Juan Antonio García Sánchez | +52 818363 8211<br>antonio.garcia@pkf.com.mx |
| Mexico City – Polanco office | Francisco M. Oviedo Martínez | +52 55 5901 3900<br>f.oviedo@pkf.com.mx |

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### BASIC FACTS

| | |
|---|---|
| Full name: | United States of Mexico |
| Capital: | Mexico City |
| Main languages: | Spanish |
| Population: | 131.46 million (2022 estimate) |
| Monetary unit: | Mexican Peso (MXN) |
| Internet domain: | .mx |
| Int. dialling code: | +52 |

### KEY TAX POINTS

- The fiscal year in Mexico is on a calendar year basis.
- All income obtained by companies resident in Mexico is taxed, regardless of the source.
- Every state in Mexico requires specific contributions from its inhabitants, the largest being income tax. In some states employers are charged tax on wages paid to employees.
- Taxpayers with operations with related parties are obliged to demonstrate that such operations and profits were carried out according to market prices through a transfer pricing study, otherwise, the Tax Authority may adjust the operation for tax purposes and alter the tax loss or profit.
- A Controlled Foreign Companies regime (CFC) applies to transactions realised in specific countries or regions.
- Persons will be subject to an additional tax of 10% on dividends or profits distributed by corporations resident in Mexico. Also, foreign residents who receive dividends from Mexican corporations shall be required to make a 10% tax payment on such dividends.
- Resident persons are taxed on their worldwide income. In case of foreign income, taxes paid abroad are generally credited against taxes to be paid in Mexico.
- The Value Added Tax (VAT) rate is 16%, which is levied on purchases of goods and services received and can be offset against VAT collected and payable (output VAT). A tax rate of 8% is applicable for the North Border Region under a Presidential Decree in force until 31 December 2024.

### A. TAXES PAYABLE

### INCOME TAX

Tax is calculated for each fiscal year which in Mexico starts on 1st January and ends on 31st December, except when companies are created at any time during the calendar year. In this case, Mexican law stipulates that the fiscal year for that company starts in the month of incorporation. The yearly applicable income tax is calculated through a simple operation of adding up all sources of income and deducting all allowable deductions. Currently, the corporate tax rate is 30% on all taxable profits and a 20% rate is applicable for the North Border Region based on a Presidential Decree in force until 31 December 2024 (some restrictions may apply). The result can be further reduced by deduction of certain items laid down in Mexican tax law. A surtax or alternative minimum tax is not in place in Mexico.

Mexican and foreign companies are subject to income tax in Mexico on income that originates within the country, but the way that they should pay their applicable taxes depends on certain factors: if they are residents or non- residents and the specific source from which the income originates, as follows:

- Mexican residents and foreign companies with a permanent establishment in Mexico can offset the income tax paid abroad against the Mexican income tax up to the total local tax applicable in each case.
- Dividends distributed by foreign companies to Mexican residents may be offset against local tax due by the Mexican resident to the extent of income tax paid abroad that corresponds to the dividend or utility received by the resident in Mexico.
- Branches are taxed based on the income generated by them.
- Interest accrued from “back-to-back” credits between Mexican residents and foreigners that are considered related parties is treated as dividends.
- Equity share sales are subject to tax as per specific regulations depending on the source and type of income and the income is considered Mexican-sourced when the corporation that issued the shares is a Mexican resident. A 30% tax rate is applicable on the profit when the owner of the shares is a Mexican corporation while a 20% tax rate is applicable on the gross income without deductions when the owner of the shares is a person with an option to apply a progressive tax rate ranging between 1.92% and 35% on the tax profit (certain conditions may apply) When the owner of the shares is a foreign resident without a permanent establishment in Mexico and the book value of said shares or securities accounts directly or indirectly for more than 50% of real estate located in the country, the applicable tax rate is 25% on the gross income without deductions, however, there is an option to apply a 35% tax rate on the tax profit (certain conditions may apply).
- Withholding tax may apply on payments to non-residents (e.g. salaries, fees, capital gains, immovable property, interest, royalties, technical services fees, branch remittance tax, among others), but in some cases, benefits of a double tax treaty are available.

New provisions stipulate that foreign tax paid abroad is considered income tax when complying with Mexican tax authority (SAT) rules and when covered by a double tax treaty that Mexico has entered into.

## CAPITAL GAINS TAX

Taxable profits on the sale of land, securities and other assets are calculated by deducting the original investment cost (MOI) from the sales price. The MOI can be adjusted to its current value for inflation from the period in which the asset was acquired to the month before the sales operation took place.

The procedure for determining the gain on a disposal of shares is calculated by deducting from the income obtained for the sale of the said shares, the average share cost which is determined by the rules laid down in Mexican Income Tax law. When the shareholder only retains shares for a period of up to maximum 12 months, the taxpayer has the option to calculate the capital gains tax by considering the original adjusted cost as the proven acquisition cost and this can be deducted from paid reimbursements and dividends. A loss from the sale of shares and other securities is deductible only if certain requirements are met and may be offset against profits obtained in the same year or in the following five years.



## BRANCH PROFITS TAX

Branches compute income tax in the same manner as companies established in Mexico and apply the 30% corporate tax rate on taxable income. Branches are entitled to deduct expenses incurred both abroad and in Mexico provided that certain conditions are met. In respect of the prorate expenditures, payments made by taxpayers will not be deductible when such payments are also deductible for a related party resident in Mexico or abroad, except if the related party accumulates earned income in the same fiscal year or the subsequent one.

## VALUE ADDED TAX (VAT)

The sale of goods, rendering of services, leasing, importation, or exportation of goods carried out in Mexican territory by companies and individuals are subject to VAT.

The VAT paid on purchases of goods and services received can be offset against the VAT collected and payable. In case the VAT paid exceeds the VAT collected in a given period, companies and individuals are entitled to be refunded for the difference by the tax authorities.

VAT paid for expenses and investments made during the pre-operational period may be (1) creditable on the VAT return for the month when the taxpayer begins business operations; or (2) requested for refund during the month following the VAT payments for expenses and investments, subject to certain requirements.

The following tax rates apply in general, depending on the type of activity:

- 0% in the case of priority activities such as basic foods, medicines, agricultural, exports, etc.;
- 16% and 8% for all other activities.

The law provides for specific exemptions on certain other activities. From 1 July 2006, tourists are reimbursed for VAT charged upon the sale of Mexican merchandise when departing for their home country by air or sea.

Further to the 2022 Tax Reform, a provision was added to VAT law stipulating that VAT paid to vendors cannot be credited if it is related to revenue that is not subject to VAT. Taxpayers carrying out activities that are not subject to VAT will not be able to credit the tax paid to suppliers or on the importation of goods when they are connected with said activities. VAT paid to suppliers will be considered a tax deduction for income tax purposes.

## FRINGE BENEFITS TAX (FBT)

Specific fringe benefits granted to employees which are considered income tax exempted in their hands can be deducted up to 47% by employers while a 53% deduction may apply subject to certain conditions.

## LOCAL TAXES

Every Mexican state requires specific contributions from its inhabitants, the largest one being real property tax (called “predial”). Predial tax is calculated on an annual basis and is required to be paid within the first two months of the year. The tax is calculated by applying a progressive tax rate on the value of the property.

Another important tax at State level consists of the wage tax, which is calculated by using a tax rate ranging between 1 and 3% on a monthly basis on payments to employees, e.g. in Mexico City, employers must pay 3% of tax on wages paid to their employees.

The transfer or sale of real property is subject to tax at State level and is calculated by using a tax rate ranging between 2% and 5% on the assessed value of the property. It is paid by the buyer on all purchases of property. The federal government works with the states in order for co-operating states to only apply the local tax without levying federal tax.

## OTHER TAXES:

## SOCIAL SECURITY PAYMENTS

All employers must register their employees with the Mexican Institute of Social Security, which provides them with benefits for job-related and other disabilities, as well as pensions, death benefits and access to credit for housing. Amounts paid for each employee to the Institute are computed on the basis of all payments made to the employee for wages and benefits, with a few exceptions that meet certain requirements. These include savings, food, prizes for attendance and punctuality, as well as a portion of overtime and profit-sharing.

Approximately one third of the payments are withheld by the employer from the employees’ wages and the other two thirds are paid by the employer. Both employee and employer contributions should be made by the employer on a monthly basis. Social security payments for pension and housing will be made on a bi-monthly basis.

## FOREIGN TRADE TAXES

Customs duties are in place for both import and export. Duties on export are minimal to none and import duties depend on each specific item. On 1 July 2020, the new United States-Mexico-Canada Agreement (USMCA or T-MEC) entered into force replacing the previous North American Free Trade Agreement (NAFTA) after 26 years. The USMCA free trade agreement contains significant improvements: new rules of origin, market access provisions for automobiles, agricultural market access, investment and public procurement, labour and environment, intellectual property rights and digital commerce, among other topics.

USMCA would be valid for at least 16 year with periodic reviews every 6 years without the possibility of letting the 16-year term lapse. If during the first review an agreement would not be achieved, a yearly review would be established until an agreement is reached. During these negotiations, the parties can agree on USMCA´s extension for additional periods of 16 years.

## SPECIAL TAXES

Taxes on production and services are levied on relatively few items such as the importation and sales of cigars, alcoholic beverages and supplying agency services for brokerage, distribution, flavoured drinks, etc of said goods. There is also a special tax on telephone services. A tax on new automobiles and vehicle ownership is applied directly to purchasers and owners of automobiles.



## B. DETERMINATION OF TAXABLE INCOME

Taxable income of companies is computed considering all income received less deductions allowed by law. The law mentions certain specific items which are not considered as income, including capital increases, recognition of the equity method of accounting, and revaluation of assets and capital.

## ALLOWABLE DEDUCTIONS

In general terms, all expenses needed to generate income may be deducted, except in specific cases where there are certain limits and special rules for deduction. Allowable deductions include sales discounts, bad debts, interest paid and losses due to exchange and inflation.

Non-deductible expenses include taxes, representation costs, commercial credits, provisions to estimated reserves, net interest that exceeds the amount resulting from multiplying the adjusted tax profit by 30% (adjusted tax profit = tax profit of the year plus interest accrued and tax depreciation), subcontracting services (if the vendor of such services has a permit issued by the Ministry of Labour, among others conditions). Investments in certain assets can be deducted during the tax year at a discount.

The Income Tax Law provides that payments for interest, royalties or technical assistance to a foreign entity that controls or is controlled by the taxpayer will not be deductible when:

(a) The entity receiving the payment is considered to be transparent except where the transaction is carried out at market value and its shareholders or partners are then subject to income tax on income through the foreign company;

(b) Payment is considered non-existent for tax purposes in the country where the alien is located;

(c) The foreign entity receiving the payment does not consider it as taxable income.

Payments that are also deductible for a related party resident in Mexico or abroad are not deductible, unless the related party accumulates income generated by the taxpayer, either in the fiscal year or the following.

## DEPRECIATION AND AMORTISATION

Deduction for investment in tangible or intangible assets is allowed by law through the depreciation or amortisation of such assets. Freight and handling, insurance, commissions, and fees are allowed in addition to the purchase value of the asset. Depreciation and amortisation are calculated for full months starting with the month when the asset was purchased and using the straight-line method with no allowance for estimated disposal values. As a general rule, all types of assets - except for land - may be depreciated or amortised for tax purposes. The basic depreciation and amortization tax rates allowed are as follows:

| | |
|---|---|
| Outlays made prior to commencing operations | 10% |
| Industrial buildings and warehouses | 5% |

| | |
|---|---|
| Machinery and equipment | 10% except on assets used for specific activities |
| Furniture and fixtures | 10% |
| Cars, vans and trucks | 25% |
| Leasehold improvements | Lease terms |
| Environment-friendly machinery and equipment | 100% |

## STOCK / INVENTORY

Purchases of raw materials, goods in process or finished goods intended for sale are deductible under the cost of sales system when sold by the company. Taxpayers may choose either method of inventory valuation indicated below:

(i) First in - First Out (FIFO);

(ii) Identified Cost;

(iii) Average Cost;

(iv) Retailer.

## INFLATION

The law recognises the effects of inflation on a taxpayer's debts and financial assets so that, in the case of assets, the view is taken that there is a loss of purchasing power of said assets with the passing of time and, in the case of liabilities, a gain is recognised. For such purpose, an annual average of financial assets and debts is determined. The inflation factor is applied to the difference obtained comparing the assets and debts: when the debts are higher there will be a taxable income and when the assets' amount is higher there will be a deduction.

## INTEREST DEDUCTIONS

A thin capitalisation regime was incorporated into tax law in 2005 in relation to loan finance obtained by Mexican-resident companies from overseas. Taking both related party and non-related party debt into account, interest payments are not deductible where the debt/equity ratio exceeds 3:1. Companies that do not meet this ratio will have a term of five years to reduce it in equal proportions per year. These rules do not apply to financial institutions. The interest paid that exceeds this ratio will be non-deductible. From 1 January 2007 onwards, only loans with foreign parties on which the company is required to pay interest are considered in determining the debt/equity ratio.

## LOSSES

Tax losses may be used to offset taxable income obtained during the following ten years. The amount of tax losses is uplifted for inflation for the period from July of the year when they occur to June of the year when they are offset.

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## EMPLOYEE PROFIT SHARING

Companies are obliged to share profits with their employees. Profit sharing is calculated annually at the rate of 10% on taxable income, if any, for income tax purposes. Non-deductible expenses related to fringe benefits granted to employees must deducted from taxable income for profit sharing calculation purposes. As of 1 January 2005, profit sharing paid during the year is deductible from the after-tax profit or loss of the year.

Further to the most recent reform to Labour Law in April 2021, a limit of PTU payable to each employee was introduced, i.e., the total amount derived from the following two calculations shall not exceed the higher of:

a) The amount of 3 months of the employee's salary; or

b) The average PTU received by the employee over the last 3 years.

## INCENTIVES

Incentives are available under the form of an investment deduction, investment credit, and regional and other incentives:

- Investment deduction for taxpayers engaged in real estate development or the subdivision of lots, or in construction of fixed assets requiring long processes, as well as suppliers of tourism services under time-sharing systems;
- Investment credit: for R&D; for hiring disabled or impaired employees; tax credit for amount assigned to investment projects for the film industry; tax credit equal to the amount of investments made in national theatre productions; for investments in infrastructure of high-performance sports; tax credit equal to 30% on investments made on electrical power supply units;
- Regional and other incentives: in-bond assembly operations (maquiladoras); real estate investment trusts: some tax benefits exist for qualifying real estate investment trusts (i.e. REITs or the so-called FIBRAS under the Spanish acronym) in Mexico. Due to the 2020 Tax Reform, the tax benefits for private FIBRAS are eliminated; tax incentive for cooperatives; farming and forestry promotion; hydrocarbon extraction activities; tax incentive for the northern and southern border regions.

## SIMPLIFIED TRUST REGIME FOR SMALL CORPORATIONS AND PERSONS

Further to the 2022 Tax Reform, small corporations with income not exceeding MXN 35 million are under the obligation to determine their income tax based on a new Regime called the "Simplified Trust Regime" (RESICO under the Spanish acronym).

For individuals carrying out business activities with income not exceeding MXN 3.5 million the determination of the income tax under the RESICO regime is optional.

The RESICO Regime for corporations and individuals provides various tax benefits, such as:

- Tax return forms will contain preloaded information based on the electronic invoices issued and received by the taxpayers;
- Calculation of income tax will be on a cash basis (while income tax under the General Regime for corporations is calculated on an accrued basis). The applicable tax rate for corporations is 30%. For individuals the applicable tax rate will be a progressive rate ranging between 1% and 2.5% on gross income. Deductions are not allowed at the level of individuals.

- Tax depreciation rates at the level of corporations for certain investments in fixed assets are higher than the General Regime for corporations.
- For corporations there is an additional deduction for investments in fixed assets acquired from September to December 2021.

## ANTI-AVOIDANCE RULES

**General anti-avoidance rule – "Business reason".**

Added to the Law in 2020, it seeks to identify the economic substance for transactions that generate a tax benefit to prevent fictitious operations from receiving tax benefits as well as the erosion of the tax base that they generate.

The "business reason" will be fundamental to have access to various tax benefits such as the sale of shares at tax cost or deferring the payment of income tax derived from restructuring, as well as the absence of the sale of assets in spin-offs and mergers.

**Restrictions on the tax deduction by net interest.**

As of fiscal year 2020, net interest in a given fiscal year that exceeds 30% of the adjusted taxable profit (i.e., tax profit less interest accrued and tax depreciation) is non-deductible for income tax purposes.

The limitation is applicable when the non-deductible interest calculated under this new rule is greater than the one calculated under the thin cap test (3:1 debt-to-equity ratio), otherwise, thin cap rules will apply.

Net interest that is non-deductible in a given tax year due to the application of the interest barrier rule may be carried forward for up to 10 years. Additionally, net interest that is non-deductible in a given tax year must be added to the amount of net interest of the following fiscal years.

This limitation does not apply to the first MXN 20 million accrued interest among other exceptions and, in case of Group entities, the calculation of the limitation will be made on a group basis.

**Controlled foreign corporations / tax havens.**

Applies to income wherever derived where the tax charged was less than 75% of the tax that would have been paid in Mexico (preferential tax regime). Income derived through foreign entities carrying out business activities is not considered to be subject to a preferential tax regime and, therefore, is not attributable to the taxpayer. This does not apply when income derived by the foreign entity from rent, dividends, interest, capital gains or royalties (passive income) exceeds 20% of its total income and more than 50% of the income earned by the foreign entity is sourced in Mexico or represents, directly or indirectly, a tax deduction in Mexico.

**Non-deductible payments through hybrid arrangements.**

Hybrid arrangements involve the use of entities, instruments, agreements or payments that result in a deduction in Mexico and no or only partial taxation to the non-resident counterparty. Payments related to hybrid arrangements and that are considered subject to tax in a tax haven will be non-deductible.

Also, payments made to dual residents and to non-residents with a permanent establishment in Mexico also will be non-deductible, unless such people recognise and accrue the income generated in Mexico in the other state.

**Foreign legal vehicles and foreign transparent entities.**

This type of entities will be treated as separate legal entities that are subject to tax in Mexico. These entities also could be treated as Mexican tax residents subject to tax in Mexico if their business is primarily managed and controlled in Mexico. Mexican residents will have to pay tax on income generated in proportion to their participation in such entities even if the income is taxed abroad. This is a new regime incorporated in the Law in 2020 and will apply as from 1 January 2021.

**Rules for private equity firms investing in Mexico.**

Foreign private equity vehicles that are considered transparent in their country of residence and invest in Mexican resident corporations will be treated as transparent for Mexican income tax purposes. This will apply only with respect to dividends, interest, capital gains and income real estate leases, with the result that such income will be deemed to flow through to investors. These rules were incorporated in the Law in 2020 and will apply as from 1 January 2021.

**Foreign tax credit for dividends.**

The indirect foreign tax credit is disallowed if the non-resident payer can claim a deduction for the dividends paid. A direct foreign tax credit could be disallowed if the tax is creditable in another country or jurisdiction, unless the credit derives from an indirect foreign tax credit or also is taxed as income in that other Country or jurisdiction.

**Reporting of tax planning arrangements.**

In line with the recommendations of BEPS Action 12, Mexico introduced mandatory disclosure rules (MDR) to its domestic tax legislation as part of its 2020 tax reform, similar to the EU's DAC6 regulation.

Under the new rules, transactions where a taxpayer, irrespective of its tax residence, directly or indirectly obtains a Mexican tax benefit need to be discloses, to the extent the benefit meets any one of the specific 14 characteristics listed in the law or consists of a transaction involving a mechanism to avoid reporting such transactions. A transaction is defined to include any planned project, proposal, advice, instruction or recommendation expressly or tacitly provided to materialise a series of legal acts.

The MDR entered into force as from 1 January 2021, with a requirement to report historic data, as transactions performed in previous years should be reported by taxpayers if the tax effects are carried forward in 2020 or subsequent years.

The Mexican tax authority (SAT) has issued a detailed list of documents and information to be provided by tax advisors and taxpayers to comply with the obligation to report aggressive tax planning schemes.

Such information includes, among others, a diagram containing all the legal acts carried out as part of the reportable scheme and the applicable legislation.

In addition, tax advisors and taxpayers must state if the implementation of the scheme requires the participation of non-resident legal entities or individuals and indicate the sequence in which the legal acts composing the reportable scheme are carried out.

The SAT has also issued the official procedures to be followed by tax advisors and taxpayers for complying with the obligation to report said schemes. Additionally, the SAT has made available a website containing these procedures and relevant information with respect to this obligation for tax advisors and taxpayers.

Also, on 26 January 2021, the SAT released the electronic form on its website for tax advisors and taxpayers to upload the informative tax return that is required for disclosing reportable arrangements.

## C. FOREIGN TAX RELIEF

A tax credit is allowed for foreign income tax paid or deemed paid by Mexican companies. However, in general the credit is limited to the amount of Mexican tax incurred on the foreign-source part of the company's worldwide taxable income. This computation must be made in principle on a country-by-country base.

## D. CORPORATE GROUPS

As of 2014, the Income Tax Law no longer provides a Tax Consolidation regime. However, it grants the possibility to benefit from the following schemes:

- Continue to be taxed under the consolidation regime until financial year 2017, for which determination of tax must continue to be calculated in the same way as in the prior legislation. Once the aforementioned period has passed, the taxpayer must choose one of the two taxation schemes indicated below.
- Avail to new rules for determining the tax under the scheme of "deconsolidation" under which tax must be calculated and reported within the time specified by the new Income Tax Law. The tax charge resulting from the deconsolidation will have to be paid to the tax authorities as follows:
  - o 25% by the last day of May 2014.
  - o 25% by the last day of April 2015.
  - o 20% by the last day of April 2016.
  - o 15% by the last day of April 2017.
  - o 15% by the last day of April 2018.
- In lieu of the tax consolidation regime, a new optional regime of inclusive corporations is created in which payment of tax is partially deferred by three fiscal years.

## E. RELATED PARTY TRANSACTIONS

The Secretary of the Treasury is empowered to alter the tax loss or profit in the case of transactions between related parties made at prices other than market prices, including sales or purchases, loans, rendering of services, lease or sale of real property, as well as use or transfer of intangible assets, when they are not realised at a fair market value. Taxpayers are obliged to carry out an annual transfer pricing study. Taxpayers must apply the best method rule. By default this is to be the Comparable Uncontrolled Price Method (CUP), unless the taxpayer can prove that such method is not applicable.

The maquiladoras (Related Parties) are required to perform the calculation of safe harbour rules. As from 2022 Advance Transfer Pricing Agreements (APA) are no longer available for the calculation of the tax profit.

For the application of the benefits contained in tax treaties and in the case of transactions between related parties, the tax authorities may request the non-resident to demonstrate the double juridical taxation through a statement under oath.

## TRANSFER PRICING CHANGES

In accordance with the initiatives presented by the Federal Executive on 8 September 2021, Mexico's Federal Executive presented a decree that would amend various tax laws, thus modifying the transfer pricing regime to enhance its effectiveness as a tax collection and audit instrument for the tax authorities.

The decree would provide new rules for taxpayers through changes amending, adding and repealing several provisions of the Federal Tax Code (CFF), Mexican Income Tax Law (LISR), the Value Added Tax Law (LIVA), and the Special Tax on Production and Services Law (LIESP).

The following provides for a summary of the most relevant changes in transfer pricing:

## MEXICAN INCOME TAX LAW (MITL) MODIFICATIONS TO TRANSFER PRICING

### ARTICLE 76, SECTION IX

- The tax reform modifies the wording of Article 76 of the income tax law to clarify that both transactions with related parties abroad and those carried out with domestic related parties must be set at market value. Before the reform, only transactions with foreign related parties had to be set at market value.
- The approved reform modifies articles 76 and 179 of the LISR to clarify that functional analyses within transfer pricing studies must examine the functions, assets, and risks of both the taxpayer and all related parties with whom operations have been carried out while also clarifying that a functional analysis reviewing the functions, assets, and risks of each of the parties involved in each intercompany transaction must include characteristics of the operations, functions or activities of each party, assets used, risks assumed in the operation, contract terms, economic circumstances, and business strategies.

### ARTICLE 76, SECTIONS X AND XII

- The determination of accumulative income and authorised deductions must take into account not only the prices, but also the profit margins that would have been used by independent companies, being consistent with the transfer pricing methods established by law.
- It is mandatory to identify in the accounting records the items corresponding to transactions with related parties, both domestic and foreign residents. Operations should be identified at the income statement and balance sheet level (revenue, costs, expenses, accounts receivable, accounts payable).

### ARTICLE 76, SECTIONS X AND 76-A

- The submissions dates of the Multiple Informative Declaration and the Local File with the Tax Administration Service would be aligned. The latter would change from 31st December of the immediately subsequent fiscal year to 15th May of the immediately subsequent fiscal year, along with the tax report.
- The due date for the filing of annex 9 of the multiple informative declaration was changed to 15th May (previously, the due date was 31st March). The deadline for filing the local file with annex 9 was aligned to 15th May of the fiscal year immediately following the reporting year (previously, the due date was 31st December). As far as the Master File and Country-by-Country are concerned, they remain the same.

| Type of filing | Previous deadline | New deadline |
|---|---|---|
| Multiple Information Declaration | 15th March | 15th May |
| Local File | 31st December | 15th May |
| Master File | 31st December | No change |
| Country by Country report | 31st December | No change |

### ARTICLE 179, PARA. 4

The information of comparable companies must be that of the year under analysis and the use of information from two or more fiscal years of the comparables may be used only when the taxpayer documents that the business cycle or acceptance of its goods and/or services covers more than one fiscal year.

### ARTICLE 180 – INTERQUARTILE STATISTICAL METHOD TO OBTAIN THE PRICE RANGE OF THE AMOUNT OF THE CONSIDERATION OR PROFIT MARGINS IN COMPARABLE OPERATIONS

Application of the interquartile method as the appropriate one to adjust the ranges in accordance with the provisions of the MITL regulations (previously only the application of statistical methods was mentioned). A statistical method other than the interquartile may only be applied when the same is under a mutual agreement procedure (MAP).

### ARTICLES 182 AND 183 BIS – MAQUILADORAS

The option to request an Advance Transfer Pricing Agreement will be cancelled, leaving Safe Harbour as the only compliance option for maquilas.

## IMPORTANT MEXICAN DOCUMENTATION COMPLIANCE CONSIDERATIONS

### 1. SECRET COMPARABLES

The procedure for the tax authorities to disclose to taxpayers confidential information on comparable transactions carried out by independent third parties (secret comparables) is included. The taxpayer may get access to this privileged information only for the following purposes:

- To correct the tax situation (specifically to correct misrepresented facts or omissions); and
- To challenge considerations that determine a tax credit.

The taxpayer cannot get copies or take photographs of such information and must sign a non-disclosure agreement.

### 2. THRESHOLD OBLIGATIONS WITHDRAWN

Further to the reform, all taxpayers resident in Mexico that have had transactions with domestic related parties having accumulated income greater than MXN 1,650,490,600 (approximately USD 80,554,700) during the previous fiscal year, also must file their local report through the means the tax administrations defined.

Previously, the tax authority had determined that only taxpayers that exceeded said income threshold were subject to filing the local report. Further to this reform, parties that have carried out transactions with such taxpayers will also be required to file this return, irrespective of the amount of their accruable income.

### 3. TRANSFER PRICING SPECIFIC PENALTIES

Further to the reform, a taxpayer's failure to comply with transfer pricing obligations is now considered an aggravating circumstance and will be subject to the following penalties:

- failure to file the information return (annex 9): a fine of MXN 86,050 to MXN 172,000 (approximately USD 4,197 to USD 8,386);
- failure to file (or file with errors or omissions) the local, master or CbC return: a fine of MXN 172,480 to MXN 245,570 (approximately USD 8,402 to USD 11,959);
- failure to identify related party transactions in accounting: a fine of MXN 1,950 to MXN 5,860 (approximately USD 95 to USD 285) for each transaction.

## F. WITHHOLDING TAXES

- A company that distributes dividends to individuals and non-residents must retain a 10% final withholding tax. For non-residents, the tax rate may be reduced subject to the application of a double tax treaty. Grandfathering rules are in place for profits taxed before 31 December 2013, i.e. these profits are not subject to withholding tax if they originate from a CUFIN account of the entity.
- Interest paid to non-residents is subject to a 30% withholding tax rate. Subject to certain conditions, rates of 4.9%, 10%, 15% and 21% are also in place while a 40% rate applies to interest paid to a related party located in a tax haven. The tax rate may be reduced, or relief may be available subject to the application of a double tax treaty.
- Royalties paid to non-residents are subject to a 35% (trademarks and patents) or 25% withholding tax (other types of royalties), subject to the application of a double tax treaty, while a 40% rate applies to royalties paid to a related party located in a tax haven. The tax rate may be reduced subject to the application of a double tax treaty.
- Fees paid for technical assistance are subject to a 25% withholding tax rate. The tax rate may be reduced subject to the application of a double tax treaty.

- Similar rules are applicable for branch remittance tax as for dividends of Mexican entities (CUFIN). Dividends or gains distributed by branches to their head office abroad are subject to 10% additional tax.
- In case of salaries paid by a foreign company to a foreigner working in Mexico, personal income taxes have to be computed and paid, except when the foreign company does not have a branch or fixed base in the country and the person spends less than 183 days in the country during the year. The tax shall be determined by applying the following rates to the revenue obtained during a calendar year:
  - o The first MXN 125,900 are exempted;
  - o 15% rate on revenue obtained exceeding MXN 125,900 and up to MXN 1,000,000;
  - o 30% rate on revenue obtained exceeding MXN 1,000,000.
- In certain cases withholding tax may apply to payments to non-residents for concepts of fees, capital gains, immovable property, etc., subject to the application of a double tax treaty.

## G. EXCHANGE CONTROL

There are no exchange restrictions in Mexico. Foreign currencies can be freely bought, sold and sent or transferred abroad. However, since 2010 there are limitations to USD cash transactions.

## H. ELECTRONIC ACCOUNTING, TAXPAYER EMAIL AND ELECTRONIC SIGNATURE

Taxpayers are required to keep their accounting transactions in an electronic format based on account catalogues and codes issued by the tax authorities. They also are obliged to submit part of their accounting information, among others, their financial statements and trial balance on a monthly basis.

All Individuals and Corporations enrolled in the Federal Registration of Taxpayers (RFC) have been assigned a "taxpayer email", which serves as a communication tool with the tax collecting authority. In this taxpayer email, the authority will notify all determinations. Among other information taxpayers will send their accounting through this channel. The tax authorities may perform electronic reviews of the accounting information sent by taxpayers.

Electronic signature certificate must be available. It serves to electronically sign tax returns, notices, and letters to the Tax Authority, among other things.

## I. PERSONAL TAXES

Individuals residing in Mexico calculate their annual tax on their total income generated both in Mexico and abroad. In case of foreign income, taxes paid abroad are generally credited against taxes payable in Mexico. A person is considered resident if he/she has a permanent home in Mexico. In case of individuals that have a home in two countries, the location of the person's centre of vital interest will determine the tax residence. Mexican nationals are, in principle, considered tax residents, subject to the permanent home and/or the centre-of-vital-interest test.

Income tax is imposed on a person's profits on a cash flow basis and, in part, under a schedular system, although some categories of income can be mixed in order to determine the taxable income. There are specific rules for each type of personal income such as: wages, fees, capital gains, dividends, etc.

Deductions and allowances are permitted depending on the category of income and are subject to certain restrictions and caps.

Personal deductions are available and can be deducted from the annual tax profit:

a) School transportation for own children (subject to conditions);
b) Medical and dental fees, including hospital expenses for the taxpayer, spouse, direct-line ascendants or descendants;
c) Funeral expenses for the persons mentioned under (b) above;
d) Donations to authorised entities;
e) Contributions for employee retirement;
f) Medical insurance payments;
g) Interest paid related to mortgage loans for the purchase of family home;
h) Payments for professional services in psychology and nutrition.

As of 2011, a decree has entered into force that allows the deduction of school tuition payments from primary up to High School level. Specific amounts and rules apply.

The tax rates are progressive from 1.92% up to 35%. Individuals must make instalments towards annual income tax on a monthly basis. In the case of wages, the taxes are withheld by the employer.

The monthly income tax payments are calculated by the taxpayer or employer, as the case may be, according to the following table:

| Monthly Taxable Income (MXN) | Tax due on lower limit (MXN) | Marginal rate on excess (%) |
|---|---|---|
| Up to 644.58 | 0 | 1.92 |
| 644.59 – 5,470.92 | 12.38 | 6.40 |
| 5,470.93 – 9,614.66 | 321.26 | 10.88 |
| 9,614.67 – 11,176.62 | 772.10 | 16.00 |
| 11,176.63 – 13,381.47 | 1,022.01 | 17.92 |
| 13,381.48 – 26,988.50 | 1,417.12 | 21.36 |
| 26,988.51 – 42,537.58 | 4,323.58 | 23.52 |
| 42,537.59 – 81,211.25 | 7,980.73 | 30.00 |
| 81,211.26 – 108,281.67 | 19,582.83 | 32.00 |
| 108,281.68 – 324,845.01 | 28,245.36 | 34.00 |
| 324,845.02 and above | 101,876.90 | 35.00 |

## J. TREATY WITHHOLDING TAX RATES

The rates established hereafter are found in the document published by the SAT (Tax Administration Service) named "Withholding Tax Rate for Dividends, Interests and Royalties According to the Double Tax Conventions in Force" (updated: January 2019) on the following link: http://www.sat.gob.mx

| | Dividends[1] (%) | Interest (%) | Royalties(%) |
|---|---|---|---|
| **Treaty countries:** | | | |
| Argentina | 10/15 | 12 | 10/15 |
| Australia | 0/15 | 10/15 | 10 |
| Austria | 5/10 | 10 | 10 |
| Bahrain | 0 | 4.9/10 | 10 |
| Barbados | 5/10 | 10 | 10 |
| Belgium | 5/15 | 10/15 | 10 |
| Brazil | 10/15 | 15 | 15 |
| Canada | 5/15 | 10 | 10 |
| Chile | 5/10 | 15 | 15 |
| China | 5 | 10 | 10 |
| Colombia | 0 | 5/10 | 10 |
| Costa Rica[2] | 5/12 | 10 | 10 |
| Czech Republic | 10 | 10 | 10 |
| Denmark | 0/15 | 5/15 | 10 |
| Ecuador | 5 | 10/15 | 10 |
| Estonia | 0 | 4.9/10 | 10 |
| Finland | 0 | 10 | 10/15 |
| France | 5/15/0 | 15/15 | 5/10/15 |
| Germany | 5/15 | 5/10 | 10 |
| Greece | 10 | 10 | 10 |
| Hong Kong | 0 | 4.9/10 | 10 |
| Hungary | 5/10 | 10 | 10 |
| Iceland | 5/15 | 10 | 10 |
| India | 10 | 10 | 10 |
| Indonesia | 10 | 10 | 10 |
| Iceland | 5/15 | 10 | 10 |
| Ireland | 10/5 | 5/10 | 10 |
| Israel | 5/10 | 10 | 10 |
| Italy | 15 | 15 | 15/0 |
| Jamaica[3] | 5/10 | 10 | 10 |
| Japan | 0/5/15 | 10/15 | 10 |
| Korea | 0/15 | 5/15 | 10 |
| Kuwait | 0 | 4.9/10 | 10 |
| Latvia | 5/10 | 5/10 | 10 |
| Lithuania | 0/15 | 10 | 10 |
| Luxembourg | 8/15 | 10 | 10 |
| Malta | 0 | 5/10 | 10 |
| Netherlands | 5/15 | 5/10 | 10 |
| New Zealand | 15 | 10 | 10 |
| Norway | 0/15 | 10/15 | 10 |
| Panama | 5/7.5 | 5/10 | 10 |
| Peru | 10/15 | 15 | 15 |
| Philippines[3] | 5/10/15 | 12.5 | 15 |
| Poland | 5/15 | 10/15 | 10 |
| Portugal | 10 | 10 | 10 |
| Qatar | 0 | 5/10 | 10 |
| Romania | 10 | 15 | 15 |

| | Dividends[1] (%) | Interest (%) | Royalties(%) |
|---|---|---|---|
| Russia | 10 | 10 | 10 |
| Saudi Arabia[3] | 5 | 5/10 | 10 |
| Singapore | 0 | 5/15 | 10 |
| Slovak Republic | 0 | 10 | 10 |
| South Africa | 5/10 | 10 | 10 |
| Spain | 5/15 | 5/15 | 10/0 |
| Sweden | 0/5/15 | 10/15 | 10 |
| Switzerland | 15/0 | 10/15 | 10 |
| Turkey | 5/15 | 10/15 | 10 |
| Ukraine | 5/15 | 10 | 10 |
| United Arab Emirates | 0 | 4.9/10 | 10 |
| United Kingdom | 0/15 | 5/10 | 10 |
| United States | 0/5/10 | 4.9/10 | 4.9/10 |
| Uruguay | 5 | 10 | 10 |

Notes:

1. The lower rate applies provided the corporate shareholder holds a minimum percentage of share capital or voting power in the payer which varies depending on the country concerned. Individual tax treaties should be consulted to determine the applicable rates in a given case.
2. Effective date: 1 January 2020.
3. Effective date: 1 January 2019.

# MONGOLIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Ulaanbaatar | Tamir Amarbayasgalan | +976 99 111183<br>tamir@pkf-ifs.mn |

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## BASIC FACTS

| | |
|---|---|
| Full name: | Mongolia |
| Capital: | Ulaanbaatar |
| Main languages: | Mongolian |
| Population: | 3.38 million (2022 estimate) |
| Monetary unit: | Mongolian Tugrik (MNT) |
| Internet domain: | .mn |
| Int. dialling code: | +976 |

## KEY TAX POINTS

As a result of a profound tax reform, the key tax laws including General Law on Taxation, Corporate Income Tax Law, Personal Income Tax Law and VAT Law have been revised and adopted by the Parliament of Mongolia on 4 June 2019. The new tax law is effective as from 1 January 2020.

- The corporate income tax (CIT) rate is 10% for income up to MNT 6 billion and 25% for the excess while certain types of income are taxed at specific rates. CIT rate is 1% for business entities with annual turnover under MNT 300 million and certain qualifying conditions may apply.
- Dividends, interest, royalties and technical service fees paid to a non-resident are subject to a 20% withholding tax. A 20% branch remittance tax also applies.
- Loss carry-forward period is 4 years without sector differentiation with a universal restriction of 50% of taxable profits in any tax year.
- The standard VAT rate is 10%.

## A. TAXES PAYABLE

## COMPANY TAX

A corporate entity is a taxpayer provided it produces revenue subject to tax at the end of each accounting year or is bound to pay tax under Corporate Income tax law of Mongolia, notwithstanding the absence of taxable profits.

A taxpayer is either a permanent resident or non-resident taxpayer of Mongolia. A permanent resident taxpayer in Mongolia is a corporate entity incorporated under the laws of Mongolia. A non-resident taxpayer in Mongolia includes a foreign corporate entity that conducts its business in Mongolia within the framework of its representative office which earns income in Mongolia.

Permanent resident and non-resident companies are both required to pay tax on their revenues including income from activities, property income and income from the sale of property.

SMEs with less than MNT 6 billion annual taxable income can file two quarterly tax returns only while bigger taxpayers need to keep on filing four quarterly tax returns. Small entities with less than MNT 50 million annual taxable income can elect for a flat 1% gross tax and can file just one tax return a year.

The law introduces new rules for treating a foreign company as a Mongolian resident taxpayer if it meets certain criteria. If any three out of the following conditions are met, the foreign company shall be treated as a Mongolian resident taxpayer:

- More than 50% of shareholders (or their nominees) reside in Mongolia;
- More than 50% of shareholder meetings have been held in Mongolia during the past 4 years;
- Financial or accounting documents are maintained in Mongolia;
- More than 25% of board members or their representatives reside in Mongolia;
- More than 60% of total income is sourced from Mongolia.

**Rates**

Taxable income up to MNT 6 billion is taxed at 10% while the excess is taxed at 25%.

Certain types of income are taxed at the following rates:

| Income | Tax rate (%) |
|---|---|
| Dividends | 10 |
| Royalties | 10 |
| Interest | 10 |
| Sales of rights | 10 |
| Sale of immovable property | 2 |
| Quizzes, gambling and lotteries | 40 |
| Fees for technical services from non-resident taxpayer | 20 |
| Insurance reimbursement | 10 |

## CAPITAL GAINS TAX

There is no separate capital gains tax. Gross income from the sale of real property is taxed at a rate of 2%. Gains from the sale of securities are taxed at a rate of 10% after deducting the purchase price. Non-residents who derive capital gains will be taxed at the rate of 20% on gross capital gains.

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## BRANCH PROFITS TAX

There is no separate branch profits tax in Mongolia. Branches and permanent establishments of foreign entities are subject to the same rates as resident entities. Non-resident entities are subject to a 20% branch remittance/repatriation tax, subject to the application of a tax treaty.

## SALES TAX / VALUE ADDED TAX (VAT)

Value Added Tax (VAT) is levied on imported and exported goods as well as on goods produced and sold, work performed, or services provided by a person or legal entity on the territory of Mongolia.

The VAT rate is 10% of the taxable amount of goods imported, produced or sold, work performed, or services provided. VAT is levied on goods, work, or services exported outside the territory of Mongolia at a 0% rate.

The registration threshold is an annual taxable turnover of MNT 50 million. Generally, the registration requirements for non-residents are the same as for residents.

Services provided by non-residents are subject to reverse charge VAT.

## FRINGE BENEFITS TAX

Fringe benefits provided by an employer in addition to salaries, wages, bonuses, and incentives are considered an indirect income according to the Law on Personal Income Tax of Mongolia and includes income from the following goods and services, not directly related to the performance of an employee's duties:

a) Provision of free or discounted transportation;
b) Provision of payment for utilities and rent expenses for housing and fuel;
c) Provision of entertainment;
d) Provision of a housekeeper, chauffeur, gardener, or other services;
e) Waiver of an obligation to pay an amount owed to the employer or to any other person;
f) Interest discount on a loan if the rate of interest is lower than the market rate for a loan;
g) Voluntary insurance payment except voluntary life insurance, health insurance, unexpected accident and professional liability insurance;
h) School tuition fee of family members;
i) Payment related to expenses for moving in and out of Mongolia;
j) Additional payment for working and living in a challenging climate;
k) Other similar income.

The following fringe benefits provided by an employer to an employee to improve the employee's working conditions shall not be subject to gross taxable income:

a) Provision of meals for all employees on equal terms in a canteen, cafeteria, or dining room operated by the employer at the workplace during working hours;
b) Provision of a lounge or other services for employees who work at a remote workplace and provision of scheduled transportation for going to and returning from the workplace;
c) Interest discount on a loan provided for purchase and construction of an apartment for an employee if the interest rate is lower than that of a commercial loan;
d) Support and contribution provided for medical expenses paid to the Health organization;
e) Per-diem expenses;
f) Costs of labour safety clothing and uniform, antidote drinks, and other similar supplies provided in accordance with applicable laws;
g) Voluntary life insurance, health insurance, unexpected accident and professional liability insurance paid by employer related to employment.

## OTHER TAXES

- There is no net worth tax in Mongolia;
- An immovable property tax is levied at 0.6% to 1% on the value of the immovable property.

## B. DETERMINATION OF TAXABLE INCOME

Tax is imposed on a company's profits. Taxable revenue includes income derived from the sale of products, the provision of services, the lease or sale of assets, the sale of shares and other operations.

Individuals must include all gross income from whatever source derived during the tax year. Self-employed individuals or freelancers may deduct costs and expenses.

Resident companies are subject to tax on their worldwide income. Corporate income tax is imposed on the following income:

- Income from activities includes:
  - o income from production, operations and services;
  - o income derived from quiz, gambling and lottery activities;
  - o income from technical, management, consulting and other services;
  - o income from goods and services received from others free of charge;
  - o other similar income.
- Property income includes:
  - o income from lease of movable and immovable property;
  - o income from royalties;
  - o income from dividends;
  - o income from interest.
- Income from sale and transfer of property includes:
  - o income from sale of immovable property;
  - o income from sale and transfer of rights granted by government organisation;
  - o income from sale of shares, securities and other financial instruments;
  - o other income from sale of intangible asset and movable property excluding income from sale and transfer of rights, sales of shares, securities and other financial instruments.
- Other income:
  - o Reimbursement due to cause of damage, interest, fines and loss from a legal entity that hasn't fulfilled the commitment to the contract;
  - o Winnings from quiz, gambling and lotteries;
  - o Profit distributed from representative office to its parent company in a current tax year;
  - o Realised foreign currency exchange gain;
  - o Refund as per articles 9.11 of the Law of Mongolia on Evaluation of Environmental Effects and articles 11.1.4 and 12.5 of Law of Mongolia on Oil and Petroleum;
  - o Insurance reimbursement.



## DEPRECIATION

Depreciation and amortisation rates are applicable for a taxpayer's assets used for more than one year. Depreciation and amortisation rates thereof shall be calculated using the straight-line method:

| Non-current assets | Useful life (years) | |
|---|---|---|
| Building and constructions | Non-extractive industries | Extractive industries including exploration and mining supply chains |
| | 25 | 40 |
| Computers, computer parts and software | 2 | |

| Non-current assets | Useful life (years) |
|---|---|
| Intangible assets with indefinite useful life | 10 |
| Machinery and equipment | 10 |
| Intangible assets with definite useful life (includes licenses for mineral and exploration) and extraction | Validity period |
| Other non-current assets | 10 |

## STOCK/INVENTORY

Inventory includes raw materials, work-in-progress and finished goods. Each item of inventory must be valued at acquisition cost or cost of production. Accepted valuation methods include average cost.

## DIVIDENDS

Income from dividends includes monetary and non-monetary income and interest earned through profit sharing and income distribution by a legal entity with contributed capital.

A taxpayer's dividend income is taxed at 10%. As for a non-resident-taxpayer in Mongolia, the dividend income received from a corporate entity registered and operating in Mongolia is taxed at the rate of 20%.

## INTEREST DEDUCTIONS

Combination of 30% of EBITDA (earnings before interest, tax, depreciation and amortisation) restriction and current 3:1 thin capitalisation restriction. Under current laws, thin capitalisation arises when investor's debt-to-equity exceeds a 3:1 ratio. Any interest attributable to the debt exceeding the debt-to-equity ratio is non-deductible for tax purposes. In addition, the New CIT law introduced another restriction that such related party loan interest shall not exceed 30% of EBITDA for any given year.

## LOSSES

A tax loss is the excess of allowable deductions over gross income. Loss carry-forward period is 4 years without sector differentiation with a universal restriction of 50% of taxable profits in any tax year. Tax losses can't be transferred during company reorganisations.

## FOREIGN SOURCED INCOME

Corporate income tax is levied on a taxpayer of a corporate entity incorporated under the laws of Mongolia and a foreign corporate entity with its head office located in Mongolia for its revenues generated both in Mongolia and a foreign country in a given year.

## INVESTMENT ALLOWANCE/INCENTIVES

The following income of a taxpayer shall constitute a tax credit:

- Discounts equal to 50% of invested capital in Free Trade Zones (FTZs) for businesses with more than USD 300,000 of investment in building warehouses, loading and unloading facilities, tourist camps, hotels, or manufacturers of exported and import-substituted goods in the FTZs; and
- Discounts equal to 50% of invested capital in FTZs for businesses that have invested USD 500,000 or more in the FTZs operating to improve infrastructure, such as energy and heating sources, clean water supply, pipeline networks, roads, railways, airports, waste water sewage, and basic communication lines.

## C. FOREIGN TAX RELIEF

Domestic CIT law provides for unilateral foreign tax credit irrespective of tax treaties in place. Excess foreign tax credits cannot be carried forward or back.

## D. CORPORATE GROUPS

There are no specific provisions for group taxation.

## E. RELATED PARTY TRANSACTIONS

Transactions between related parties are valued for tax purposes at fair market value using the arm's-length principle. The Corporate Income Tax Act and the General Tax Act define "related parties" and allow the tax authorities to adjust the price of a transaction to reflect an arm's length price if it is above or below fair market value. The transfer pricing regulations generally are aligned with the OECD guidelines. Companies with sales revenue of at least MNT 6 billion in the preceding tax year or members of a group with consolidated sales revenue of at least MNT 6 billion in the preceding tax year and companies that have foreign owners must prepare a local file and master file annually and submit them to the Mongolian tax authorities. The head or member of the multinational corporation should submit a Country-by-country (CbC) report within 12 months from the end of the financial year.

Related parties are considered a person or more than one person who are able to have significant influence over the entity's economic results and the conditions of transactions to be performed between themselves in a way of direct and indirect participation to control and manage the entity.

## F. WITHHOLDING TAX

'Withholding agent' means a person that withholds tax imposed on a taxpayer's income and paying the same to the state and local budget. A withholding agent retains taxes imposed on income from:

a) Dividends, interests and royalties at 10%;

b) Sale and transfer of immovable property at 2%;

c) Quizzes and gambling and lotteries at 40%;

d) Transferred profits by a representative office of a foreign company to a non-resident-taxpayer, i.e. branch remittance tax, at the rate of 20%.

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Withholding tax shall be transferred to the Treasury within 10 working days.

A Mongolian VAT withholding agent retains tax imposed on income from goods sold, work performed and services provided by a non-resident legal entity to the resident legal entity at 10%.

## G. EXCHANGE CONTROL

Mongolian currency "MNT" must be used in transactions between Mongolian entities (except for banks and other financial institutions) and individuals, unless the central bank specifically approves otherwise. Transactions between Mongolian and foreign legal entities may be in foreign currency. Both residents and non-residents may hold bank accounts in any currency. There are no restrictions on the remittance of profits, dividends, interest or royalties. The central bank must be notified of loans by foreign lenders.

## H. PERSONAL TAX

A citizen of Mongolia, foreign national and stateless person who resides in Mongolia is a taxpayer. A taxpayer is classified as either a permanent resident taxpayer of Mongolia or a non-resident taxpayer of Mongolia.

A permanent resident taxpayer of Mongolia includes:

- A civil servant of Mongolia appointed to work overseas;
- An individual shall be a Mongolian resident taxpayer if any of the following two criteria are met:
  - o an individual who resides in Mongolia for 183 or more days in a given consecutive 12-month period.
  - o if income earned in Mongolia and/or Mongolian-sourced income is more than 50% of an individual's worldwide income.

  *The first criterion will need to be checked first.*

A non-resident taxpayer of Mongolia is considered an individual who earned income in Mongolia or sourced from Mongolia, excluding a permanent resident taxpayer of Mongolia.

A resident taxpayer of Mongolia is taxable on his/her worldwide income while non-residents shall be taxed on Mongolian-sourced income only.

The personal income tax rates are as follows:

| Income | Tax rate (%) |
|---|---|
| Employment income | 10 |
| Business and professional income[1] | 10 |
| Income from property | 10 |
| Sale of immovable property | 2 |
| Income from quizzes, gambling and lotteries | 40 |
| Income from sports competitions, art performances and similar income | 5 |

1. Including income derived by self-employed professionals like lawyers, doctors, accountants and independent contractors.

Taxable income of a non-resident tax payer is determined by the amount of total income earned on the territory of Mongolia. A withholding agent has the obligation to retain withholding tax imposed on taxable income of a non-resident taxpayer at 20% of the total income amount.

A resident individual entrepreneur may elect to be taxed at 1% gross tax instead of 10% tax on the taxable income from business operations if annual turnover is under MNT 50 million.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Dividends, interest, and royalties paid, and payments made for goods sold and work/services provided (directly or electronically), to non-residents are subject to WHT at a 20% rate. Interest provided to non-residents on bonds issued by Mongolian commercial banks and listed on the domestic or foreign stock exchange are subject to WHT at 10%.

| No | Recipient | Withholding tax rates (%) | | | |
|---|---|---|---|---|---|
| | | Dividends | Interest | Royalties | Technical fees |
| | **Non-treaty/domestic rates** | 20 | 20 | 20 | 20 |
| | **Treaty rates** | | | | |
| 1 | Austria | 5/10[1] | 10 | 5/10[11] | N/A |
| 2 | Belarus | 10 | 10 | 10 | N/A |
| 3 | Belgium | 5/15[2] | 10 | 5 | N/A |
| 4 | Bulgaria | 10 | 10 | 10 | N/A |
| 5 | Canada | 5/15[7] | 10 | 5/10[12] | 5 |
| 6 | China | 5 | 10 | 10 | N/A |
| 7 | Czech Republic | 10 | 10 | 10 | N/A |
| 8 | France | 5/15[7] | 10 | 5 | N/A |
| 9 | Germany | 5/10[1,4] | 10 | 10 | N/A |
| 10 | Hungary | 5/15[9] | 10 | 5 | N/A |
| 11 | India | 15 | 15 | 15 | 15 |

| No | Recipient | Withholding tax rates (%) | | | |
|---|---|---|---|---|---|
| | | Dividends | Interest | Royalties | Technical fees |
| 12 | Indonesia | 10 | 10 | 10 | N/A |
| 13 | Italy | 5/15[13] | 10 | 5 | N/A |
| 14 | Kazakhstan | 10 | 10 | 10 | N/A |
| 15 | Korea (North) | 5 | 5 | 10 | N/A |
| 16 | Korea (South) | 5 | 5 | 10 | N/A |
| 17 | Kyrgyzstan | 10 | 10 | 10 | N/A |
| 18 | Malaysia | 10 | 10 | 10 | 10 |
| 19 | Poland | 10 | 10 | 5 | N/A |
| 20 | Russia | 10 | 10 | 10 | N/A |
| 21 | Singapore | 0/5/10[6,9] | 5/10[10] | 5 | N/A |
| 22 | Switzerland | 5/15[5] | 10 | 5 | N/A |
| 23 | Turkey | 10 | 10 | 10 | N/A |
| 24 | Ukraine | 10 | 10 | 10 | N/A |
| 25 | United Kingdom | 5/15[3] | 7/10[8] | 5 | N/A |
| 26 | Vietnam | 10 | 10 | 10 | 10 |

Notes:
1. 5% if the recipient is a company (excluding partnerships) and directly owns at least 10% of the capital of the company paying dividends.
2. 5% if the beneficial owner is a company (excluding partnerships) and directly or indirectly holds at least 10% of the capital of the company paying dividends.
3. 5% if the beneficial owner is a company that directly or indirectly controls at least 10% of the voting power in the company paying dividends.
4. 5% if the beneficial owner is a company (excluding partnerships) and directly owns at least 10% of the company.
5. 5% if the beneficial owner is a company (excluding partnerships) and directly owns at least 25% of the capital of the company paying dividends.
6. No tax if dividends paid to the government/certain public bodies.
7. 5% if the beneficial owner is a company and directly or indirectly holds at least 10% of the capital of the company paying dividends.
8. 7% if interest is paid to a bank that is the beneficial owner of the interest and carrying on a bona fide banking business.
9. 5% if the beneficial owner is a company and directly owns at least 25% of the capital of the company paying dividends.
10. 5% if interest is received by a bank or a similar financial institution.
11. 5% if the beneficial owner of the royalties in the meaning of any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial, or scientific experience; 10% in all other cases.
12. 5% if the beneficial owner of the royalties in the meaning of copyright royalties and other payments for production or reproduction of any literary, dramatic, and other work, royalties for the use of, or the right to use, computer software or any patent, or for information concerning industrial, commercial, or scientific experience; 10% in all other cases.
13. 5% if the beneficial owner is a company (excluding partnerships) that owns at least 10% of the capital of the company paying dividends over the past 12 months before determining dividends.

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# MOROCCO

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Casablanca | Abdellatif Zarkal | +212 522 47 64 70<br>zarkal@pkfmaroc.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Morocco |
| Capital: | Rabat |
| Main languages: | Arabic |
| Population: | 37.73 million (2022 estimate) |
| Monetary unit: | Moroccan Dirham (MAD) |
| Internet domain: | .ma |
| Int. dialling code: | +212 |

## KEY TAX POINTS

- Moroccan corporations are subject to corporate tax *('impôt sur les sociétés')* or IS system.
- The standard rate of Value Added Tax is 20% and applies to all suppliers of goods and services, except those taxed at other

rates or those who are exempt. A reduced rate of 10% applies to specific items.

- Dividends paid to a non-resident are subject to a 15% withholding tax unless the rate is reduced under an applicable tax treaty. Interest on loans obtained from a non-resident and royalties paid to non-residents are subject to a 10% withholding tax (subject to the application of a treaty).

## A. TAXES PAYABLE

### CORPORATE TAX

Before the entry into force of the 2022 finance law, corporate tax was calculated according to progressive rates with a rate cap for certain companies.

In order to ensure progressive convergence towards a unified proportional rate in terms of corporate tax, the Finance Law abolished the progressivity of the rates for the scale of this tax and adopted a method of calculation according to proportional rates. The rates are as follows:

| Taxable profit (MAD) | Rate (%) |
|---|---|
| Up to 300,000 | 10 |
| 300,001 – 1,000,000 | 20 |
| Over 1,000,000 | 31 |

Note that these rate are applicable for financial years with effect from 1 January 2022.

There is a reduced rate in place for companies carrying out an industrial activity. The rates are as follows:

| Taxable profit (MAD) | Rate (%) |
|---|---|
| Up to 300,000 | 10 |
| 300,001 - 1,000,000 | 20 |
| 1,000,001 – 100,000,000 | 26 |
| Over 100,000,000 | 31 |

The rate of the capped scale for their export turnover remains at 20%.

An industrial activity within the meaning of Article 19-I-A-9 ° of the CGI is any activity that consists in directly manufacturing or transforming tangible movable property by means of technical installations, materials and tools whose role is preponderant.

This provision shall apply to financial years beginning on or after 1 January 2022.

### BRANCH PROFITS TAX

The Moroccan-sourced income of Moroccan branches of foreign companies is subject to income tax at the normal corporate tax rate. The taxable income is calculated as if the branch was a separate entity from the foreign company.

After-tax profits realised by a branch or establishment of a foreign company and subsequently transferred to the foreign head office are subject to a 15% withholding tax on remitted income unless a lower treaty rate applies.

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### MINIMUM TAX CONTRIBUTION

Companies are subject to a minimum corporate Tax (Cotisation Minimale or “CM”) of 0.50% on various revenues. The CM is based on turnover, income from interest, subsidies, bonuses, or donations received. The CM is not payable by companies during their first 36 months of operations. However, legal entities liable for Corporate Tax which do not generate turnover must pay a minimum contribution of MAD 3,000.

Further to the 2022 Finance Law the rate of the minimum contribution applicable to corporation tax and income tax is reduced from 0.50% to 0.40% for companies whose current result excluding depreciation is positive. However, the minimum rate is 0.60% for companies whose current result excluding depreciation is negative for two consecutive years.

### SOCIAL SOLIDARITY CONTRIBUTION (SSC)

The 2022 finance law has reinstated the social solidarity contribution for companies subject to IS whose net profit is equal to or greater than MAD 1,000,000.

### VALUE ADDED TAX

The standard VAT rate is 20% and applies to all suppliers of goods and services, except those taxed at reduced rates or those that are exempt. A reduced rate of 10% applies to specific items such as banking and credit services, leasing, gas, water, and electricity. Two types of exemptions from VAT are in place. The first is an exemption with credit, equivalent to the zero-rated tax, which applies to exports, agricultural materials and equipment, and fishing equipment. The second is an exemption without credit, i.e., the seller cannot recover the input VAT paid. This exemption applies to basic foods, newspapers, and international transport services.

The right to deduction of VAT on inputs starts at the end of the month of the establishment of Customs receipts or the end of the month of the full or partial payment of bills on behalf of the beneficiary.

Newly created companies can be exempt from input VAT on fixed assets. This requires a request to be made prior to purchase to the tax administration within 36 months of the companies’ establishment date.

The above benefit is extended for fixed assets acquired under Islamic finance operations of “Mourabaha”.

Already existing companies are exempt from VAT on fixed assets for 36 months, when they carry out new projects within the framework of an investment agreement concluded with the government for an amount equal to or more than MAD 50 million.

Many expensive medicines and medical equipment are VAT zero-rated without credit. Examples of medicines are as follows: asthma, cardiovascular diseases, vaccines, and medicines listed in a joint order of the Minister of Health and the Minister of Finance and intended for the treatment of fertility and multiple sclerosis, and medicines with a manufacturer’s price excluding tax set by regulation exceeding MAD 588.

Cancellation of zero-rated VAT with credit on some agricultural equipment. Agricultural equipment with input recoverable VAT is listed in article 92-I-5 of 2019 General Tax Code.

Water pump powered by renewable energy for agricultural activities is VAT zero-rated with credit and exempted from VAT on importation.

VAT exemption for the importation of poultry, cattle, sheep, and camel meat imported by the royal army or on their behalf.

VAT exemption with right of deduction for military machines, equipment and materials, weapons, ammunition as well as related accessories acquired by the bodies in charge of National Defence and those in charge of security and the security forces.

VAT exemption without right of deduction for photovoltaic panels and solar water heaters.

## PROFESSIONAL TAX

A Professional Tax or “Taxe Professionnelle” is levied on individuals and companies that habitually carry-on business in Morocco, except for those that are expressly exempted by a tax law provision. The Professional Tax is applied to the annual rental value of business premises (rented or owned) capped at MAD 50 million net of VAT. The tax rates range from 10% to 30% with an exemption for the first five years of activity.

The same applies to owners of machines and appliances that are integral parts of the establishment of producing goods or services.

## PROPERTY TAX

Property tax or “Taxe d’Habitation” is assessed on the rental value of the property. The general property tax rate is 10% of the assessed rental value, as determined by the local tax authorities. If the property is used as a primary residence, only 25% of the assessed rental property value is subject to tax. Properties occupied as a main or second residence are taxed at progressive rates as follows:

| Tax base (MAD) | Tax rate |
|---|---|
| Up to 5,000 | Nil |
| 5,000 – 20,000 | 10% |
| 20,000 – 40,000 | 20% |
| Over 40,000 | 30% |

## CUSTOMS DUTIES

All goods and services may be imported. Goods deemed to have a negative impact on national production, however, may require an import licence. Products from the EU are fully exempted. Cars, household items and semi-finished products for the local industry are reviewed. Some materials and products, however, are exempted, in particular those imported under the investment charter, imported under customs economic systems and those using renewable energies. VAT is also levied on goods imported into Morocco.



## CAPITAL GAINS TAX

Individuals earning capital gains from selling property are subject to tax on property profits. Profits on the sale of property are taxable at 20% of any profit but with a minimum tax of 3% of the sales price.

The taxable gain is computed by deducting the following from the sales price:

- Acquisition price and incidental costs.
- Transfer costs.
- Investment expenses.
- Interest payments.

Capital gains from the sale of a property which has been the primary residence of the taxpayer are not subject to tax under the following conditions:

- The property sales price shall not exceed MAD 4 million.
- The seller shall acquire another residence within 6 months from the sale of his last primary house.
- The exemption is granted once.

When the sales price of a property, which has been the primary residence of the taxpayer, exceeds MAD 4 million the taxpayer is subject to a minimum tax of 3% on the part of the price exceeding that threshold.

## RENTAL INCOME TAX

The rental revenue collected by natural persons is subject to one of the following proportionate discharging rates:

- 10% for gross annual taxed revenue not exceeding MAD 120,000.
- 15% for the said revenue equal to or exceeding MAD 120,000.

The annual rent revenue not exceeding MAD 30,000 is exempted.

As from 2019, the lessee company should withhold tax from rent paid to an individual lessor. The company is exempt from withholding tax when the individual receiving the revenue opts to pay the tax spontaneously.

## B. DETERMINATION OF TAXABLE INCOME

Companies are taxed on the difference between their trading income and expenditure. Business expenses incurred in the operation of the business are generally deductible unless specifically excluded. Expenses not permitted include fines, penalties, interest on shareholder loans where the stock is not fully paid up, and interest on shareholder loans over the official annual interest rate. Morocco operates a territorial tax system. Companies (both resident and non-resident) are generally subject to corporate tax only on income generated from activities carried on in Morocco. Foreign corporations are subject to taxation on income arising in Morocco if they have, or are deemed to have, a permanent establishment in Morocco. A company is a resident in Morocco if it is incorporated there or its place of effective management is in Morocco.

### LOSSES

Tax losses may be carried forward for four years from the end of the loss-making accounting period. However, the portion of a loss that relates to depreciation may be carried forward indefinitely. Losses may not be carried back.

### CAPITAL GAINS

Morocco instituted a tax on the proceeds from a company's stocks, shares and comparable income (TPT), distributed by companies based in Morocco and paying taxes on corporations. A withholding tax of 15% applies to:

- Capital interest.
- Profit percentages.
- Special allowances or the payment of fees and other compensation allotted to members of the board of directors (except for the fraction of these compensations considered as salary and subject to Income Tax (IR).
- Sums levied on profits to repay capital produced to stockholders or to buy overstock.
- Beneficiary/founder's shares.
- Surpluses from winding up augmented by reserves built up over at least ten years ago.
- Profits made in Morocco by establishments whose home office is located abroad, as these profits are made available to such companies abroad.

### DIVIDENDS

Dividends received by corporate shareholders from taxable Moroccan-resident entities must be included in the business profits of the recipient company, but the dividends are 100% deductible for taxable income calculation purposes.

### INTEREST DEDUCTIONS

Interest paid on loans and other debts is deductible to the extent that it relates to borrowings made for income-producing purposes.

The tax deductibility of interest paid by a company is subject to the following limits for the case of shareholder loans:

- The amount of the shareholder loan does not exceed the amount of the share equity capital (ratio 1:1); and
- The interest rate does not exceed the rate annually set by the Ministry of Finance during a given tax year.

## C. FOREIGN TAX RELIEF

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Since a Moroccan resident is taxed on worldwide income, the Moroccan tax system provides relief from foreign taxes paid on such worldwide income by means of a foreign tax credit. This foreign tax credit cannot exceed the Moroccan tax otherwise payable in respect of the foreign-sourced income.

## D. CORPORATE GROUPS

Moroccan tax law does not provide for the option to file a consolidated tax return for group companies. The transfer of losses between group members is not possible.

## E. RELATED PARTY TRANSACTIONS

Moroccan tax law has a procedure in place for taxable businesses in Morocco having direct or indirect dependency links with companies outside of Morocco and meeting one of the following conditions:

- Turnover is equal to or greater than MAD 50 million per year; or
- Total gross assets are over MAD 50 million at year-end.

They can opt to conclude with the tax administration an advance ruling on the method of determining transfer prices between them for a period not exceeding four years. This measure will enable these companies to benefit from a legal guarantee against the risk of calling into question the method of determining prices.

In addition to paying interest and dividends, the payment of management fees, service fees, and royalties are methods of repatriating profits to the non-resident associates, controllers, and owners of Moroccan entities. In these circumstances, the payments made by the Moroccan resident to the non- resident associate must reflect the market value of the goods and/or services to the Moroccan company, i.e., all payments must be calculated with reference to arm's length market rates.

Where the Tax Office takes the view that the Moroccan company has paid an excessive amount for the goods and/or services, the Tax Office can disallow the deduction claimed by the Moroccan company and substitute it with an alternative price. Other transactions between Moroccan taxable entities (or branches) and their related foreign entities or head offices are also subject to the transfer pricing rules. Where a Moroccan branch of a foreign company remits profits to its parent by way of management fees or service fees, the profits are not subject to withholding tax or branch profits tax.

TP documentation needs to be prepared as follows:

- a master file containing information on the overall activities of the affiliated enterprises, the global transfer pricing policy applied and the distribution of profits and activities worldwide; and
- a local file containing information specific to the transactions that the audited company carries out with the abovementioned companies that have links of dependency.

In case of non-compliance, the company is liable for a fine equal to 0.5% of the amount of the transactions related to the documents not produced. However, the minimum fine cannot be less than MAD 200,000 for each year subject to the above requirements.

## F. WITHHOLDING TAX

- Dividends paid to a non-resident are subject to a 15% withholding tax unless the rate is reduced under an applicable tax treaty.
- Interest on loans obtained from a non-resident is subject to a 10% withholding tax unless the rate is reduced under an applicable tax treaty.
- Royalties paid to non-residents are subject to a 10% withholding tax unless the rate is reduced under an applicable tax treaty.

## PERSONAL INCOME TAX

**General scheme**

Individuals, regardless of nationality or activity, who have their habitual residence in Morocco are subject to income tax (*Impot sur le Revenu* or IR) on their worldwide income on a progressive scale between 10% and 38%. Individuals who do not have their habitual residence in Morocco are subject to tax only on Moroccan source income. Habitual residence status is established by reference to one of the following:

- Place of permanent abode;
- Centre of economic interest;
- Duration of stay in the country exceeding 183 days within any period of 365 days.

The issue of double taxation is partially addressed by tax treaties or unilateral relief in the form of a tax credit. All compensation received by an individual is taxable, including salaries and wages, allowances, pension annuities, and all other employment benefits, investment income, property income and income derived from the carrying out of a business or profession. Capital gains derived from the disposal of immovable property are generally subject to tax as part of the income of the individual, i.e. 20%. Filing and payment: the tax return must be filed by 31 March of each year in the place where the taxpayer has his/her habitual residence or main business. Resident individuals are assessed on their taxable income as per the bands below:

| Income (MAD) | Tax rate |
|---|---|
| 0 – 30,000 | 0% |
| 30,001 – 50,000 | 10% |
| 50,001 – 60,000 | 20% |
| 60,001 – 80,000 | 30% |
| 80,001 – 180,000 | 34% |
| Over 180,000 | 38% |

Employers must withhold income tax on the salaries paid to their employees of the month and pay the tax by the end of the following month. Individuals who receive income from non-wage sources must file a tax declaration every year on or before 31st March. Net rental income is taxable under the income tax at progressive rates.

**Specific scheme**

Employees working at companies with Casa Finance City status are subject to a 20% income tax on their gross earnings.

Retirement pensions in Morocco are subject to a tax allowance concerning the annual gross amount:

- 60% from the annual gross amount of MAD 168,000;
- 40% in excess of MAD 168,000.

Unincorporated companies established prior to 2020 in the Free-trade Zone (FZ) will benefit from a revenue tax exemption during the first five years of operations, after which they will get tax cuts of 80% for the next 20 years. However, as per the 2020 Finance Act, the zone naming has changed. Effective from 2020 the FZ is called the Industrial Acceleration Zone (IAZ).

Unincorporated companies established in the IAZ after 1 January 2021 benefit from a total exemption from income tax during the first 5 years from the commencement of operations and are taxed at a 20% rate (non-progressive) for subsequent years. Companies that carry out their activities in the IAZ as part of a construction or assembly site are excluded from this scheme.

Income from poultry and equine farming is included in the category of agricultural income.

The regime of “auto-entrepreneur” applies to individuals whose annual turnover does not exceed MAD 500,000 for commercial, industrial, and craft activities undertaken and where yearly turnover does not exceed MAD 200,000 for the provision of services. Under the “auto-entrepreneur status, individuals are subject to income tax at a rate of 0.5% or 1% of turnover, depending on the activity.

Income tax does not apply to the gross monthly salary capped at MAD 10,000 for newly created companies subject to the following conditions:

- The exemption concerns companies during 24 months from the start of their activities between 1 January 2015 and 31 December 2022; and
- with a maximum of 10 employees.

Premiums and contributions relating to pension insurance contracts are only deductible up to 50% of the net taxable salary, regardless of the date of the conclusion of the pension insurance contract.

Benefits from life insurance and capitalisation insurance contracts with a duration of at least 8 years are exempt from income tax. The 2020 Finance Act extended the exemption to Takaful investment contracts that are entered into for at least 8 years.

Permanent institution of tax neutrality concerning income tax on contributions of equity securities to a holding company subject to income tax and resident in Morocco. Individuals who transfer all their shares they hold in one or more companies to a resident holding company subject to corporate income tax are not subject to income tax in respect of the net capital gain realised as a result of the transfer transaction. The exemption is subject to the following conditions:

- The contribution must be assessed by a statutory auditor;
- The contributor should submit a declaration within 60 days from the transaction date;
- The contributor shall undertake in the contribution agreement to pay the tax on the gains he shall derive from the sale, refunding or cancellation of the stocks received in exchange for the contribution.

In case the above-mentioned conditions are not met, the capital gains are taxed in accordance with common tax rules.

The 2022 Finance Law has renewed the exemption from income tax of salaries paid by a company, association or cooperative, regardless of the date of its creation, to an employee on the occasion of his first recruitment during the first 36 months from the date of said recruitment.

This exemption shall be granted subject to the following conditions:

- The employee must be recruited under an employment contract of indefinite duration, concluded during the period from 1 January 2021 to 31 December 2022;
- The employee's age must not exceed 35 years on the date of conclusion of his first employment contract.

In addition, an exemption from income tax is applicable in respect of recruiting employees who have lost their job due to Covid-19. The exemption is in force as long as the following criteria are met:

- Monthly salary is exempt from income tax, up to a maximum of MAD 10,000 paid by the company, the association, or the employer or the cooperative to an employee who involuntarily lost his or her job for economic reasons related to the impact of the spread of Covid-19 during the period from 1 March 2020 to 30 September 2020;
- Duration of exemption: first 12 months from the date of recruitment.

**Conditions**

- The employee must be recruited during the year 2021;
- The employee must have benefited from the fund for loss of employment in accordance with the provisions of Law No. 03-14 amending and supplementing the Dahir providing Law No. 1-72-184 of 15 Jumada II 1392 (27 July 1972) on the social security system;
- The employee may not benefit twice from the above-mentioned exemption;
- Lump-sum allowance on the taxable amounts of sportsmen's salaries;
- Extension of the benefit to coaches, trainers, and members of technical committees.

**Single Professional Contribution (CPU) scheme**

This regime allows taxpayers to determine their tax base and to pay the corresponding tax spontaneously, by applying to the turnover they have achieved a coefficient fixed for each profession in accordance with the table attached to the CGI.

- Individuals concerned - Individuals whose annual turnover does not exceed the following limits:
  - o MAD 2,000,000 for commercial, industrial, and artisanal activities;
  - o MAD 500,000 for service providers.
- Conditions of application:
  - o Turnover must not exceed for two consecutive years the limits provided for above. Otherwise, the general scheme is applicable;
  - o Enrolment in the basic compulsory health insurance scheme in accordance with the laws and regulations in force.
- Terms and conditions of taxation:

  Individuals whose professional income is determined according to the single professional contribution scheme are subject to income tax at the rate referred to in Article 73-II-B-6°, i.e., 10%, based on the realised turnover to which the following coefficient set for each profession applies in accordance with the table annexed to the tax code: CPU = (Turnover* Coefficient) * 10%.

In addition to the above tax, additional fees will be paid as a contribution to the compulsory medical insurance known as AMO:

| Annual fees instalments (MAD)<br>Quarterly amount of additional fees | Quarterly amount of supplementary rights (MAD) | Annual amount of supplementary rights (MAD) |
|---|---|---|
| Less than 500 | 300 | 1,200 |
| 500 to 1,000 | 390 | 1,560 |
| 1,001 to 2,500 | 570 | 2,280 |
| 2,501 to 5,000 | 720 | 2,880 |
| 5,001 to 10,000 | 1,050 | 4,200 |
| 10,001 to 25,000 | 1,500 | 6,000 |
| 25,001 to 50,000 | 2,250 | 9,000 |
| Over 50,000 | 3,600 | 14,400 |

The rate of capital gains tax is 20%.

Note:

Several activities are not eligible for the CPU. These concern activities set by regulations. According to the 2021 Finance Act, the complementary right is also applicable to income taxed according to the self-entrepreneur regime.

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## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest[11] (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 15 | 0 | 10 | 10 |
| Individuals | 0/15 | -- | 10 | 10 |
| **Treaty countries:** | | | | |
| Arab Maghreb Union[1] | –[10] | –[10] | –[10] | –[10] |
| Austria | 10 | 5[2] | 0/10 | 10 |
| Bahrain | 10 | 5[3] | 0/10 | 10 |
| Belgium | 10 | 6.5[2] | 0/10 | 10 |
| Bulgaria | 10 | 7[2] | 10 | 10 |
| Canada | 15 | 15 | 15 | 5/10[14] |
| China | 10 | 10 | 0/10 | 10 |
| Croatia | 10 | 8[2] | 0/10 | 10 |
| Czech Republic | 10 | 10 | 10 | 10 |
| Denmark | 25 | 10[2] | 10 | 10 |
| Egypt | 12.5 | 10[2] | 0/20 | 10 |
| Finland | 10 | 7[2] | 0/10 | 10 |
| France | 15 | 15 | 10/15[12] | 5/10[14] |
| Gabon | 15 | 15 | 0/10 | 10 |
| Germany | 15 | 5[2] | 0/10 | 10 |
| Greece | 10 | 5[2] | 10 | 10 |
| Guinea | 10 | 5[4] | 0/10 | 10 |
| Hungary | 12 | 12 | 0/10 | 10 |
| India | 10 | 10 | 0/10 | 10 |
| Indonesia | 10 | 10 | 0/10 | 10 |
| Ireland | 10 | 6[2] | 0/10 | 10 |
| Italy | 15 | 10[2] | 0/10 | 5/10[14] |
| Ivory Coast | 10 | 10 | 0/10 | 10 |
| Jordan | 10 | 10 | 0/10 | 10 |
| Korea | 10 | 5[2] | 0/10 | 5/10[14] |
| Kuwait | 10 | 2.5/5[5] | 0/10 | 10 |
| Latvia | 10 | 6[2] | 0/10 | 10 |
| Lebanon | 10 | 5[3] | 0/10 | 5/10[14] |
| Luxembourg | 15 | 10[2] | 10 | 10 |
| Malaysia | 10 | 5[3] | 0/10 | 10 |
| Mali | 10 | 5[2] | 0/10 | 10 |
| Malta | 10 | 6.5[2] | 0/10 | 10 |
| Netherlands | 25 | 10[6] | 10/25[13] | 10 |
| North Macedonia | 10 | 10 | 0/10 | 10 |
| Norway | 15 | 15 | 10 | 10 |
| Oman | 10 | 5[3] | 0/10 | 10 |
| Pakistan | 10 | 10 | 0/10 | 10 |
| Poland | 15 | 7[2] | 10 | 10 |
| Portugal | 15 | 10[7] | 1[2] | 10 |
| Qatar | 10 | 5 | 0/10 | 10 |
| Romania | 10 | 10 | 0/10 | 10 |
| Russia | 10 | 5[8] | 0/10 | 10 |
| Senegal | 10 | 10 | 0/10 | 10 |
| Singapore | 10 | 8[3] | 10 | 10 |
| Spain | 15 | 10[2] | 10 | 5/10[14] |
| Switzerland | 15 | 7[2] | 10 | 10 |

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| | Dividends | | Interest[11] (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Syria | 10 | 10 | 0/10 | 14 |
| Turkey | 10 | 7[2] | 0/10 | 10 |
| Ukraine | 10 | 10 | 0/10 | 10 |
| United Arab Emirates | 0/10 | 5[3] | 0/10 | 0[15]/10 |
| United Kingdom | 25 | 10[3] | 10 | 10 |
| United States | 15 | 10[9] | 0/15 | 10 |
| Vietnam | 10 | 10 | 0/10 | 10 |
| Zambia[16] | 10 | 10 | 0/10 | 10 |

Notes:

1. Member states are Algeria, Libya, Mauritania, Morocco and Tunisia.
2. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
3. The reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the paying company.
4. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 30% of the capital of the paying company.
5. 2.5% if the beneficial owner is the Government of the other contracting state and 5% if the beneficial owner is a company which holds directly at least 10% of the capital of the paying company.
6. The reduced rate applies if the recipient is a company the capital of which is wholly or partly divided into shares and holds directly at least 25% of the capital of the paying company, on condition that the relationship between the two companies was not established or is not maintained principally for the purposes of benefiting from this reduced rate.
7. The reduced rate applies if the beneficial owner is a company which, for an uninterrupted period of two years prior to the payment of the dividends, holds directly at least 25% of the capital of the paying company.
8. The reduced rate applies if the participation of the resident of the other contracting state in the capital of the paying company exceeds USD 500,000.
9. The reduced rate applies if (i) during the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10% of the voting shares of the paying corporation was owned by the recipient corporation, and (ii) not more than 25% of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business or dividends or interest received from subsidiary corporations, 50% or more of the outstanding shares of the voting stock of which is owned by the paying corporation at the time such dividends or interest is received).
10. No limitation on the withholding tax rate under the treaty.
11. Certain treaties provide for an exemption for some types of interest (not included in this table), e.g. interest paid to public bodies and institutions.
12. 15% for interest on term deposits and cash vouchers and 10% for other types of interest.
13. 10% for interest paid by a resident of one state to an enterprise of the other state and 25% in all other cases.14
14. The reduced rate generally applies to copyright royalties and other similar payments in respect of the production or reproduction of any literary, artistic or dramatic work (excluding cinematographic and television films) while the 10% withholding rate applies to other types of royalties.
15. The 0% rate applies if royalties are paid to the Government of the United Arab Emirates, its Central Bank, the Abu Dhabi Fund for Economic Development, the Abu Dhabi Investment Authority, the Dubai Investment Company or any other public institutions.
16. Effective date: 1 January 2022.



## MOZAMBIQUE

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Maputo | Ricardo Coelho | +258 214 833 54/5 |
| | | Ricardo Coelho@pkf.co.mz |

### BASIC FACTS

| | |
|---|---|
| Full name: | Mozambique |
| Capital: | Maputo |
| Main languages: | Portuguese |
| Population: | 33 million (2022 estimate) |
| Monetary unit: | Mozambican Metical (MZN) |
| Internet domain: | .mz |
| Int. dialling code: | +258 |

### KEY TAX POINTS

- Resident corporations are subject to corporate income tax (IRPC) on their worldwide income. Non-resident companies with a permanent establishment in Mozambique are liable for IRPC on the income attributable to that permanent establishment.

- Resident individuals are subject to income tax on their worldwide income while non-residents are liable to income tax only on income sourced in Mozambique.
- The standard corporate income tax rate is 32%.
- The standard VAT rate is 17% on the supply of goods and services in Mozambique and on the importation of goods.
- Dividend payments to non-resident companies are subject to a 20% final withholding tax. A 10% rate applies to dividends distributed by companies listed on the Mozambique Stock Exchange to their non-resident corporate shareholders.
- Interest payments to non-resident companies are subject to a 20% final withholding tax.
- Royalties paid to non-resident companies are subject to a 20% final withholding tax.

## A. TAXES PAYABLE

### COMPANY TAX

Resident corporations are subject to corporate income tax (IRPC) on their worldwide income. Resident companies are those which have their head office, or place of effective management, in Mozambique. Non-resident companies with a permanent establishment (PE) in Mozambique are liable for IRPC on the income attributable to that PE. A non-resident company without a PE in Mozambique is taxed on the following types of income sourced in Mozambique: capital gains, dividends, interests, royalties, services and rents.

The standard corporate income tax rate is 32%. A higher rate of 35% is applicable to undocumented, hidden or unlawful expenses, whether or not the company has made a profit.

The tax year usually coincides with the calendar year (1 January to 31 December). Exceptions must be approved in advance by the Finance Minister and only apply if a company is owned for more than 50% by another company with a different tax year, in which case it may adopt that different tax year. Tax is payable as follows:

| Taxable persons | Tax payment |
|---|---|
| Resident entities whose main activity is commercial, industrial or agricultural and non-residents with a permanent establishment in Mozambique. | - Payments on account (PC) in May, July and September (5th, 7th and 9th month after year end).<br>- Special payments on account (PEC) in June, August and October (6th, 8th and 10th month after year end).<br>- The balance is due by the date when the tax return is filed – generally 31 May. (5th month after year-end) |
| Resident entities whose main activity is neither commercial, industrial nor agricultural. | Tax is payable by 31 May following the end of the tax year. |
| Non-resident entities without a permanent establishment. | Taxed by definitive withholding made by client or by independent tax return. |

Payments on account (PC) are estimated on the basis of 80% of previous tax year's IRPC liability, less any tax withheld at source and divided into three equal instalments.

$$PC = \frac{\textit{(IRPC of previous year – withheld taxes of previous year) x 80\%}}{\textit{3 installments}}$$

Special payments on account (PEC) are estimated on the basis of 0.5% of the sales and/or services rendered during the previous financial year, with the minimum amount of 30,000 MZN and maximum of 100,000 MZN, net of provisional tax payments made in the previous year and divided into three equal instalments.

$$PEC = \frac{\textit{(turnover of previous year x 0.5\% – PC of previous year)}}{\textit{3 installments}}$$

PEs of non-resident companies are taxed at the rates applicable to resident companies. When there is no PE, tax is levied at rates varying between 10% and 20% according to the source of income.

### CAPITAL GAINS TAX

Worldwide capital gains obtained by resident companies are included in taxable income. The gain (or loss) is calculated by the difference between the sales proceeds and the acquisition cost which may be updated using official inflation coefficients. If the proceeds of the sales are reinvested in other fixed assets, within three tax years following the year of sale, 100% of the gain obtained (net of the related losses) will be excluded from taxation. When only part of the consideration is reinvested, only the corresponding part of the gain qualifies for the relief.

### BRANCH PROFITS TAX

There is no branch profits tax. Branches are subject to a final 32% tax rate at year-end on the net accounting result after tax adjustments.

### VALUE ADDED TAX (VAT)

The standard VAT rate is 17% on the supply of goods and services in Mozambique and on the importation of goods.

If a non-resident entrepreneur does not have a PE in Mozambique, but has an authorised representative in Mozambique, the obligations laid down in the VAT Code must be complied with by the representative.

### OTHER TAXES

### MUNICIPAL TAX REAL ESTATE

Owners of real estate properties are subject to tax between 0.2% and 1% for urban properties depending on the municipality.

## REAL ESTATE TRANSFER TAX (SISA)

Real Estate Transfer Tax applies to transfer of real estate property and is normally payable by the purchaser at a rate of 2%. A 10% rate applies when the purchaser of the property is a resident of a black-listed offshore jurisdiction.

## SOCIAL SECURITY CONTRIBUTIONS (INSS)

Social security contributions are payable by employers (4%) and employees (3%) on monthly remuneration.

Payable by 10th of the next month.

## B. DETERMINATION OF TAXABLE INCOME (IRPC)

Normally net income, or taxable income, is arrived at by adjusting the accounting profits for non-taxed income and non-deductible expenses. As a general principle, costs are only deductible when necessarily incurred for the purpose of generating income.

## DEPRECIATION

Fixed assets can be depreciated for tax purposes. The main depreciation rates are:

| Assets | Rate (%) |
|---|---|
| **Tangible assets:** | |
| Industrial buildings | 2 |
| Office and residential buildings | 2 |
| Machinery and installations, air conditioning, and telephone equipment | 10 |
| Lifts | 8.33 |
| Tools | 25 |
| Laboratory equipment | 12.5 |
| Telex and interior equipment | 10 |
| Furniture and filing systems | 10 |
| Typewriters and accounting machines | 16.66 |
| Computer hardware | 25 |
| Warehouse and filing installations: | |
| Of concrete | 5 |
| Of wood | 6.66 |
| Of steel | 8.33 |
| Trucks | 20 |
| Automobiles | 25 |
| **Intangible assets:** | |
| Pre-operating expenses incurred prior to the commencement of business | 25 |
| Deferred expenses arising in connection with increases in share capital, changes in form of business enterprises, issuance of debentures, marketing and other studies, and financial expenses incurred for the acquisition or own production of fixed assets prior to completion | 33.33 |
| Patents | 10 |
| Manufacturing licences, concessionaire agreements, and similar rights | 5* |
| Trademark or premium of taking over leases of real estate | ** |

NOTES:

* If certain conditions are met.

** May be accepted by the tax authorities if the decrease of the value is proved.

## STOCK / INVENTORY

Inventory must normally be valued at the effective cost of acquisition or production (historic cost). Other methods which may be adopted include:

- The standard cost method, which must be calculated in accordance with the appropriate technical and accounting principles;
- The sale price method, based on the market value less a normal profit margin;
- The special costing for basic or normal inventory, subject to prior approval of the tax authorities; and,
- The costing based on market price quote, this can be used by companies selling agricultural products and other biological assets.

## CAPITAL GAINS AND LOSSES

Gains obtained by non-resident entities from the disposal of shares may be exempt from tax depending on the holding period of the shares. This exemption is not applicable if the gains are obtained from a non-resident.

| Period of detention of shares | Reduction (%) | Effective Rate (%) |
|---|---|---|
| Less than one year | 0 | 32 |
| 12 to 24 months | 15 | 27.2 |
| 24 to 60 months | 35 | 20.8 |
| More than 60 months | 45 | 17.6 |

## DIVIDENDS

There is a full participation exemption for the payment of dividends between Mozambique resident companies, when the recipient of the dividends is a company that has held a participation of at least 20% of the share capital of the distributing company for a minimum period of two years (if the investment is held for less than 2 year the law allows that the shareholders will still be exempt if they hold the investment until 2 years are completed). If such conditions are not met, the dividend amount is subject to taxation.

## INTEREST DEDUCTIONS

Interest is deductible on an accruals basis. The Fiscal Administration is entitled, under certain circumstances, to disallow interest payments to related parties in excess of arm's length arrangements. Thin capitalisation rules are applied when the debt/equity ratio exceeds 2:1.

## LOSSES

Operating losses incurred by resident companies, or by a branch of a non-resident company, may be carried forward to offset against taxable profits for five years. No loss carry-back is allowed.

## FOREIGN SOURCE INCOME

Taxation of resident companies and permanent establishments takes into account their worldwide income. Double taxation treaties may allow to balance the tax paid overseas and IRPC.

## TAX INCENTIVES

The Investment Law grants certain tax and customs benefits depending on the amount, location and sector of investment activity.

## C. FOREIGN TAX RELIEF

Foreign-sourced income, gross of tax paid abroad, is included in taxable income. A unilateral credit for foreign income tax suffered can be offset against the IRPC. Mozambique's tax treaties also apply the ordinary credit method. The tax credit is restricted to the lower of:

- The income tax paid abroad (ordinary credit method); and,
- The Mozambique income tax chargeable on that foreign income.

## D. CORPORATE GROUPS

There is no group basis tax option in Mozambique. Each company has to complete its tax returns separately.

## E. RELATED PARTY TRANSACTIONS



Mozambique's Council of Ministers enacted Decree 70/2017, dated 6 December 2017, which approves the Transfer Pricing Regulations ("TP Regulations") and entered into force on 1 January 2018. It defines the procedures to assess transactions carried out between related parties, imposes new documentation requirements and allows corrections to taxable profits by the tax authorities.

### Scope

The TP Regulations are applicable to both residents in Mozambique, as well as to permanent establishments of non-resident companies carrying out transactions with related parties.

The obligation to prepare transfer pricing documentation is applicable to taxpayers whose annual net turnover and other income, in the preceding fiscal year, is equal to or exceeds MZN 2.5 million (approximately USD 40,000).

### Concept of related parties

Two entities are considered related parties if managed or controlled by: (i) the same person/entity, (ii) a person that is a key member of the management of the other entity or its parent company, or (iii) has the capacity to exercise a significant influence on management decisions. This may be deemed to occur inter alia:

- Between an entity and its shareholders, their spouses, ascendants or descendants, which directly or indirectly hold at least 10% of the share capital or voting rights;
- Entities in which the same shareholders, their spouses, ascendants and descendants, directly or indirectly hold at least 10% of the share capital or voting rights;
- An entity and the members of its governing bodies, or any bodies from its administration, direction, management or audit, as well as their spouses, ascendants and descendants;
- Entities in which the majority of the members of their governing bodies, or any bodies from its administration, direction, management or audit are the same persons or, being different, are related through marriage, non-marital partnership or affinity in direct line;
- Entities linked by a subordination contract, group parity contract or another contract with equivalent effect;
- Entities in a controlling relationship, as determined in the legislation which states the obligation of presenting consolidated financial statements;
- Entities which, due to their direct or indirect commercial, financial, professional or legal relations, depend on each other for carrying out their business activity (e.g. know how contracts, transfer of technology, etc.).

### Transfer pricing methods

The TP Regulations enacted adopt the methods set forth in the OECG Guidelines for Multinational Entities. The methods accepted are:

- Comparable uncontrolled price method;
- Resale price method;

- Cost plus method;
- Profit split method;
- Transaction net margin method;
- Other methods.

**Transfer pricing documentation**

The new documentation requirements foresee the following information to be disclosed:

- Description of the related party transactions with respect to characterization of the entities through their functions, assets and risks;
- Description of the business of the tested party in terms of operations as well as strategy;
- Directives relating to the application of the TP policy;
- Contracts and other legal agreements pertaining to the related party transactions;
- Selection and application of the selected TP methods by transaction;
- Comparability analysis as well as detailed information on the comparable information used.

**Other compliance obligations**

The tax return to be submitted by taxpayers shall include the following information, related to transactions with related parties:

- Identification of the parties;
- Transaction value per product or service;
- Transfer pricing adjustments;
- Transfer pricing method selected per transaction.

## F. WITHHOLDING TAX

- Dividend payments to non-resident companies are subject to a 20% final withholding tax. A 10% rate applies to dividends distributed by companies listed on the Mozambique Stock Exchange to their non-resident corporate shareholders.
- Interest payments to non-resident companies are subject to a 20% final withholding tax.
- Royalties paid to non-resident companies are subject to a 20% final withholding tax.

## G. EXCHANGE CONTROL

All transfers to and from abroad are subject to registration with the Bank of Mozambique and may be not authorised in certain circumstances. Shareholders loans or any other type of foreign loan are liable to pre-approval by the Central Bank. Other examples of operations that require pre-approval are insurance operations and guarantees operations.

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## H. PERSONAL TAX

Personal Income tax (IRPS) is payable by individuals on income obtained from employment, a business activity or independent profession, investment income, immovable property, capital gains, pensions and betting or gambling profits. Resident individuals are subject to income tax on their worldwide income while non-residents are liable to income tax only on income sourced in Mozambique.

| Taxable Income (MZN) | Tax Rate (%) | Flat Rate Rebate |
|---|---|---|
| Up to 42,000 | 10 | - |
| 42,001 – 168,000 | 15 | 2,100 |
| 168,001 – 504,000 | 20 | 10,500 |
| 504,001 – 1,512,000 | 25 | 25,700 |
| More than 1,512,000 | 32 | 141,540 |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 10/20[1] | 10/20[1] | 20 | 20 |
| Individuals | 10/20 | -- | 10/20 | 20 |
| **Treaty countries:** | | | | |
| Botswana[2] | 12 | 0 | 10 | 10 |
| India | 7.5 | 7.5 | 10 | 10 |
| Italy | 15 | 15 | 0/10[5] | 10 |
| Macau | 10 | 10 | 10 | 10 |
| Mauritius | 15 | 8/10[3] | 8 | 5 |
| Portugal | 15 | 15 | 0/10[5] | 10 |
| South Africa | 15 | 8[4] | 0/8[6] | 5 |
| United Arab Emirates | 0[7] | 0[7] | 0[7] | 5 |
| Vietnam | 10 | 10 | 10 | 10 |

Notes:

1. 10% rate applies to dividends distributed by companies listed on the Mozambique Stock Exchange to their non-resident corporate shareholders.
2. This treaty has not yet entered into force. The 0% rate will apply to dividend payments if the beneficial owner is a company which holds at least 25% of the capital of the dividend-paying company.
3. The 8% rate applies if the beneficial owner is a company which holds at least 25% of the capital of the paying company. The 10% rate applies if the beneficial owner is a company which holds less than 25% of the capital of the paying company.
4. The reduced rate applies if the beneficial owner is a company which holds at least 25% of the capital of the paying company.
5. The 0% rate applies, among others, to interest paid or derived by public bodies.
6. The 0% rate applies solely to interest paid to a bank or a public body.
7. Income is subject to tax in the state of residence of the recipient only.

# MYANMAR

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Yangon | Thida & Partners Ltd. | +959 78 515 0902<br>thidachowin@pkf.com.mm |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of the Union of Myanmar |
| Capital: | Naypyidaw |
| Main languages: | Burmese |
| Population: | 55.11 million (2022 estimate) |
| Monetary unit: | Myanmar Kyat (MMK) |
| Internet domain: | .mm |
| Int. dialling code: | +95 |

## KEY TAX POINTS

- Corporate income tax is levied at the rate of 22% on income earned in MMK with effect from FY2021-2022.
- There is no withholding tax on dividends paid to a resident or non-resident.
- Interest is subject to a 15% withholding tax if paid to a non-resident. There is no withholding tax on interest paid to a resident.
- Royalties are subject to a 15% withholding tax if paid to a non-resident. Royalties paid to a resident are subject to a 10% withholding tax.
- There is no Value Added Tax (VAT), although commercial tax is levied as a turnover tax on goods and services, generally at a rate of 5%.

## A. TAXES PAYABLE

## COMPANY TAX

The Corporate Income Tax (“CIT”) rate has been reduced from 25% to 22% effective from FY2021-2022. The new CIT rate is applicable for Myanmar companies, branches registered under the Myanmar Companies Law (“MCL”) 2017, and companies operating under an investment licence from Myanmar Investment Commission (“MIC”) (i.e., foreign-owned resident companies with an investment licence from the MIC granted under the Foreign Investment Law and Myanmar Investment Law 2016). However, the CIT rate of 20% for companies listed on the Yangon Stock Exchange remains unchanged. Resident entities, which are defined as companies established under the MCL, are obliged to declare and pay CIT on their worldwide income. Non-residents, including branches or overseas corporations registered under the MCL, are only obliged to pay CIT on their Myanmar-sourced income.

## CHANGE OF FINANCIAL YEAR IN MYANMAR

On 1 October 2021, the Internal Revenue Department (“IRD”) of the Ministry of Planning and Finance (“MOPF”) announced a change to the income year (previously it was from 1 October to 30 September) of private and cooperative sectors to run from 1 April to 31 March. As a consequence, the six-month period from 1 October 2021 to 31 March 2022 (FY2021-2022) is specified as an interim budget period for all private and cooperative sectors, including government ministries, organisations, and state-owned enterprises.

The relevant annual tax return filing deadlines for taxpayers are summarised in the table below.

| Income year | Deadlines for annual tax return filings | Assessment years |
|---|---|---|
| 1 October 2021 to 31 March 2022 (FY2021-2022) | 30 June 2022 | 1 April 2022 to 31 March 2023 (FY2022-2023) |
| 1 April 2022 to 31 March 2023 (FY2022-2023) | 30 June 2023 | 1 April 2023 to 31 March 2024 (FY2023-2024) |

### Advance payment of 2% CIT on importation and exportation

Companies importing or exporting goods must pay a 2% Advance Income Tax (“AIT”) on the assessed value of the goods for import and export. There are a few exceptions, including the import of materials and equipment during the construction period of projects, and raw materials imported during the first three years of production under an investment licence from MIC. The tax that is collected as an AIT can be offset against the annual CIT liability.

## CAPITAL GAINS TAX

### Overview

Capital assets include land, buildings and their rooms, vehicles, and work-related capital assets. The expression also includes shares, bonds, securities and similar instruments. Capital gains tax ("CGT") is applicable to both resident and non-resident taxpayers deriving a profit from the sale, exchange, or transfer of capital assets in Myanmar. CGT is payable by the person deriving the gains. A CGT return must be submitted by any person who sells, exchanges or transfers capital assets within 30 days from the date of transaction, even if there is a loss.

### Income threshold for paying CGT

If the total value of the capital asset; which was sold, exchanged or transferred, does not exceed MMK 10 million during an income year, CGT will not be applicable.

### Rates of tax

The CGT rate for all taxpayers (with the exception of those deriving a gain from an upstream oil and gas asset or a company holding an upstream oil and gas asset) is 10%, and is imposed in either MMK or a foreign currency. CGT for upstream oil and gas sector must be paid in the same currency in which the gain was received. The following rates apply:

| | Capital gain | Tax rate |
|---|---|---|
| 1 | Up to MKK 100 billion | 40% |
| 2 | From over MMK 100 billion to MMK 150 billion | 45% |
| 3 | Over MMK 150 billion | 50% |

### Calculation of CGT

CGT is calculated on the full value of the sale, exchange or transfer after deducting depreciation, the original asset cost, any capital expenditures to increase the life of the asset, and any expenditures incurred in the procurement, sale, exchange or transfer of the asset. Deprecation is not allowed for the year of disposal of the capital asset.

## BRANCH PROFITS TAX

A foreign company's branch is also taxed at a rate of 22% on Myanmar-sourced income. There is no branch remittance tax in Myanmar.

## COMMERCIAL TAX

### Overview

Commercial tax ("CT") is levied on four types of activities:

- Local production and sale of goods
- Importation of goods
- Trading
- Provision of services

### Taxable and Non-taxable goods and services

There are 45 goods exempted from CT, and the majority of the exempted goods are related to food products (see Annex 1 for details).

All kinds of goods sold and services rendered in Myanmar are subject to CT at 5% except for the following goods and services:

- Hotel and tourism services at a reduced CT rate of 3%;
- The construction, renovation, and sale of buildings (whether by renting state-owned land or a joint venture ("JV") with the State or on privately-owned land or by entering into a JV with a private landowner) at a reduced CT rate of 3%;
- The importation and sale of gold jewellery is now taxed at 1% CT;
- Internet services will be taxed at 15% CT, and a one-time CT of MMK 20,000 will be applicable for each sale of a sim card and sim card activation (effective 8 January 2022).

However, 33 types of services are exempted from CT (see Annex 2 for details).

### Revenue threshold for charging and paying CT

Taxpayers whose revenue from trading, the sale of goods and services in the financial year exceeds the minimum threshold of MMK 50 million are obliged to charge, collect and pay CT to the IRD.

### Registration

Apart from importation, any person (including non-residents) who is performing the abovementioned activities that are subject to CT is required to register for CT one month in advance of the commencement of business. CT on importation will be collected by the Customs Department together with customs duty.

### Rates of tax

Below is a summary of the applicable CT rates:

| Activities | CT rate |
|---|---|
| Importation | 5% unless exempted |
| Local manufacturing | 5% unless exempted |
| Trading | 5% unless exempted |
| Exportation | Zero rated, unless crude oil 5% and electricity 8% |
| Services rendered in Myanmar | 5% unless exempted |
| Real estate<br>- lease<br>- sale of building | <br>5%<br>3% |
| Importing and sale of jewelleries made with gold | 1% |
| Hotel and tourism services | 3% |
| Internet services | 15% |
| Sales of Sim-card and Sim-card activation | MMK 20,000 per Sim-card |

### Basis of Taxation

The tax base is the sale or service proceeds including Specific Goods Tax (if applicable) from trading, rendering services, local production or sales of goods. For imports, the tax base is the CIF (cost, insurance and freight) value, customs duty and SGT (if applicable).

### Offsetting Input and Output CT

All input CT can be offset against output CT. However, input CT paid on damaged goods and unsold goods cannot be offset against output CT. If there is more input CT than output CT at the end of the income year, the unutilised input CT cannot be carried forward or will not be refunded by the IRD. However, such input CT can be deducted as a business expense when calculating CIT.

Unutilised input CT on advance rental fees, unsold goods and unutilised raw materials can be carried forward to the next income year subject to IRD approval. Input CT paid on the purchase of jewellery made with gold cannot be offset against output CT on the sale and exportation of such jewellery.

## SPECIFIC GOODS TAX

### Overview

Myanmar introduced a Specific Goods Tax (“SGT”), effective from 1 April 2016. SGT is imposed on:

- The import of specific goods into Myanmar
- The local production of specific goods
- The export of specific goods overseas

Therefore, importers, producers and exporters of specific goods are subject to paying SGT. There are 14 types of specific goods.

### SGT Exemptions

There are a number of SGT exemptions, including an exemption for the export of specific goods temporarily imported for the purpose of re-exporting in the same condition.

### Revenue Threshold for Charging and Paying Sgt

Apart from the local production of tobacco, cheroots and cigars that does not exceed the minimum threshold of MMK 20 million, there is no threshold for other types of specific goods.

### Registration

Importers, producers and exporters of specific goods must register with the relevant IRD.

### Rates of Tax

SGT rates are announced on a yearly basis in the UTL. Please refer to Annex 3 for current SGT rates imposed on local production and importation as per the UTL 2021.

The SGT rates for exportation are mentioned in Annex 4.

### Basis of Taxation

The SGT basis for importation is the landed value of the specific goods. For local production of specific goods which are taxable as per price range, the basis is the greater of the factory sales price or the sales price as estimated and specified by the Director General and Management Committee of the IRD. Locally produced specific goods which are not taxable as per price range will be assessed based on the value determined by the Management Committee of the IRD. However, the value determined by the IRD for locally produced specific goods which are not taxable as per the price range would be similar to the landed value of similar goods imported from overseas.

### Offsetting Input and Output SGT

Input SGT can be offset against output SGT.

## JEWELLERY TAX

### Overview

All gems and jewelleries are excluded from the specific goods category and will now be subject to Jewellery Tax under the Myanmar Gemstone Law. Jewellery Tax will be based on the higher value of the sales price of the seller and the sales price determined by the Myanma Gems Enterprise based on the actual sales prices. For imported gems, Jewellery Tax will be based on the landed value. The below table summarises the Jewellery Tax rates.

| No. | Type of gems | Tax rate |
|---|---|---|
| 1. | Raw jade | 11% |
| 2. | Raw gemstones of ruby, sapphire and other precious raw gemstones, except diamonds and emeralds | 9% |
| 3. | Finished gemstones of jade, ruby, sapphire (except diamonds and emeralds) and other finished precious gemstones; and finished jewellery made with jade, ruby, sapphire, and other precious gemstones, except diamonds and emeralds | 5% |
| 4. | Goods made with gemstones | 5% |

## OTHER TAXES

### Stamp Duty

The Stamp Act, as amended on 1 April 2014, is the fundamental legislation in respect of stamp duty ("SD") obligations. The main purpose of levying SD is to give legal effect to chargeable instruments, which are documents that create, transfer, extinguish or record rights or obligations.

As a general rule, SD is levied on all chargeable instruments, unless explicitly exempted. If the SD is not paid at the time of execution of the instruments or within one month of their execution, the IRD will impose a penalty of either MMK 500 or three times the amount of the overdue SD.

Please refer to Annex 5 for further details.

### Property Tax

The fundamental legislation for property tax ("PT") is the Yangon City Development Law 2018 and Yangon City Development Committee ("YCDC") was created to administer these laws and collect PT. PT only applies to certain land, buildings or land and buildings ("premises") located within the territory of Yangon (Territory); in other areas of Myanmar, for instance Mandalay or Nay Pyi Taw, PT is administered in accordance with relevant local regulations.

PT includes four categories of taxes: miscellaneous tax, lighting tax, water tax and sanitation tax. PT is levied on the annual value of land or premises in question but subject to different tax rates and is payable once in a year. The rates and calculation of PT depend on the purposes of use of the premises. The general user of the premises is liable to pay PT on an annual basis once YCDC has already assessed the annual value of the premises.

### Customs Duty

In Myanmar, customs duty is levied in accordance with the Sea and Land Customs Act. Customs duty is levied on Assessment Value and is payable according to the tariff schedule listed by HS code published by the Customs Department.



## B. DETERMINATION OF TAXABLE INCOME

Tax is levied on total income, after deduction of allowable expenditure and depreciation.

Generally, expenditures incurred for the purpose of earning business income are deductible, subject to certain limitations. Capital expenditures, personal expenditures, expenditures not commensurate with the volume of business, inappropriate expenditures, expenditures incurred for purposes other than earning such income, and payments made to a member of an association of persons other than a company or a cooperative society, are not deductible.

## DEPRECIATION

A depreciation allowance is deductible for CIT purposes. Capital assets must be capitalized and depreciated on a straight-line basis in accordance with the rates set out in Notification 19/2016, the Second Regulations Amending the Income Tax Regulations. If a taxpayer wishes to use a different tax depreciation rate or a method, a request can be submitted to the IRD starting from FY2019-2020. If the IRD approves, a different tax depreciation rate or method can be applied. A full-year depreciation allowance can be claimed for the year in which a capital asset is acquired, regardless of whether the asset is used for all or part of that year.

## DIVIDENDS

There are no provisions for intercompany dividends in the tax legislation. However, dividends received from a company are exempt. Myanmar operates a one-tier corporate tax system, under which all dividends received from an association of persons (i.e. partnerships, joint ventures, companies, associations formed by individuals, cooperative societies and government economic organizations) are exempt from income tax at the level of the shareholders.

## INTEREST DEDUCTIONS

There is no specific thin capitalisation regime in Myanmar, although capitalization of a company might be covered in the licences granted to the company. However, there are restrictions to the deductibility of interest.

## LOSSES CARRY FORWARD

Under the Income Tax Law 1974 ("ITL"), a tax loss incurred by a company can be carried forward for up to three consecutive years and can be offset against taxable profits in the future, with the exception of capital losses.

## C. FOREIGN TAX RELIEF

There are no provisions for unilateral relief. The entitlement to tax treaty benefits is not automatic. The Myanmar tax authorities and the MoF need to be consulted by the payer of the fee on a case-by-case basis in order to obtain tax treaty relief.

## D. CORPORATE GROUPS

There are no provisions for group treatment in the tax legislation.

## E. RELATED PARTY TRANSACTIONS

There are currently no transfer pricing rules in Myanmar.

## F. WITHHOLDING TAX

### Overview

The Ministry of Planning, Finance and Industry ("MOPFI") released Notification 51/2017 ("Notification 51/2017") on 22 May 2017, which revokes the old Withholding Tax ("WHT") Notifications. The Notification 51/2017 is effective from 1 April 2017 (FY2017-2018) to 30 June 2018 (FY2018-2019). The MOPF released another new WHT Notification 47/2018 ("Notification 47/2018") on 18 June 2018 which revokes the WHT Notification 51/2017. The Notification 47/2018 will be effective from 1 July 2018 (FY2018-2019). Please refer to below table in relation to payments subject to WHT under the Notification 51/2017 and Notification 47/2018.

| Type of income | Residents | | Non-residents | |
|---|---|---|---|---|
| | Notification 51/2017 | Notification 47/2018 | Notification 51/2017 | Notification 47/2018 |
| Interest | 0% | 0% | 15% | 15% |
| Royalties | 10% | 10% | 15% | 15% |
| Goods (Locally purchased goods) – payments made by government organisations, ministries and state-owned enterprises | 2% | 2% | 2.5% | 2.5% |
| Goods (Locally purchased goods) – payments made by others apart from government organisations, ministries and state-owned enterprises | 2% | 0% | 2.5% | 2.5% |
| Services (Locally rendered services) – payments made by government organisations, ministries and state-owned enterprises | 2% | 2% | 2.5% | 2.5% |
| Services (Locally rendered services) – payments made by others apart from government organisations, ministries and state-owned enterprises | 2% | 0% | 2.5% | 2.5% |

Both Notification 51/2017 and Notification 47/2018 impose legal obligation on payer to deduct WHT from payments that are subject to WHT, regardless of whether the income recipient has agreed to the deduction or not. Please note that the Internal Revenue Department ("IRD") may recover the WHT from payer if the payer is failed to deduct applicable WHT. The payer can be a resident taxpayer or a non-resident taxpayer. The obligation for deducting WHT rests with the payer.

### Exemption of WHT

Exemption from WHT deduction is given to payments between government organizations, and payments made to respective government organisations and stated-owned enterprises and interest payments to non-resident lenders who open branches locally or file corporate income tax return for income derived from the branch. Previously, Myanmar branches of foreign banks were considered non-residents and are thus captured in Myanmar's 15% WHT rate on interest paid to non-residents. From 1 April 2017, the WHT on interest payment to the Myanmar branches of foreign banks will no longer apply.

### Minimum Threshold

Under Notification 47/2018, there is a minimum threshold of MMK 1 million within a one-year period for total payments made by government organisations, ministries and state-owned enterprises. However, there is no minimum threshold for payments made to non-residents.

### Double Taxation Agreement

Myanmar has Double Taxation Agreements ("DTAs") in force with eight countries: the United Kingdom, Singapore, Malaysia, Thailand, Vietnam, India, the Republic of Korea, and Laos, with a number of other DTAs in the draft stage, including Indonesia and Bangladesh. Accordingly, the income tax imposts may be reduced by any DTAs that are currently in effect.

The relief under the applicable DTA is not automatically granted and the taxpayer concerned must submit their arguments and evidence to the IRD for review before their income tax becomes due. In other words, applications for DTA relief must be approved before the financial year-end. Certificate of Residence will be required with respect to a DTA relief application. If the service contract value is US$100,000 and below, a payer under the Self-Assessment System is no longer required to submit a DTA relief application to the IRD.

## G. EXCHANGE CONTROL

Myanmar's foreign exchange regulatory framework has evolved substantially since 2011. In order to ease its stringent foreign exchange controls, the Government of Myanmar enacted a new Foreign Exchange Management Law (FEML) in August 2012. The FEML liberalizes transfer payments related to current account transactions, though transfers related to capital accounts remain conditional. The application of the new law in practice continues to evolve. However, companies registered under the new investment law are guaranteed the ability to repatriate investment and profits in the foreign currency in which such investments were made, subject to the approval of Myanmar Investment Commission (MIC).

## H. PERSONAL TAX

### Overview

Employers, whether residents or non-residents of Myanmar for tax purposes, are liable to deduct personal income tax ("PIT") from payments of salaries, wages and other remuneration made to all employees. Employees that are residents of Myanmar (both Myanmar nationals and foreigners) are taxed on their worldwide income at progressive rates after deducting the prescribed allowances and reliefs; whereas non-residents are taxed only on their Myanmar-sourced income, at the same progressive rates.

### Residency

A foreign individual is considered a resident foreigner for tax purposes if they are in Myanmar for 183 days or more during an income year or if they are working on an MIC project and are in Myanmar for any length of time. Accordingly, foreigners who are not working on an MIC project and reside in Myanmar for less than 183 days are considered non-resident foreigners.

### Taxable Salary

Salary income as defined by the ITL includes "salary, wages, annuities, bonuses, awards, and fees or commissions received in lieu of or in addition to the salary or wages". Taxable benefits are not defined under the law; therefore, any payment from an employer to an employee will be considered a taxable benefit unless it can be demonstrated that it is business-related only. The following are exempt from PIT: pensions, gratuities, salary income of non-resident citizens received in foreign currency abroad, and money received from the state lottery. According to the Union Tax Law ("UTL") of 2021, anyone whose annual salary income is MMK 4.8 million or less is exempt from paying PIT.

### Tax Reliefs and Allowances for Myanmar Residents

- Basic allowance of 20% of annual salary income, up to a maximum of MMK 10,000,000 (approximately USD 5,882*);
- MMK 500,000 per annum (approximately USD 294*) for each child living with the taxpayer who fulfils all of the following criteria: 1) is unmarried; 2) is not earning assessable income; and 3) is either under 18, or if 18 or over, is in full-time education;
- MMK 1,000,000 (approximately USD 588*) for one non-working spouse who is living with the taxpayer
- MMK 1,000,000 (approximately USD 588*) per parent for dependent parents living with the taxpayer. The term "parent" includes a father- or mother-in-law;
- Premiums paid for the life insurance of the taxpayer and taxpayer's spouse;
- Contributions towards savings funds approved by the Internal Revenue Department ("IRD"); Contributions towards the savings fund as prescribed by the Income Tax Rules
- Social security contributions made by employees to the Social Security Board (2% of annual salary, capped at MMK 72,000 (approximately USD 42*).

* Using an exchange rate of USD 1 = MMK 1,700



### Tax Rates

The tax rates for resident and non-resident employees are now at the same progressive rates, although for resident taxpayers, the PIT rates are applied on their worldwide income after deduction of the reliefs and allowances above, while for non-residents, the PIT rates are applied on their Myanmar-sourced salary income without any deduction. The following table shows the PIT rates on annual salary income. Approximate USD amounts are shown in brackets based on an exchange rate of USD 1 = MMK1,700.

| Personal income tax rates | | |
|---|---|---|
| **From MMK (USD)** | **To MMK (USD)** | **Income tax rate** |
| 1 (0.0006) | 2,000,000 (1,176) | 0% |
| 2,000,001 (1,177) | 10,000,000 (5,882) | 5% |
| 10,000,001 (5,883) | 30,000,000 (17,647) | 10% |
| 30,000,001 (17,648) | 50,000,000 (29,412) | 15% |
| 50,000,001 (29,413) | 70,000,000 (41,176) | 20% |
| 70,000,001 (41,177) and above | | 25% |

### Social Security Contributions

The Social Security Law requires an employer with more than five employees to contribute to a social security scheme. The rates of the monthly contributions by the employer and employees are 3% and 2%, respectively, of an employee's total salary including benefits (capped at a maximum monthly salary of MMK 300,000), in local currency or US dollars, depending on the currency in which the employee is paid. Hence, the maximum monthly contribution for an employee is MMK 6,000, and for an employer it is MMK 9,000 per employee. The employer is responsible for deducting the contribution from the employee's salary and paying the amount to the social security board.

### Rental Income

If income is derived from the lease of land, buildings, or apartments for individual taxpayers, such income will be subject to income tax at 10% after deduction of prescribed tax reliefs and allowances.

For state-owned enterprises, businesses, and companies operating under permits issued by the MIC, or cooperative societies, income tax shall be charged at the applicable rates specified for that particular category of taxpayers.

### Undisclosed source of income

Income escaping assessment will be subject to income tax at 30% for both citizens and foreigners before deduction of prescribed tax reliefs and allowances mentioned under the PIT section. However, if the citizen can disclose source for income used for buying, constructing or acquiring any capital assets or establishing a new business or expanding an existing business, the portion of income that source can be proved shall be deducted from the total undisclosed income and the balance of the undisclosed income will be taxed at the progressive rates mentioned in the table below. Undisclosed sources of income are still subject to income tax at progressive tax amnesty rates ranging from 3% to 30% under the amended UTL 2021. However, the income ranges have been expanded.

A comparison of the income ranges for undisclosed income between UTL 2021 and the amended UTL 2021 is shown in the table below.

| No. | Income (MKK) | Income tax rate |
|---|---|---|
| a | 1 – 100,000,000 | 3% |
| b | 100,000,001 – 300,000,000 | 5% |
| c | 300,000,001 – 1,000,000,000 | 10% |
| d | 1,000,000,001 – 3,000,000,000 | 15% |
| e | 3,000,000,001 and above | 30% |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

According to domestic tax law:

- Dividends paid by a resident to a non-resident are not subject to withholding tax;
- Interest paid by a resident to a non-resident (except to a Myanmar branch of a foreign bank) is subject to a 15% final withholding tax on the gross amount;
- Royalties paid by a resident to a non-resident are subject to a 15% final withholding tax on the gross amount (effective from 1 April 2017).

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 0 | 0 | 15 | 15 |
| Individuals | 0 | -- | 15 | 15 |
| **Treaty countries:** | | | | |
| India | 5 | 5 | 10 | 10 |
| Korea (South) | 10 | 10 | 10 | 10/15[3] |
| Laos | 5 | 5 | 10 | 10 |
| Malaysia | 10 | 10 | 10 | 10 |
| Singapore | 10 | 0/5[1] | 8/10[2] | 10/15[3] |
| Thailand | 10 | 10 | 10 | 5/10/15[4] |
| United Kingdom | 0 | 0 | --[5] | 0 |
| Vietnam | 10 | 10 | 10 | 10 |

Notes:

1. The 5% reduced rate applies if the beneficial owner is a company which owns at least 25% of the shares of the dividend-paying company. The 0% rate applies if dividends are paid to the government of the other contracting state.
2. The 8% reduced rate applies if interest is received by any bank or financial institution.
3. The 10% reduced rate applies if royalties are paid for the use of, or the right to use, any patent, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The 5% reduced rate applies if royalties are paid for the use of, or the right to use, any copyrights of litreary, artistic or scientific work. The 10% reduced rate applies if royalties are paid for any services of a managerial or consultancy nature, or for information concerning industrial, commercial, or scientific experience.
5. There is no reduction under the treaty, the domestic rate applies.

### Tax Compliance Requirements

The financial year in Myanmar currently runs from 1 April to the following 31 March.

### Compliance timelines and penalties

| Tax | Payment | Filing | Penalty |
|---|---|---|---|
| CIT | Payments quarterly, within 10 days after the end of each quarter | Annual return within three months after the income year-end (i.e., 30 June) | - Late payment – 10% of unpaid tax due<br>- Late return filing – the higher of either:<br>- 5% of payable tax and 1% of payable tax for each or part of the month during which the failure to file continues; or<br>- MMK100,000 |
| WHT | Payment within 15 days of payments to suppliers. In practice, the returns and payments can be done on a monthly basis. | | - Late payment – 10% of payable WHT amount<br>- Failure to deduct WHT – the IRD will consider the payer as a defaulter and will recover payable WHT amount from the payer |
| CT | Payment on a monthly basis within 10 days after month-end | Quarterly, within one month of the end of each quarter and annual returns within three months after the income year end (i.e., 30 June) | - Late payment -–10% of unpaid tax due<br>- Late return filing – the higher of either:<br>- 5% of payable tax and 1% of payable tax for each or part of the month during which the failure to file continues; or<br>- MMK100,000 |
| PIT | Payments within 15 days after disbursement of salary | Annual return within three months after the income year end (i.e., 30 June) | - Late payment – 10% of unpaid tax due<br>- Late return filing – the higher of either:<br>- 5% of payable tax and 1% of payable tax for each or part of the month during which the failure to file continues; or<br>- MMK100,000 |
| SGT | Payment on a monthly basis, within 10 days after the month-end | Quarterly, within 10 days after the quarter-end | - Late payment – 10% of unpaid tax due<br>- Late return filing – the higher of either:<br>- 5% of payable tax and 1% of payable tax for each or part of the month during which the failure to file continues; or<br>- MMK100,000 |
| CGT | Payments within 30 days from the date of transfer or sale of capital assets | Transaction CGT filing – within 30 days from the date of transfer of capital assets | - Late payment – 10% of unpaid tax due<br>- Late return filing – the higher of either:<br>- 5% of payable tax and 1% of payable tax for each or part of the month during which the failure to file continues; or<br>- MMK100,000 |

## Investment Incentives

### Myanmar Investment Commission Incentives

An investment licence issued by the MIC for qualified projects provides a number of advantages that have been specified in the Myanmar Investment Law 2016, as outlined in the table below.

| No. | Advantage | Description |
|---|---|---|
| 1 | CIT holiday | Only promoted business activities mentioned under MIC Notification 13/2017 are entitled to apply for income tax holiday. Depending on the investment zone, the CIT holiday period can be 7 years (Zone 1), 5 years (Zone 2) and 3 years (Zone 3). |
| 2 | Tax-free profit if reinvested | Profit which is reinvested within one year is exempt from CIT, including the profit reinvested in another similar type of business |
| 3 | Depreciation | Accelerated depreciation may be allowed to start from the date of commercial operation |
| 4 | Equal income tax rate | Income tax rates on foreign investors are the same as on resident citizens |
| 5 | R&D deduction | Right to deduct R&D costs from assessable income |
| 6 | Exemption for imports of machinery, equipment, materials, spare parts, construction materials that cannot be purchased locally | Exemption from customs duty and other local taxes during the construction period and expansion period of the project |
| 7 | Exemption for raw materials and semi-finished goods | Exempt from customs duty and other local taxes for businesses which export their entire production |

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| No. | Advantage | Description |
|---|---|---|
| 8 | Refund of tax and duty in case of export | When goods are exported, refund of customs duty and other local taxes paid on the import of the raw materials and semi-finished goods of those goods that are exported |

## Special Economic Zone Incentives

There are two main zones under the Special Economic Zone ("SEZ") Law, and businesses investing in an SEZ are provided with a number of advantages, as listed in the table below.

| Exemptions & Relief | Free/Exempt Zone[1] | Promotion Zone[1] |
|---|---|---|
| Tax holiday | 7 years of CIT exemption from the start of commercial operations | 5 years of CIT exemption from the start of commercial operations |
| | CIT rate reduction of 50% for the following 5-year period | CIT rate reduction of 50% for the second 5-year period |
| | 50% of the profits exempted for the next 5-year period (requires reinvestment of profits within 1 year) | 50% of the profits exempted for the third 5-year period (requires reinvestment of profits within 1 year) |
| Customs duty and other taxes | Exemption from customs duty and other taxes on imports of: raw materials to be used in production; machinery and spare parts; construction materials to construct a factory, warehouse, and offices; and vehicles and other equipment required for the business | Exemption from customs duty and other taxes for 5 years and a 50% reduction for another 5 years on imports of: equipment and spare parts to be used in the business (and not for trading purposes); construction materials to construct a factory, and warehouse; vehicles and other equipment required for the business |
| | | Can apply for a refund of the customs duty and other taxes paid on the import of raw materials, provided semi-finished or finished goods are exported |
| Carry forward and set off of losses | Can be carried forward for 5 years | Can be carried forward for 5 years |

Note:

1. Free/Exempt Zone is for export and Promotion Zone is for domestic sales orientated business.



## Investment and Free Trade Agreements

Myanmar has signed the ASEAN Comprehensive Investment Agreement ("ACIA") with other nine ASEAN member states ("ASEAN") in 2012. In addition, ASEAN has signed Free Trade Agreements ("FTA") with China, South Korea, Australia/New Zealand and India. Therefore, Myanmar has FTAs with four countries.

Myanmar has Bilateral Investment Treaties ("BIT") with 12 countries which include Israel, South Korea, the United States of America, Indonesia, Japan, India, Thailand, Kuwait, Laos, China, Vietnam, Philippines.

## Annex 1: Commercial Tax-exempted Goods

| No. | Type of Good |
|---|---|
| **Foodstuffs** | |
| 1 | Paddy rice, broken rice, fine bran, coarse bran, husk, fine and coarse wheat bran, and wheat seeds, various types of maize and their seeds |
| 2 | Varieties of whole and split pulses and beans, and their flour, bran and husks, groundnuts, shelled and unshelled, sesame, niger, residual oil-cake of groundnut, sesame, cotton seed, rice bran, etc. |
| 3 | Onions, garlic, potatoes, spices (leaves, fruit, seeds, bark) and spice mixtures (masala), chili, chili powder, turmeric and turmeric powder, ginger, ripe tamarind, various types of salt |
| 4 | Fresh assorted fruit, vegetables |
| 5 | Fresh tea leaves, dried tea leaves, dried shredded tea leaves, processed and packaged dried tea leaves |
| 6 | Fresh fish, fresh prawns, and fresh meat, various types of eggs (chicken, duck, etc.) |
| 7 | Groundnut oil, sesame oil |
| 8 | Sugarcane, sugar, jaggery, and brown slab sugar, various types of milk and dairy products, condensed milk, evaporated milk, various types of milk powder, yoghurt and soy milk |
| 9 | Creamers |
| 10 | Varieties of fish sauce (ngan-pya-ye), various types of dried fish and dried prawns, various types of pickled fish and pickled prawns, coarse fish and prawn powder, various types of fish paste (ngapi) |
| **Agriculture and Livestock Related Goods** | |
| 11 | Mulberry leaves, silk cocoons |
| 12 | Live animals, fish and prawns, terrestrial animals, aquatic animals, amphibians, their eggs, their embryos, their offspring, and specimens from them, aquatic plants and seeds, seedlings, algae, and moss |

| No. | Type of Good |
|---|---|
| 13 | Soil and fertilizers, including chemical fertilizers used for growing plants and enhancing fructification in agricultural activities, various types of agricultural insecticides, herbicides, fungus, bacteria, nematodes and other plant protection agrochemicals, various types of fumigations used in livestock farms (mosquito coils and sprays, and rat poison not included), animal, fish and prawn medicines, veterinary preventive medicines (including the medicines and preventive medicines approved by the ministry of agriculture, livestock and irrigation development and medicines licensed by livestock breeding and veterinary department), raw and finished materials for animal, fish and prawn feed (excluding food for pets) |
| 14 | Palm oil, sunflower seeds, cotton seeds, pumpkin seeds, melon seeds, cashew nuts, areca (betel) nuts, areca (betel) nuts shells, quality crop and vegetable, seeds and plants |
| 15 | Raw cotton, cotton (assorted), cardamon, thanakha, agricultural products not specified elsewhere, coconut oil (not palm oil) |
| 16 | Coconut yarn |
| 17 | Firewood, bamboo, raw and processed cane, fuel block as an alternative to firewood |
| **Goods used in Offices and Schools** | |
| 18 | Sealing wax, assorted stamps (including revenue stamps) |
| 19 | National flag |
| 20 | Slate, slate pencils, and chalk, graphite (lead) used for the production of pencils |
| 21 | Various types of school textbooks, education and technical reference books that can be used by schools, universities and colleges, exercise books and drawing books, litreature, magazines, journals and newspapers, and paper for the production of such books (between 40 gsm and 80 gsm only) and all sorts of pencils, various types of rulers, erasers, sharpeners |
| **Health Related Goods** | |
| 22 | Medicinal herbal plants |
| 23 | Various types of mosquito repellent for home use |
| 24 | Honey, beeswax |
| 25 | X-ray film, X-ray paraphernalia, and other medical equipment prescribed by the health department, medical cotton, cloth, bandages, hospital outfits, masked, surgical gloves, masks that are used in prevention of influenza virus and miscellaneous items, various types of household medicine and other pharmaceuticals and various types of traditional medicine (medicines given licensed or registered under food and drug administration which are not been prohibited by any law and regulations), raw materials for medicine including raw materials for traditional medicine |
| 26 | Condoms |
| **Religions and Social Use Goods** | |
| 27 | Rosaries (except for rosaries made with precious gemstones), religious clothes (robes, etc.) |
| 28 | Fire engines, search and rescue vehicles and hearses |
| **Transportation Related Goods** | |
| 29 | Fuel sold to foreign embassies, UN organisations and foreign diplomats by the Ministry of Electricity and Energy |
| 30 | Jet fuel to be used for both international and domestic flights |
| 31 | Airplane and helicopter engines, equipment, accessories, and parts thereof |
| **Industrial Goods** | |
| 32 | Bleaching substances (only those that use hydrochloride for bleaching), raw materials to produce detergent, raw materials to produce soap and raw soap |
| 33 | Jute and other fibers, oil dregs and gum tragacanth |
| 34 | Agricultural and livestock tools; agricultural and livestock machinery and equipment, and their spare parts; tractors; equipment used for preparing the land and harvesting, threshing and drying together with humans or animals; machines and spare parts (except for motor vehicles that are required to be licensed as per the Motor Vehicle Law), various livestock equipment and tools, machinery and spare parts used for livestock. Semen (including frozen semen), sperm, and eggs used for artificial insemination for livestock improvement, embryos, and equipment for artificial insemination |
| 35 | Solar panels, solar charger controllers, and solar inverters |
| 36 | Raw materials or sub-assemblies or packaging materials for finished goods, machines, tools and machinery and their respective spare and extra parts that are not for resale and sent by clients from abroad for the purpose of producing any finished goods on a contract Manufacturing basis |
| **Defence Related Goods** | |
| 37 | Weapons, vehicles, machinery, materials, equipment and their spare parts used by defence and security forces of the Union, various types of gunpowder, dynamite and any other materials for civilian purposes (only the products which are permitted by the office of Defence in Chief (Army)), goods for the armed forces bought using the allotted budget of the Ministry of Defence |

| No. | Type of Good |
|---|---|
| **Gemstones and Mineral Resources Related Goods** | |
| 38 | Blocks of pure gold (standard gold bars and gold coins), raw gemstones and finished gemstones of jade, ruby, sapphire sold at local Myanmar Gems Emporiums held by the government |
| 39 | Oil dregs |
| **Miscellaneous Goods** | |
| 40 | Goods to be sold at duty-free shops to passengers leaving the country |
| 41 | Goods under the principle of reciprocity to be used by foreign embassies or consulates, their members and staff who are not ambassadors which are approved by the Ministry of Planning and Finance by issuing the notification as per proposal of the Ministry of Foreign Affairs under the permission of Union Government |
| 42 | Goods purchased from local or foreign sources under the name of any local United Nations entity |
| 43 | Goods purchased with cash donations or contributions given to the state by local or foreign benefactors |
| 44 | Goods exempt from taxes by notification of the Union Government with the approval of the State Administration Council according to state requirements |
| 45 | Goods imported under temporary admission or on a drawback basis subject to customs procedures |

## Annex 2: Commercial Tax-exempted Services

| No. | Type of Service |
|---|---|
| **Foreign Affairs Sector** | |
| 1 | Services used by foreign embassies or consulates and members and staff thereof under the principle of reciprocity, recommended by the Ministry of Foreign Affairs, notified by the Ministry of Planning, Finance and Industry under the permission of Union Government |
| 2 | Local services used under the name of the country offices of United Nations organizations |
| **Defence Sector** | |
| 3 | Publications by the Security Press of the Ministry of Defence |
| **Religions and Cultural Affairs Sector** | |
| 4 | Culture and arts services |
| **Transportation Sector** | |
| 5 | Parking lot rental services |
| 6 | Haulage (cargo transportation) services (transport services by train, car, watercraft, airplane, and crane, except transport through pipelines) |
| 7 | Moving services |
| 8 | Toll collection services |
| 9 | Domestic and international air passenger transportation services with fares |
| 10 | Public transport services |
| 11 | Postal service provided by Union Government |
| **Education and Information Sector** | |
| 12 | Education services |
| 13 | Publishing services for books, magazines, journals, and newspapers |
| **Health Sector** | |
| 14 | Healthcare services except from cosmetic surgery |
| 15 | Traditional massage and massage by the blind |
| 16 | Animal healthcare services |
| 17 | Public toilet entrance fee collection services |
| **Planning and Finance Sector** | |
| 18 | Life insurance services |
| 19 | Microfinance services |
| 20 | Capital market services |
| 21 | Banking and financial services conducted with the permission of the Central Bank of Myanmar |
| 22 | Customs and port clearance services |
| 23 | Lottery business |
| **Social Welfare, Relief and Resettlement Sector** | |
| 24 | Catering equipment rental services |
| 25 | Funeral services |
| 26 | Childcare and nursery services |

| No. | Type of Service |
|---|---|
| **Industrial and Electrical Sector** | |
| 27 | Services provided on a contract manufacturing basis |
| 28 | Industrial agriculture services |
| 29 | Private small-scale electricity production and distribution services provided to the regions that are not connected to the national grid yet |
| **Miscellaneous Sectors** | |
| 30 | Licence fees paid to government organizations in order to obtain any license |
| 31 | Services exempt by the notification of the Union Government because of state requirements with the approval of the Pyidaungsu Hluttaw |
| 32 | Services received via donations or contributions by local and foreign organizations to the Union |
| 33 | Interdepartmental services between the President's Office, Union Government Office, Pyidaungsu Hluttaw Office, Pyithu Hluttaw Office, Amyotha Hluttaw Office, Union Supreme Court Office, Constitutional Tribunal Office, Union Election Commission Office, Union Ministries, Union Attorney General Office, Union Auditor General Office, Union Civil Service Board Office, Nay Pyi Taw Council Office, Central Bank of Myanmar, Social Security Board, Region or State Government Offices, government departments, etc. (except services provided to or received by state-owned economic enterprises) |

## Annex 3: Specific Goods Tax Rates for Local Production and Importation

| No. | Type of Specific Good | Price Range | Tax Rate |
|---|---|---|---|
| 1 | (a) Cigarettes, all types | Up to a sales price of MMK700 per pack of 20 cigarettes | MMK10 per cigarette |
| | (b) Cigarettes, all types | For a sales price of MMK701 to MMK900 per pack of 20 cigarettes | MMK19 per cigarette |
| | (c) Cigarettes, all types | For a sales price of MMK901 to MMK1,100 per pack of 20 cigarettes | MMK24 per cigarette |
| | (d) Cigarettes, all types | For a sales price of MMK1,101 and above per pack of 20 cigarettes | MMK27 per cigarette |
| 2 | Tobacco | | 60% |
| 3 | Virginia tobacco, cured | | 60% |
| 4 | Cheroot | | MMK1 per cheroot |
| 5 | Cigars | | 80% |
| 6 | Pipe tobacco | | 80% |
| 7 | Betel quid preparations | | 80% |
| 8 | (a) Liquor, all types | MMK200 to MMK1,200 per litre | MMK190 per litre |
| | (b) Liquor, all types | MMK1,201 to MMK2,300 per litre | MMK500 per litre |
| | (c) Liquor, all types | MMK2,301 to MMK3,400 per litre | MMK855 per litre |
| | (d) Liquor, all types | MMK3,401 to MMK4,600 per litre | MMK1,200 per litre |
| | (e) Liquor, all types | MMK4,601 to MMK5,800 per litre | MMK1,560 per litre |
| | (f) Liquor, all types | MMK5,801 to MMK7,000 per litre | MMK1,920 per litre |
| | (g) Liquor, all types | MMK7,001 to MMK8,200 per litre | MMK2,280 per litre |
| | (h) Liquor, all types | MMK8,201 to MMK9,400 per litre | MMK2,640 per litre |
| | (i) Liquor, all types | MMK9,401 to MMK10,600 per litre | MMK3,000 per litre |
| | (j) Liquor, all types | MMK10,601 to MMK11,800 per litre | MMK3,360 per litre |
| | (k) Liquor, all types | MMK11,801 to MMK13,000 per litre | MMK3,720 per litre |
| | (l) Liquor, all types | MMK13,001 to MMK14,200 per litre | MMK4,230 per litre |
| | (m) Liquor, all types | MMK14,201 to MMK15,400 per litre | MMK4,610 per litre |
| | (n) Liquor, all types | MMK15,401 and above per litre | 60% of the value per litre |
| 9 | Beer, all types | | 60% |
| 10 | (a) Wine, all types | Up to MMK850 per litre | MMK92 per litre |
| | (b) Wine, all types | MMK851 to MMK1,600 per litre | MMK280 per litre |
| | (c) Wine, all types | MMK1,601 to MMK2,350 per litre | MMK465 per litre |
| | (d) Wine, all types | MMK2,351 to MMK3,100 per litre | MMK653 per litre |
| | (e) Wine, all types | MMK3,101 to MMK3,850 per litre | MMK839 per litre |
| | (f) Wine, all types | MMK3,851 to MMK4,600 per litre | MMK1,025 per litre |
| | (g) Wine, all types | MMK4,601 to MMK6,100 per litre | MMK1,304 per litre |
| | (h) Wine, all types | MMK6,101 to MMK7,600 per litre | MMK1,676 per litre |
| | (i) Wine, all types | MMK7,601 to MMK9,100 per litre | MMK2,049 per litre |
| | (j) Wine, all types | MMK9,101 to MMK11,500 per litre | MMK2,421 per litre |
| | (k) Wine, all types | MMK11,501 to MMK13,600 per litre | MMK2,979 per litre |

| No. | Type of Specific Good | Price Range | Tax Rate |
|---|---|---|---|
| | (l) Wine, all types | MMK13,601 to MMK 16,600 per litre | MMK3,724 per litre |
| | (m) Wine, all types | MMK16,601 and above per litre | 50% of the value per litre |
| 11 | Timber logs, wood cuttings | | 5% |
| 12 | (a) 1,501 CC to 2,000 CC vans, saloons, sedan and Estate Wagon, Coupe, except Pickup and electric cars including Double Cab 4 Door Pickup | | |
| | (b) 2001 CC to 4000 CC vans, saloons, sedan and Estate Wagon, Coupe, except Pickup and electric cars including Double Cab 4 Door Pickup | | |
| | (c) 4,001 CC and above vans, saloons, sedan and Estate Wagon, Coupe, except Pickup and electric cars including Double Cab 4 Door Pickup | | |
| 13 | Kerosene, gasoline, diesel, and jet fuel | | 5% |
| 14 | Natural gas | | 8% |

## Annex 4: Specific Goods Tax Rates for Export

| No. | Specific Goods | Tax rate |
|---|---|---|
| 1 | Timber logs, wood cuttings | 10% |

## Annex 5: Selected Stamp Duty Schedules

### Agreements and Counterparts

| Description of Instrument | Proper Stamp-duty |
|---|---|
| **AGREEMENT OR MEMORANDUM OF AGREEMENT: -** | |
| a. if relating to the sale of a bill of exchange; | MMK50 |
| b. if relating to the sale of a Government security or share in an incorporated company or other body corporate; | Subject to a maximum of MMK10,000, MMK25 for every MMK100,000 or part thereof of the value of the security or share. |
| c. if relating to joint venture agreement, production or profit-sharing contract, construction agreement or other similar agreement or contract; | One percent on the amount or value of the subject matters. Provided that the maximum duty shall be MMK150,000. |
| if not otherwise provided for. | MMK300 |
| **Exemptions** | |
| Agreement or memorandum of agreement: -<br>a. for or relating to the sale of goods or merchandise exclusively, not being a NOTE OR MEMORANDUM chargeable under No.43;<br>b. made in the form of tenders to the Government of the Union of Myanmar for or relating to any loan;<br>c. made under the Land Acquisition Act.<br>d. AGREEMENT TO LEASE See LEASE (NO .35) | |
| **AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE**, i.e. any instrument evidencing an agreement relating to:<br>1. the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security); or<br>2. the pawn or pledge of moveable property. Where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt: | |

| | |
|---|---|
| a. if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement; | The same duty as a Bill of Exchange [No.13(a)] for the amount secured (if payable on demand, 0.0065% of the amount or value; if payable otherwise than on demand, 0.5% of the amount or value). |
| b. if such loan or debt is repayable not more than three months from the date of such instrument. | Half the duty payable on a Bill of Exchange [No.13 (a)] for the amount secured. |
| **Exemptions** | |
| Instrument of pawn or pledge of goods if unattested | |
| **COUNTERPART OR DUPLICATE** of any instrument chargeable with duty and in respect of which the proper duty has been paid: | |
| • if the duty with which the original instrument is chargeable does not exceed MMK150; | The same duty as is payable on the original. |
| • in any other case. | MMK100 |
| **Exemptions** | |
| Counterpart of any lease granted to a cultivator when such lease is exempted from duty. | |
| **LETTER OF CREDIT**, i.e. any instrument by which one person authorises another to give credit to the person in whose favour it is drawn.<br>**LETTER OF GUARANTEE**. See **AGREEMENT** (No.5). | MMK200 |

## Bonds

| Description of Instrument | Proper Stamp-duty |
|---|---|
| **BOND** as defined by section 2(5), not being a DEBENTURE (No.27), and not being otherwise provided for by this Act or by the Court Fees Act | 0.5% on the amount or value. |
| See **ADMINISTRATION-BOND** (No.2), **BOT TOMRY BOND** (No.16), **CUSTOMS BOND** (No.26), **INDEMNITY-BOND** (No.34), RE **SPONDENTIA BOND** (No.56), **SECURITY BOND** (No.57). | |
| **Exemptions** | |
| Bond, when executed by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem. | |

## Conveyance, Lease, Mortgage and Re-Conveyance

| Description of Instrument | Proper Stamp-duty |
|---|---|
| **CONVEYANCE**, as defined by section 2(10) not being a **TRANSFER** charged or exempted under No.62- | 2% on the amount or value (additional 2% if relates to immovable property). |
| **Exemptions** | |
| Assignment of copyright made under the Myanmar Copyright Act. **CO-PARTNERSHIP-DEED**. See **PARTNERSHIP** (No.46) | |
| **FURTHER CHARGE: -** Instrument of, i.e. any instrument imposing a further charge on mortgaged property: | The same duty as a **CONVEYANCE** (No.23) (2%) for a consideration equal to the amount of the further charge secured by such instrument. |
| a. when the original mortgage is one of the descriptions referred to in Clause (a) of Article No.40 (that is, with possession); | |
| b. when such mortgage is, one of the descriptions referred to in Clause (b) of Article No.40 (that is, without possession): - | |
| i. if at the time of execution of the instrument of further charge possession of the property is given or agreed to be given under such instrument; | The same duty as a **CONVEYANCE** (No.23) (2%) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge. |
| ii. if possession is not given. | The same duty as a **Bond** (No.15) (0.5%) for the entire amount payable or deliverable under such instrument. |
| **LEASE**, including an under-lease or sub-lease and any agreement to let or sub-let: | |

| Description of Instrument | Proper Stamp-duty |
|---|---|
| c. where by such lease the rent is fixed and no premium is paid or delivered: - | |
| i. where the lease purports to be for a term of less than one year | The same duty as a **Bond** (No.15) (0.5%) for the whole amount payable or deliverable under such lease. |
| ii. where the lease purports to be for a term of not less than one year but not more than three years; | The same duty as a **Bond** (No.15) (0.5%) for the amount or value of the average annual rent reserved. |
| iii. where the lease purports to be for a term in excess of three years; | The same duty as a **CONVEYANCE** (No.23) (2%) for a consideration equal to the amount or value of the average annual rent reserved. |
| iv. where the lease does not purport to be for any definite term; | The same duty as a **CONVEYANCE** (No.23) (2%) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long. |
| v. where the lease purports to be in perpetuity; | The same duty as a **CONVEYANCE** (No.23) (2%) for a consideration equal to the one-fifth of the whole amount of the rents which would be paid or delivered in respect of the first fifty years of the lease. |
| b. where the lease is granted for a fine or premium or for money advanced and where no rent is reserved; | The same duty as a **CONVEYANCE** (No.23) (2%) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease. |
| c. where the lease is granted for a fine or premium or for money advanced in addition to rent reserved. | The same duty as a **CONVEYANCE** (No.23) (2%) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered. Provided that, in any case when an agreement to lease is stamped with the ad valorem stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed MMK300. |
| **Exemptions** | |
| a. Lease executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink), without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed MMK10,000. | |
| b. Leases of fisheries granted under the existing Laws. | |
| **MORTGAGE-DEED**, not being an "**AGREEMENT RELATING TO DEPOSIT OF TITLEDEEDS, PAWN OR PLEDGE** (No.6)", **BOTTOMRY BOND** (No.16), **MORTGAGE OF A CROP** (No.41), **RESPONDENTIA BOND** (No.56), **OR SECURITY BOND** (No.57): | |
| a. when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given; | The same duty as a **CONVEYANCE** (No.23) (2%) (Additional 2% if relates to immovable property) for a consideration equal to the amount secured by such deed. |
| b. when possession is not given or agreed to be given as aforesaid; | The same duty as a **BOND** (No.15) (0.5%) for the amount secured by such deed. |
| **Explanation** | |
| A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this Article: | |
| c. when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above mentioned purpose, where the principal or primary security is duly stamped:- | |
| • for every sum secured not exceeding MMK1,000,000; and | MMK50 |
| • for every MMK100,000 or part thereof secured in excess of MMK1,000,000. | MMK50 |
| **Exemptions** | |
| 1. Instruments executed by persons taking advances under the existing relevant Laws, or by their sureties as security for the repayment of such advances. | |

| Description of Instrument | Proper Stamp-duty |
|---|---|
| 2. Letter of hypothecation accompanying a bill of exchange. | |
| **RECONVEYANCE** of mortgaged property or instrument of extinguishment of a mortgage. | Subject to the maximum of MMK10,000 the same duty as a **CONVEYANCE** (No.23) (2%) (Additional 2% if relates to immovable property) for the amount of the consideration for the mortgage. |

### Promissory Note

| Description of Instrument | Proper Stamp-duty |
|---|---|
| **PROMISSORY NOTE** [as defined by section 2(22)]:- | |
| a. when payable on demand:- | |
| i. when the amount or value does not exceed MMK25,000; | MMK50 |
| ii. when the amount or value exceeds MMK25,000 but does not exceed MMK100,000; | MMK100 |
| iii. in any other case. | MMK150 |
| b. when payable otherwise than on demand. | The same duty as a **BILL OF EXCHANGE** (No.13) for the same amount payable otherwise than on demand (if payable on demand, 0.0065% of the amount or value; if payable otherwise than on demand, 0.5% of the amount or value). |

### Transfer

| Description of Instrument | Proper Stamp-duty |
|---|---|
| **TRANSFER** (whether with or without consideration): | |
| a. of shares in an incorporated company or other body corporate; | 0.1% on the value of share. |
| b. of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8; | 0.1% on the fix amount of the debentures. |
| c. of any interest secured by a bond, mortgage-deed or policy of insurance: | |
| i. if the duty on such bond, mortgage deed or policy does not exceed MMK500; | The duty with which such bond, mortgage-deed or policy of insurance is chargeable. |
| ii. in any other case. | MMK300 |
| d. of any property under the Administrator General's Act, section 25; | MMK300 |
| e. of any trust -property without consideration from one trustee to another trustee or from a trustee to a beneficiary | MMK300 or such smaller amount as may be chargeable under clauses (a) to (c) of this Article |
| **Exemptions** | |
| Transfers by endorsement: | |
| a. of a bill of exchange, cheque or promissory note;<br>b. of a bill of lading, delivery order, warrant for goods, or other mercantile document of title to goods;<br>c. of a policy of insurance; (d) of securities of the Government of the Union of Myanmar.<br>See also section 8. | |

## NAMIBIA

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Windhoek | Uwe Wolff | +264 61 387800<br>uwe.wolff@pkf-fcs.com |

### BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Namibia |
| Capital: | Windhoek |
| Main languages: | English, Afrikaans, German |
| Population: | 2.63 million (2022 estimate) |
| Monetary unit: | Namibian Dollar (NAD) |
| Internet domain: | .na |
| Int. dialling code: | +264 |

## KEY TAX POINTS

- Resident and non-resident companies are only taxable on sources of income arising and deemed to arise in Namibia.
- Dividends received from any source are generally not taxed, dividends paid are subject to NRST.
- There are no donation taxes, estate duties nor taxes on capital gains.
- Income Tax rate on non-mining companies: 32%.
- Maximum Income Tax rate on individuals and trusts: 37% (on income in excess of NAD 1.5 million).
- Withholding taxes (final tax): interest earned by individuals 10%, interest paid to foreign persons 10% (subject to DTT), payment in respect of foreign service, including rentals of equipment: 10% (subject to DTT).
- Trusts are taxed as individuals, with the first NAD 50,000 taxable income per annum not being taxed.
- The standard VAT rate is 15%. VAT applies to imports and the supply of goods and services in Namibia at 16.5%. Certain basic commodities are zero-rated, with a variety of services being exempt such as medical, financial and educational.
- Shareholders are personally liable for any tax debt of their company, as is any director or other senior official.
- Individuals and directors are subject to a payroll tax on earnings (PAYE).
- Persons exporting goods manufactured in Namibia, subject to exceptions, are eligible for an 80% reduction of taxable income derived from such exports.

## A. TAXES PAYABLE

### INCOME TAX

Income tax is source-based with certain income deemed to be from a Namibian source, e.g. income earned from a Namibian employer whilst being temporarily absent from Namibia, or on restraint of trade payments. Tax is imposed on all receipts and accruals from a Namibian source, other than receipts or accruals of a capital nature. Some items are specifically included in taxable income even if of a capital nature, for example the sale of mining rights or the sale of shares of a company holding such rights. Fringe benefits tax is payable by employees on low interest loans, motor vehicle usage, free housing and other cash benefits. Meals served at the place of work, uniforms and company contributions to group benefit funds are not taxed. The taxable income of foreign companies is computed in the same way as for local companies.

The tax year is the same as the financial year of a company. Tax liabilities are calculated on a self-assessment basis. The collection of taxes is as follows:

- Provisional Payments (1st and 2nd) are due after the first six months of the financial year and on the last day of the financial year.
- A top-up payment is payable on due date for the return of Income – seven months after the end of the financial year.

### TAX RATES – MINING COMPANIES

The tax rate by hard rock mining companies and companies rendering services in connection with mining is 37.5% and the tax rate applying to diamond mining companies is 55%. The basic rate of tax payable by oil and gas extraction companies is 35%. Oil and gas extraction companies are also subject to additional profits tax that is calculated in terms of a complex formula contained in the Petroleum Taxation Act.



### GAS EXPLORATION AND PRODUCTION LICENCE SALES

The proceeds on the sale of petroleum licences and right to explore for, develop or produce petroleum are taxable effective from 30 December 2015 at a rate of 32%.

### BRANCH PROFITS TAX

Normal company income tax rules apply to the Namibian branch tax profits of non-Namibian companies.

### VALUE ADDED TAX (VAT)

VAT applies to the supply of goods and services by VAT registered persons in Namibia and on the import of goods and services into the country. The VAT registration threshold is NAD 500,000, voluntary registration is possible from a turnover of NAD 200,000 in any 12-month period. VAT is payable on the value of the goods or services supplied at the rate of 15%, or imported at an effective rate of 16.5%. Certain supplies are zero-rated. These include:

- Export of goods and services and related supplies;
- International transport;
- Sale of a going concern;
- Sale of land and buildings for residential purposes and erection of residential buildings;
- Supply of municipal services to residential accounts;
- Supply of mahango and maize meal;
- Supply of agricultural land to be used for resettlement purposes;
- Supplies made in respect of guarantees;
- Supply of funeral undertaking services;
- Supply of services physically rendered elsewhere than in Namibia;
- Petrol, diesel and paraffin;
- Certain food supplies;
- Postage stamps, but excluding postage stamps supplied as a collector’s piece;
- Telecommunication services to residential accounts;

- Supplies by charitable organisation and similar institutions;
- Supply of livestock (on the hoof);
- The supply of goods, and the repair thereof, to be used as aids by physically handicapped persons who are blind, deaf, crippled or a chronic invalid. Services for any adjustment or modification in respect of a vehicle used for these purposes.

Exempt Supplies:

- Financial services;
- Medical services and services provided by hospitals;
- Group finance/management companies and inter-company loans;
- Residential leases and fringe-benefit accommodation;
- Public transport services;
- Educational services;
- Management of group housing and commercial premises;
- Employee organisations;
- Local authorities;
- Fringe benefits;
- Supplies to foreign heads of state.

## LOCAL TAXES

Municipal taxes are payable on the value of fixed property. A land tax is payable annually on the value of agricultural land, based on the location and size of the land.

## OTHER TAXES

Other direct and indirect taxes and imposts include:

- Stamp Duty (on documents and marketable securities);
- Transfer duties payable on property transactions
- Motor vehicle licences;
- Royalty on minerals;
- National Training Levy (VET);
- Social Security Fund and Workmen's Compensation Funds;
- Customs and Excise duties;
- Non-resident shareholders tax;
- Withholding tax on interest;
- Withholding tax on services.

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## WITHHOLDING TAX ON SERVICES

The rate of withholding tax on services applicable to payments to non-residents for services of a technical, managerial or consultative nature is set at 10%. Relief may be available in terms of a double taxation agreement between Namibia and the country in which the service provider is a resident. The rate of withholding tax on director's fees and entertainment fees is 25%.

## ROYALTY WITHHOLDING TAX

The royalty withholding tax rate applicable to royalties payable to non-residents is levied at 10%, double tax agreement relief is available. This WHT is also applicable to leases of equipment from foreign suppliers.

## ENVIRONMENTAL TAX

The introduction of the first phase of the environmental taxes includes a carbon dioxide emission tax on motor vehicles and motor vehicle tyres.

## EXPORT LEVY

An export levy on the export of unprocessed minerals and other natural resources is levied to promote domestic value-addition. This tax is a levy between 0 to 2% on the value of minerals, fish, game, crude oil and gas exported.

# B. DETERMINATION OF TAXABLE INCOME

## CAPITAL ALLOWANCES

Allowances are available on plant and machinery, vehicles, implements and similar. Tax relief is allowed on the cost of assets used for purposes of trade, claimed over a three-year period (excluding finance charges on Hire Purchase or Lease). Building allowances are granted from the year where a building is first brought into use for purposes of trade: 20% of erection cost is claimable in the first year and the remainder at 4% for the following 20 years.

## DEPRECIATION

No depreciation is allowed in Namibia for tax purposes. Capital acquisitions are subject to a wear and tear allowance commencing in the year of acquisition and calculated at a rate of 1/3rd in year one and one 1/3rd in each of the two years following year of acquisition.

## STOCK / INVENTORY

Stock is to be valued at the lower of cost or market price, usually on the average cost or FIFO method.

## CAPITAL GAINS AND LOSSES

Capital gains are generally not taxable in Namibia, unless by way of specific inclusion in the Income Tax Act, such as the sale of mining rights.

## DIVIDENDS

Currently dividends are not taxable, unless paid to a non-resident in which case a non-resident shareholders tax (NRST) is withheld. Double Taxation Agreements may provide relief. NRST is levied at 20% if beneficial shareholding is less than 25% of shareholding, otherwise at 10%. Proposed legislation seeks to levy withholding tax at source on dividends paid to residents at a rate of 10%.

## INTEREST

Interest deductions are allowed in Namibia if they are incurred in the production of income. A withholding tax on interest earned by residents (individuals) from financial institutions is withheld at source at the rate of 10%, whilst interest earned on government stocks and treasury bills is exempt.

## LOSSES

Losses and profits generated by a taxpayer may be set off against each other, setoff is however not allowed within a group of related entities. A net loss may be carried forward to be utilised in future tax years, provided the taxpayer continues trading throughout. Ring-fencing on losses incurred by individuals is applicable to various suspect trades, such as part-time farming, dealing in arts, gambling and more, or where a specific trade has generated losses in 3 out of 5 years. A complex regime of rules applies to determine whether ring-fencing must be applied or not.

## FOREIGN SOURCE INCOME

Foreign income is generally not taxable in Namibia if the source is not in Namibia, excepting income deemed to be from a Namibian source.

## INCENTIVES: INDIVIDUALS

Tax relief for individuals includes housing subsidies for employers having registered a housing scheme. Special deductions for contributions to pension and other retirement funds and tertiary education policies are available up to a combined NAD 40,000 per annum in total. Upon retrenchment or retirement, a lifetime allowance of NAD 300,000 may be utilized as a tax-free amount.

## C. FOREIGN TAX RELIEF

A tax credit is available for foreign tax paid in respect of dividends, royalties and similar income, which is also taxable in Namibia, subject to a maximum of the Namibian tax payable on the overseas income concerned and further subject to the provisions of Double Taxation Agreements.



## D. CORPORATE GROUPS

Corporate groups are not taxed as groups in Namibia. The individual legal entities in a group are taxed.

## E. RELATED PARTY TRANSACTIONS

There are no special rules in Namibia other than those contained in tax treaties. Anti-avoidance rules are in place affecting certain transactions between family members and / or related trusts.

## F. WITHHOLDING TAX

Withholding taxes applicable in Namibia are as follows, subject to any DTAs that may exist between Namibia and the country of residence of the taxpayer:

- Non-resident shareholders Tax (NRST) at 10% - 20%;
- Royalties including the right to use industrial, commercial or scientific equipment, received by or accrued to a person not being ordinarily resident in Namibia or a domestic company – 10%;
- Withholding tax on interest, which will be levied on any interest earned or accrued to any person (other than a Namibian company) from a Namibian banking institution and/or a unit trust – 10%;
- Proposed 10% withholding tax on dividends on dividends declared to residents.
- Withholding tax on payments for by a Namibian resident for:
  - services rendered by non-residents in respect of management fees, consultancy fees, technical fees – 10%; and
  - directors' and entertainment fees – 25%.

All the above taxes are final taxes.

## G. EXCHANGE CONTROL

Exchange controls apply in Namibia due to the interlinking of the Namibia Dollar with the South African Rand. EPZ enterprises may hold foreign currency bank accounts free from exchange control.

## H. PERSONAL TAX

Individuals are taxed under the same statute as companies, i.e. the Income Tax Act 1981, as amended. Generally, the income of a non-resident derived from Namibia is taxed in the same manner as that of a resident. Only income from a source within Namibia will be included in taxable income. Profits of a capital nature are generally not taxed. All individuals are taxed on income at progressive marginal rates over a series of income brackets as follows (tax rates effective since 1 March 2013):

| Taxable Income | Rate |
|---|---|
| Up to 50,000 | 0% |
| 50,001 to 100,000 | 18% on amount exceeding NAD 50,000 |
| 100,001 to 300,000 | NAD 9,000 plus 25% on amount exceeding NAD 100,000 |
| 300,001 to 500,000 | NAD 59,000 plus 28% on amount exceeding NAD 300,000 |
| 500,001 to 800,000 | NAD 115,000 plus 30% on amount exceeding NAD 500,000 |
| 800,001 to 1,500,000 | NAD 205,000 plus 32% on amount exceeding NAD 800,000 |
| Over 1,500,000 | NAD 429,000 plus 37% on amount exceeding NAD 1,500,000 |

The tax year commences on 1 March and ends on the last day of February. Tax is determined by self-assessment with a final tax due for qualifying salaried taxpayers. The due date for returns of Income is 30 June for most taxpayers although this is 30 September for others such as sole proprietors. The collection of taxes is as follows:

- Provisional taxes are to be paid in instalments after the first six months of the tax year and on the last day of the tax year;
- A top-up payment is due on the tax return filing date.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) | Management, administrative, consulting and technical fees | Directors' and entertainment fees |
|---|---|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | | | |
| **Domestic rates** | | | | | | |
| Companies | 20 | 10 | 10 | 10 | 10 | 25 |
| Individuals | 20 | -- | 10 | 10 | 10 | 25 |
| **Treaty countries:** | | | | | | |
| Botswana | 10 | 10 | 10 | 10 | 15 | 25 |
| France | 15 | 5[1] | 10 | 10 | 0 | 25 |
| Germany | 15 | 10[2] | --[3] | 10 | 0 | 25 |
| India | 10 | 10 | 10 | 10 | 10 | 25 |
| Malaysia | 10 | 5[4] | 10 | 5 | 5 | 25 |
| Mauritius | 10 | 5[5] | 10 | 5 | 0 | 25 |
| Romania | 15 | 15 | 10 | 15 | 0 | 25 |
| Russia | 10 | 5[6] | 10 | 5 | 0 | 25 |
| South Africa | 15 | 5[7] | 10 | 10 | 0 | 25 |
| Sweden | 15 | 0/5[8] | 10 | 5/15[10] | 15 | 25 |
| United Kingdom | 15 | 5[9] | 20 | 0/5 | 0 | 25 |

NOTES:

1. The reduced rate applies if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the paying company.
2. The reduced rate applies if the recipient is a company (excluding partnerships) which owns directly at least 10% of the capital of the paying company.
3. Taxable only in the state of residence of the recipient.
4. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the share capital of the paying company.
5. The reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the paying company.
6. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the share capital of the paying company and has directly invested in the equity share capital of that company not less than the equivalent of USD 100,000.
7. The reduced rate applies if the beneficial owner is a company which holds at least 25% of the capital of the paying company.
8. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the share capital of the paying company.
9. The reduced rate applies if the recipient is a company which controls, directly or indirectly, more than 50% of the entire voting power in the paying company.
10. The reduced rate applies to royalties paid in respect of a patent, secret formula or process, or for information concerning industrial or scientific experience. The 15% rate applies to other royalties.

# NEPAL

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Kathmandu | Shashi Satyal | +977 1 4410927/4420026<br>shashi.satyal@pkf.com.np |

## BASIC FACTS

| | |
|---|---|
| Full name: | Federal Democratic Republic of Nepal |
| Capital: | Kathmandu |
| Main languages: | Nepali |
| Population: | 29.19 million (2021 census) |
| Monetary unit: | Nepalese Rupees (NRS) |
| Internet domain: | .np |
| Int. dialling code: | +977 |

## KEY TAX POINTS

- Nepalese resident companies are subject to corporate tax on income derived from all sources at the rate of 25% subject to certain exceptions on various bases as per section 11 of ITA.
- All entities that carry their transactions in Nepal are required to register for Value Added Tax (VAT) if their annual turnover meets the registration turnover threshold.
- Withholding tax is deducted from interest, royalties, dividends and other specified payments as per section 88 of ITA.
- As per section 6 of ITA, Resident natural persons are taxed at all incomes from worldwide sources. Non-resident persons are taxed on incomes having source in Nepal.
- Resident natural persons are taxed at a progressive rate.
- Non-resident natural persons are taxed at a flat rate and subject to final withholding as per section 92.
- Capital gains taxes are deducted as final withholding tax for non-resident persons and individuals and as advance tax for resident companies.
- Final withholding tax at the rate of 25% is levied on all windfall gains under section 88A of ITA.
- When foreign-sourced income is included in assessable income, tax credits are available using the credit method/ expense method as per sec 71 of ITA
- Non-resident air or transport operators pay taxes on their gross collection through sales of tickets at the rate of 5%, where the first point of entry is Nepal. The tax rate is 2% of gross sales of tickets where the flights do not originate from Nepal.
- Dividends distributed by a foreign permanent establishment of a non-resident are treated as amounts repatriated and taxed at the rate of 5%.

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## 1. DIRECT TAXES

### 1.1 GENERAL

The main objective of the tax system is to enhance revenue mobilisation through effective revenue collection procedures for the economic development of the nation. Income is taxed in accordance with the provisions of the Income Tax Act 2002 (ITA). The salient features of the ITA are:

a. Various concessions and incentives allowed under different Acts have been repealed and provided under the single ITA;
b. The tax liability of residents and non-residents are clearly defined;
c. Worldwide income of a resident, whether individual or company is made taxable in Nepal;
d. Income with source in Nepal is taxable in Nepal irrespective of the place of payment;
e. Specific provision for taxing capital gains is introduced;
f. Procedures for granting credit for international tax are prescribed;
g. General provision for anti-avoidance and income splitting rules introduced; and
h. Clearly defined tax administration and payment procedures are provided.

The tax is levied on income accrued or received from business, investment, employment, and windfall gains. Employment income is taxed on a cash basis, Investment income is taxed on a cash basis for a natural person and on an accrual basis for an entity. Business income shall be taxed on an accrual basis for both natural persons and entities. Both individuals and companies are required to follow a uniform income year that runs from mid-July to the following mid-July corresponding to the Nepali Fiscal Year (NFY). All persons with assessable income are required to register with the Inland Revenue Office (IRO) and obtain a Permanent Account Number (PAN) and file a tax return annually. However, in the case of assessable income from employment only sourced in Nepal as per section 67 of ITA and where there is a single resident employer and also the income is not greater than NRS 4 million then the employee is not required to file an income tax return.

Returns are filed under a self-assessment system under which the IRO considers returns final unless they are subject to detailed scrutiny of the taxpayer's affairs. In practice, Assessing Officers make re-assessments and adjustments in the majority of the cases.

Income tax payments are made in the year in which the income is earned in the form of withholding tax and advance tax. Companies are subject to a flat rate of tax, whereas individuals are taxed at progressive rates. The Director General (DG) of the Inland Revenue Department (IRD) has responsibility for the general administration of the ITA.

## 1.2 TAXATION OF COMPANIES

### 1.2.1 INTRODUCTION

Tax is levied under the provisions of the Income Tax Act 2002, which provides for the imposition and collection of tax on the income of companies. Resident companies are subject to tax on their worldwide income. Non-residents are required to pay tax on their net income acquired or earned in Nepal or on Nepal sourced income. Tax is levied on net income after making deductions for certain expenses/allowances as specified in the ITA.

"Company" means a body corporate or a company formed under the Companies Act of Nepal and includes foreign companies and other institutions such as Unit Trust, Co-operatives Society or group of persons other than a partnership having less than 20 partners and proprietorship firm.

### 1.2.2 RESIDENCE

A resident company is a company formed or established in Nepal or is effectively managed in Nepal during the income year. A resident company is taxed on worldwide income. Dual residence is not recognised for the purposes of Nepalese tax.

### 1.2.3 ANNUAL FINANCIAL YEAR

The annual financial year in Nepal starts from mid-July of a year to mid-July of another year. All taxpayers are required to adopt a uniform income year ending July 15th each year and submit tax returns within three months thereof, i.e. by October 15th of each year although an extension of 3 months may be requested and is generally granted.

### 1.2.4 TAXABLE INCOME

Income tax is levied on the income earned or received from each of the following:

a. Business income;
b. Employment income;
c. Investment income; and
d. Windfall gains.

The income in relation to a business consists of the profits or gains derived from conducting the business, including:

a. Service fees;
b. Amounts derived from the disposal of trading stock;
c. Net gains from the disposal of business assets or liabilities;
d. Gains on the disposal of all depreciable assets in a pool of assets;
e. Gifts received in respect of the business;
f. Amounts derived as consideration for accepting a restriction on the capacity to conduct business; and
g. Amounts derived that are effectively connected with the business and that would otherwise be included in income from an investment.

In computing the income from business or investment, all actual costs are deductible to the extent that they are incurred during the year by the entity in the generation of income from the business. The following methodology is available for the valuation of inventory:

a. Prime cost or absorption cost method in case of the cash accounting system;
b. Absorption cost method in case of the accrual accounting system; or
c. A choice between the first-in-first-out method and the average cost method.

### 1.2.5 CAPITAL GAINS TAX

Net gains from the disposal of business assets or liabilities of a business are taxable as business income. Generally, gains are calculated as proceeds from the capital transaction less the tax basis in the relevant property. In the language of the ITA, the gain from the disposal of an asset or liability is calculated as the amount by which the sum of the incomings of the asset or liability exceeds the outgoings of the asset or liability at the time of disposal and is reduced by the following losses:

a. The total of all losses suffered from the disposal of business assets or liabilities;
b. Any unrelieved net loss out of any other business losses; and
c. Any unrelieved net loss for a previous income year out of losses of any business.

Loss on the disposal of an asset or liability with a foreign source can be claimed against the above gain only to the extent that the amount includes gains on the disposal of assets or liabilities with a foreign source. A non-resident is taxed only on gains from the disposal of assets or liabilities sourced in Nepal.

### 1.2.6 DIVIDENDS

Dividend distributed by a resident company and partnership firms is subject to a final withholding tax at the rate of 5 % to the resident and the non-resident person. These dividends are not taxed at the hand of the recipient and no withholding is applicable on the distribution of dividends from dividend income. Dividends of a non-resident entity, which are distributed to a resident beneficiary, are taxed by inclusion in calculating the income of the beneficiary. Distributions of dividends, which are derived after the final withholding tax, are exempted from tax. Dividends distributed from dividend income derived by the entity do not attract dividend tax at the level of the recipient.

### 1.2.7 EXEMPT INCOME

The following categories of income are exempt from tax:

a. Agricultural income derived from sources in Nepal by a person other than the income from an agriculture business derived by a firm, company, or partnership;

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b. Income of cooperatives registered under the Cooperatives Act 2074 (2017) and savings and credit cooperatives operating in rural municipalities and conducting business in agriculture and forest-based products and industry including trading in seeds, animal feeds, pesticides, manure and agricultural tools (except machine operated);
c. The income of a social, religious, educational, or charitable organisation of a public character registered without having a profit motive and similar other organisations approved by the IRD as an exempt organisation; and
d. Income of an approved mutual fund derived in line with its objective and income of non-profit motive educational institutions established based on the letter of understanding with GoN or related body shall be exempted from tax.

All expenses incurred in earning exempt income are not tax deductible.

### 1.2.8 DEDUCTIONS

All actual expenses incurred in acquiring or earning income are allowable deductions for tax purposes if it has been incurred in that NFY by the entity, including the following:

a. Interest as per section 14;
b. Cost of trading stock as per section 15;
c. Repair and improvement costs as per section 16 - amounts exceeding 7% of the value of depreciable assets in any income year are not deductible and are instead added to the depreciation basis of the relevant asset pool at the beginning of the next income year. This limitation does not apply to the aviation industry;
d. Pollution control expenses as per section 17;
e. Research & development expenses as per section 18;
f. Depreciation as per section 19; and
g. Banking companies and financial institutions are allowed a deduction for impairment of non-performing assets (loan loss provision) subject to 5% of the total loan outstanding.

However, disclaimers, write-offs or the forgiveness of debt that is written off are not tax deductible. The ITA specifically provides that certain expenses are not deductible, such as:

a. Domestic and personal expenses;
b. Income tax paid in Nepal and fines and penalties paid to GoN except tax payments to local and provincial governments;
c. Expenses incurred in deriving exempt income or final withholding payments;
d. Distributions of profits;
e. Cash payments in excess of NRS 50,000 by entities whose annual turnover exceeds NRS 2 million subject to certain exemptions;
f. Expenses of a capital nature which include the cost incurred on detailed feasibility report exploration and development cost of natural resources;
g. Remuneration and wage expenses distributed to employees and workers having no permanent account number (PAN), except time basis wages up to NRS 3,000; and
h. Expenses of invoices exceeding NRS 2,000 where no PAN is mentioned. Provided it is a purchase directly from a natural person who is not engaged in business transaction of goods: agricultural, forestry, animal product and other household goods such purchase expenditure will be valid even if the seller does not have a permanent account number (PAN).



### 1.2.9 LOSSES

Tax losses can be carried forward for a period of 7 years and in the case of public infrastructure projects to be built, operated and transferred to GON, projects relating to construction of power houses and generation and transmission of electricity and petroleum exploration and extradition companies, any unrelieved loss of the past 12 years can be deducted. However, tax losses can be carried back for set-off against the taxable income of an earlier period in case of long-term contracts under international competitive bidding subject to prior approval from IRD.

Entities that have availed a full or partial tax exemption in any of the years on investment or business income are not entitled to carry forward losses incurred in these exempt years.

Capital losses from the disposal of depreciable assets of a business are an allowable deduction and can be claimed as a normal business expense which is calculated as balancing charge (Gain) or terminal depreciation (Loss) as per section 19.

### 1.2.10 TAX DEPRECIATION / CAPITAL ALLOWANCES

Depreciation is allowed on the acquisition cost of the following assets where such assets are used for income producing purposes:

| Class | Assets Included | Depreciation Rate (%) |
|---|---|---|
| A | Buildings, structures and similar works of a permanent nature | 5 |
| B | Computers, fixtures, office furniture and office equipment | 25 |
| C | Automobiles, buses and minibuses | 20 |
| D | Construction and earth-moving equipment and any depreciable asset not included in another class | 15 |
| E | Intangible assets other than depreciable assets included in class D. | During the useful life of the asset |

Each depreciable asset at the time it is first owned or so used, is placed in a pool referred to as pools of depreciable assets. Depreciation is calculated on the reducing balance method except for pool E and is based on the pool of assets. Depreciation for pool E is calculated using the SLM method. In case of disposal of each asset under pool E the pool is deemed to be dissolved because each asset under pool E is a separate pool.

The pool of assets concept suggests aggregation of all assets with the same depreciation rate into a common block for computation of depreciation. Depreciation is computed at varying rates as prescribed. In the year of purchase, depreciation is available for the full year, if an asset is added to the pool for more than six months. In other cases, depreciation is allowed at either two thirds or one third of the normal rate, if the addition is made for less than six or three months, respectively. Amounts derived from the disposal of an asset or assets are reduced from the written down value of the relevant pool.

Special Industries as per section 11, entities engaged in construction and operation of public infrastructures like road, bridge, tunnel, ropeway, overhead bridge, entities operating trolley bus or tram, cooperatives not covered by section 11(2), entities engaged in operating public infrastructure under BOOT (Built, own, operate and transfer) mechanism that are ultimately handed to GoN, entities involved in construction, production, distribution and transmission of electricity and power generation houses can claim additional depreciation at one third rate of the normal rate.

Other additional benefits based on nature of business:

A. Entities undertaking public infrastructure projects under BOOT mechanism:
   1. When equipment, machinery, or structures of pool D are replaced
      Replacing assets (New Asset) is considered fully as absorbed addition and replaced assets (Old assets) is totally allowed as terminal depreciation for tax purposes in the year when replacement takes place.
   2. When such project is finally transferred to GoN
      Total closing depreciation base of all machinery, furniture and other equipment of pool D shall be claimed as terminal depreciation for tax purposes in the income year when the project is transferred to GoN.

B. Entity undertaking electric power generation, distribution and transmission:
   1. When equipment, machinery, or structures of pool D are replaced
      Replacing assets (New assets) is considered fully as absorbed addition and replaced assets (Old assets) is totally allowed as terminal depreciation for tax purposes in the year when replacement takes place.
   2. When such project is finally transferred to GoN
      Total of closing depreciation base of all machinery, furniture and other equipment of pool D shall be claimed as terminal depreciation for tax purposes in the income year when the project is transferred to GoN.

C. Purchase of Power Generating Equipment:

   If any person purchases power generating assets during any income year to generate power for its business purpose, such industries are entitled to claim 50% of the cost of the assets as depreciation during the income year.

D. Purchase of Fiscal printer or Electronic cash register to issue invoice:

   Irrespective of the date of purchase of Fiscal printer or Electronic cash register can claim depreciation equal to its cost if it is used to issue the invoice.

### 1.2.11 AMORTISATION OF EXPENDITURE

Costs incurred in respect of natural resource prospecting, exploration and development are treated as if they were incurred in securing the acquisition of an asset that is used in that production and depreciated.

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Expenditure incurred on R&D and pollution control related to the taxpayer's business is deductible up to 50% of the adjusted taxable income in the income year it is incurred. Any excess cost, for which deduction is not allowed as a result of the said limitation, is capitalised and depreciated.

Intangible assets are amortised over the useful life of the asset.

### 1.2.12 INTEREST

Interest means the following payments or gains:

a. A payment made or incurred under a debt obligation that is not a repayment of capital;
b. Any gain realised by way of a discount, premium, swap payment, or similar payment; and
c. The portion that is treated as interest in the payment made under an annuity or for acquiring an asset under an instalment sale or the use of an asset under a finance lease.

The interest incurred under a debt obligation is deductible to the extent, either that the obligation was required to be incurred in the production of income or the debt was used to purchase an asset that is used in the business.

### 1.2.13 TAX RATES

The current corporate tax rate varies depending on the nature of the taxable income as follows:

| Industry | Nature of Business | Rate of Tax (%) | Applied as |
|---|---|---|---|
| Manufacturing | Special industries qualifying under the Industrial Enterprises Act 2020 (except related to tobacco and alcoholic beverages) | 20% | Flat rate |
| Financial Institutions | Bank and Financial Institutions licensed by Nepal Rastra Bank, Non-life insurance companies, Money Transfer, Capital Market Business, Securities Business, Merchant Banking Business, Commodity Future Market, Securities and Commodities Broker Business | 30% | Flat rate |
| Telecom and ISP | Telecommunication, Internet Service Provider (ISP) | 30% | Flat rate |
| Tobacco related | Entity engaged in the business of cigarettes, tobacco, cigars, chewing tobacco, alcohol and beer | 30% | Flat rate |
| Other | Commercial trading/service entities and other businesses | 25% | Flat rate |

The tax rate for entities other than specified above is 25%. Non-residents are taxed at 25% except the income from transporting passengers, mail or cargo by sea or air that is embarked in Nepal is taxed at 5% and 2% on online and offline transactions, respectively.

### 1.2.14 ANNUAL TAX RETURNS

All taxpayers are required to adopt a uniform income year ending July 15th each year and submit tax returns within three months thereof. i.e. by October 15th of each year although an extension of 3 months may be requested and is generally granted. The accounts are to be audited by an auditor qualified under the laws of Nepal. Tax returns also need to be certified by the auditor and submitted along with the audited accounts within the stipulated time. However, small and medium taxpayers, having income from employment and business of NRS 10 million and any Professional (Natural person) having turnover of less than NRS 2 million are waived from tax audit and they can self-attest their tax returns.

### 1.2.15 ADVANCE TAX

Income tax is to be paid in advance in 3 instalments by all entities subject to certain exceptions during an income year by 14 January, 13 April and 16 July computed at the applicable rates on the estimated profits of the entity for the entire year. Advance tax to be deposited is as follows:

| Instalment / due date | Advance Tax |
|---|---|
| 1st, i.e. 14 January | 40% of the total estimated tax liability for the year |
| 2nd, i.e. 13 April | 70% of the total estimated tax liability for the year |
| Final, i.e. 16 July | 100% of the total estimated tax liability for the year |

Provided that, taxpayers based on turnover taxation shall pay advance tax as follows:

| Instalment / due date | Advance Tax |
|---|---|
| 1st, i.e. 14 January | Tax at the rate specified on actual transaction up to 14 January |
| Final, i.e. 16 July | Remaining of tax calculated at the rate specified on estimated transaction amount at 16 July based on actual transactions up to 16 July |

### 1.2.16 TAX PAYMENT / REFUNDS

Income-tax payments are made in the year in which the income is earned in the form of withholding tax and advance tax. The taxpayer is required to estimate taxable income and make advance payments in three instalments spread over the year. Income from services including contract payment is subject to tax withholdings that may be adjusted to calculate advance tax.

Arrangements have been made by IRO to refund within 60 days the excess money deposited by taxpayers *(in practice may take longer or not refunded but adjusted with future tax liabilities and is the process is cumbersome).*

### 1.2.17 FINES AND PENALTIES

Failure to maintain records, non-submission of returns or late submission, non-payment or short payment of tax will attract late fee/ interest at prescribed rates. Submission of false or misleading returns shall attract a penalty ranging from 50 to 100% of tax loss. Fines including imprisonment for a term ranging from one month to two years are prescribed for not paying or evading tax.

### 1.2.18 REVIEW AND APPEAL

Application for Administrative Review may be submitted with the IRD against the revised assessment or an assessment of fees, interest and penalty within 30 days from the date of receipt of notice about the decision. While applying 100% of the undisputed tax and one fourth of the disputed tax must be deposited.

## 1.3 TAXATION OF INDIVIDUALS

### 1.3.1 INTRODUCTION

As per section 6 of ITA, Resident individuals are subject to tax on their worldwide income derived from employment, business or investment. Non-residents are subject to tax on their net income earned or sourced in Nepal.

### 1.3.2 RESIDENT

A person who has resided in Nepal for a period of 183 days or more in a duration of consecutive 365 days or whose normal place of abode is Nepal or a government employee who has been deputed by the government in a foreign nation are considered residents of Nepal. Dual residence is not r for the purpose of Nepalese tax.

There is no separate provision for taxing the income of short-term visitors. Depending on the length of stay, they will be classified as resident or non-resident and the Nepal sourced income shall be taxed accordingly.

### 1.3.3 TAXATION OF INCOME

Tax is levied on the total income earned or received by an individual less deductions, relief and incentives. Certain categories of income are not included in the total income of an individual but are taxed separately under special regimes, including:

a. The amount obtained by a natural person (other than a private firm) towards the house rental has been excluded from the definition of "Rent" as per section 2 of ITA. Hence, the 10% withholding rate on rental payment does not apply to the house rental payment to natural persons. House rental tax of 10% (in the case of Lalitpur and Kathmandu municipal authority) on payment to a natural person should be deposited in the respective Municipality ward office. However, the rate may differ as per the decision taken by the municipality.
b. Interest on bank deposits of a natural person is taxed separately at source at a flat rate of 5% (final WHT) and of the tax-exempt entity at a flat rate of 15% (final WHT) if payment is made by the resident bank and financial institutions, the company issuing

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debenture, bonds, etc. and it shall also be subject to final withholding as per section 92 of ITA. Interest on deposit up to NRS 25,000 provided by a cooperative based on rural area or listed under section 11(2) shall be exempted from tax. In other cases, interest is taxed at the rate of 15% as per section 88 of ITA.

c. Gain in investment insurance of resident natural persons and from unapproved retirement fund is taxed at a flat rate of 5%. However, gain earned on compensation received due to the death of an individual is exempted from tax.
d. Windfall gains tax is taxed at a rate of 25%. Provided that if any national or international prize up to NRS 500,000 relating to Nepalese culture, arts, literature, etc. shall be exempted from income tax.
e. Returns distributed by a mutual fund to a natural person is taxed at a rate of 5%;
f. Meeting fees are taxed at a rate of 15%. Meeting fee up to NRS 20,000 per meeting shall be final withholding as per section 92.
g. Amount paid to a non-resident person after withholding applicable taxes under remuneration, fees, commission, royalty, interest and under contractual payments are final withholdings; and
h. Dividend received from a resident company and partnership firm is taxed as final tax withholding at a rate of 5% to the resident and non-resident person both.

## 1.3.4 CAPITAL GAINS TAX

Net gain derived in respect of the disposal of shares listed on the stock exchange is subject to tax at the rates of 5% & 7.5%1, 10% and 25% for a resident natural person, resident entity and others, respectively whereas in case of unlisted shares, tax at the rate of 10%, 15% and 25% is applicable for resident natural persons, resident entity and others, respectively.

Net gain derived from the disposal of land and building under the definition criteria of Non-Business Chargeable Asset (NBCA) as per section 2 is subject to tax at the rate of 2.5% if owned for more than 5 years and 5% if owned up to 5 years for a natural person. Net gain on disposal of land and building by persons other than natural persons irrespective of the period of holding is subject to 1.5% WHT by Land Revenue Office.

Note:

1. The tax on capital gains from disposal of shares listed in stock exchange has been revised. Advance tax at the rate of 7.5% shall be applicable on short term capital gain (for shares held up to 365 days) and at the rate of 5% on long term capital gain (for shares held more than 365 days).

## 1.3.5 DIVIDENDS

Dividends received from resident companies and partnership firms are taxed at source at the rate of 5% as final withholding and therefore tax-exempt for both resident and non-resident individuals.

## 1.3.6 EMPLOYMENT INCOME / EMPLOYEE BENEFITS

### GENERAL

Remuneration earned or received from the exercise of employment is taxed as income from employment. Employment income is defined to include:

a) Wages, salary, leave pay, overtime pay, fees, commission, prizes, gifts, bonuses and other facilities;
b) Personal allowances including the cost of living, subsistence, rent, entertainment and transport allowance;
c) Reimbursement of costs;
d) Payment for the agreement to any conditions of employment;
e) Retirement contributions; and
f) Other payments made in respect of the employment.

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### TREATMENT OF RETIREMENT BENEFITS

The actual contribution, one third of the employment income or NRS 300,000 whichever is lower, contributed to the approved retirement fund is deductible as per section 63 of ITA from total assessable income. No deduction is allowed if contributed to an unapproved retirement fund. However, a natural person contributing to the **Social Security Fund (SSF)** will be allowed to deduct an amount at a minimum of the actual amount or 1/3rd of assessable income or NRS 500,000.

Contribution based retirement payments exceeding, 50% of the total sum or NRS 500,000 whichever is higher, received from an approved retirement fund and GoN at the time of separation is taxed at 5%.

In case of retirement payments from an unapproved retirement fund, the gain is taxed at 5%.

The tax law provides for taxation of all non-cash benefits to be valued at market rate however, accommodation and vehicle facilities provided to employees are valued at 2% and 0.5%, respectively of gross remuneration (Basic salary + Grade).

## 1.3.7 DEDUCTIONS

Self-employed individuals can claim all reasonable expenses incurred in acquiring or earning income. Salaried employees are entitled to claim only specified deductions and relief.

## 1.3.8 PERSONAL ALLOWANCES AND REBATES OF TAX

The basic exemption is NRS 450,000 for a couple and NRS 400,000 for an individual. The exemption limit for disabled people is 50% in addition to the aforementioned limit. A rebate of 10% of the tax liability is provided to women (not with couple status and having income from employment only having source in Nepal) on their income from employment. Also, while computing the taxable income from pension, an additional 25% of the amount prescribed under the applicable first tax band shall be included for deduction.

## 1.3.9 TAX RATES

The applicable tax rates for the resident individual of Nepal shall be as follows:

| Tax Banding | Tax Rates for the financial Year 2020-21 | | | |
|---|---|---|---|---|
| Resident | Individual | | Couple | |
| (a) First slab | 400,000 | 1%* | 450,000 | 1%* |
| (b) Second slab | 100,000 | 10% | 100,000 | 10% |
| (c) Third slab | 200,000 | 20% | 200,000 | 20% |
| (d) Fourth slab | 1,300,000 | 30% | 1,250,000 | 30% |
| (e) Balance exceeding NRS 2,000,000 | > 2,000,000 | 36% | > 2,000,000 | 36% |

* First slab shall not be applicable for those individuals who contribute to the Social Security Fund (SSF).

A non-resident person shall be taxed at a flat rate of 25% on the remuneration earned from source in Nepal.

### 1.3.10 TAX ADMINISTRATION

The tax period is the financial year of the government, which is the 12-month period commencing on July 16 and ending on July 15 of the following year *(corresponding to NFY which commences from Shrawan and ends in Ashad)*.

In general, every resident and non-resident individual must file a personal income tax return within 3 months from the end of the NFY of the following year. However, individuals who only have income from employment are not required to file tax returns subject to the condition that the annual remuneration income does not exceed NRS 4 million. An employer must submit annual tax returns for each employee showing total remuneration due or paid permissible deductions and the amount of tax due, deducted and deposited with the IRO.

An employer is obliged to deduct tax at the time of payment of salary and forward the amount withheld to the tax authorities within 25 days from the end of the month of withholding.

## 1.4 INTERNATIONAL TAX

### 1.4.1 DOUBLE TAX RELIEF

Nepal provides relief against international double taxation to residents by granting foreign tax credits. This is restricted to an amount calculated by multiplying the Nepal income tax rate to the income subject to foreign tax. Excess credits can be carried forward and adjusted only against the assessable foreign income.

In addition, double tax relief can be claimed under the provisions of existing DTAs, which Nepal has negotiated with other tax jurisdictions.

An unrelieved foreign source loss can be set off only against foreign source income on a standalone basis per country.

### 1.4.2 TREATY AND NON-TREATY WITHHOLDING TAX RATES

Nepal has entered into double taxation avoidance agreements with 11 countries including India in order to provide relief from the double taxation of income of foreign investors. The tax rates applicable as per the double tax avoidance agreements is as below:

| Countries | Dividend | Interest | Royalty | Service fee |
|---|---|---|---|---|
| **Non-treaty countries** | 5% | 5/15% (NOTE 5) | 15% | 15% |
| **Treaty countries:** | | | | |
| Austria | 5*/10**/15% | At most 15/10% (NOTE 1) | At most 15% | 15% |
| Bangladesh | 10**/15% | At most 10/15% (NOTE 2) | At most 15% | 15% |
| China | At most 10% | At most 10% | At most 15% | 15% |
| India | 5***/10% | At most 10% | At most 15% | 15% |
| Korea | 5*/10**/15% | At most 10% | At most 15% | 15% |
| Mauritius | 5****/10**/15% | At most 10/15% (NOTE 2) | At most 15% | 15% |
| Norway | 5*/10**/15% | At most 15/10% (NOTE 1) | At most 15% | 15% |
| Pakistan | 10**/15% | At most 10/15% (NOTE 2) | At most 15% | 15% |
| Qatar | At most 10% | At most 10% | At most 15% | 15% |
| Sri Lanka | At most 15% | At most 15/10% (NOTE 1) | At most 15% | 15% |
| Thailand | At most 15 (NOTE 3) | At most 10/15% (NOTE 4) | At most 15% | 15% |

*5% if the beneficial owner of shares is a company and it holds at least 25% of shares of the company paying the dividends.

**10% if the beneficial owner of shares is a company and it holds at least 10% of shares of the company paying the dividends.

***5% if the beneficial owner of shares is a company and it holds at least 10% of shares of the company paying the dividends.

****5% if the beneficial owner of shares is a company and it holds at least 15% of shares of the company paying the dividends.

NOTE 1. Interest shall not exceed 10% if interest is paid to a bank, which is a resident of the other Contracting State and is the beneficial owner of the interest.

NOTE 2. Interest shall not exceed 10% if the beneficial owner is a financial institution, an insurance company or an investment company receiving income from financial investments.

NOTE 3. If the beneficial owner of shares is a company and it holds at least 15% of shares of the company paying the dividends.

NOTE 4. 15% of the gross amount of interest if it is received by a financial institution (including insurance companies)

NOTE 5. 5% if paid to a natural person, not related to business, by financial institutions, listed company or entity issuing debentures, on deposit, loans, bonds, or debentures. 15% in all other cases.

## 1.5 WITHHOLDING TAXES

Payments are subject to withholding tax as follows:

A non-resident company carrying on business in Nepal is subject to tax in the same way as a resident company i.e. on income from a source within or deemed to be within Nepal.

| TITLE | DETAIL | RATE |
|---|---|---|
| Dividends | Dividends paid by resident companies and partnership firms shall be withheld to the resident and non-resident person both as final withholdings | 5% |
| Payment to Employees/ Workers | Any amount paid to an employee or worker in lieu of employment is subject to tax withholdings. The annual gross earning of an employee is estimated at the beginning of each fiscal year and estimated tax liability is ascertained. Tax is withheld each month proportionately on taxable income | Rate as per Section 1.3.9 above |
| Contract Payments | Tax shall be withheld on payment made under a contract as per section 89 | 1.5% (If payment made within 10 days and 11 moving days is greater than NRS 50,000)<br>If the payment amount in 10 days with moving 11 days is less than NRS 50,000 then tax shall be exempted |
| Payment of Service Fee | Withholding tax on service payments to VAT registered person<br>*(However, where payments are made through an electronic medium by the consumers under section 25(1kha) of VAT Act 1996 no WHT shall be attracted)* | 1.5% |
| Payment of Service Fee | Payment to non-resident or non-VAT registered person | 15% |
| Payment of Service Fee | The tax withholding rates for services provided under the service contract by a foreign subcontractor shall attract a withholding tax from invoices raised without VAT | 15% |
| Insurance Premium | Insurance premium paid to non-resident insurance companies attracts tax which is construed as final tax withholding | 1.5% |
| Rent | Payment of Rent is subject to withholding tax as per section 88<br>*(However, 1.5% withholding tax shall be applicable on payment to vehicle rental provider registered in VAT)* | 10% |
| Interest | Withholding tax is not required for payment of interest to a resident bank or financial institution. Service charge paid to the bank also meets the definition of interest<br>Withholding tax is not required for payment of interest to the Central Bank or Central and State Governments | No WHT |
| Interest | On payment of interest by resident BFIs on loans availed in foreign currency from foreign banks or other financial institutions to invest in the areas as specified by NRB | 10% |
| Freight Payment | Payment for freight relating to carriage of goods | 2.5% |
| Payment to Consumer Committee | On payment exceeding NRS 5 million made towards the works done through the consumer committee | 1.5% |
| Payment to Foreign College & University | Payment of registration fee, educational fee, or exam fee to foreign colleges and universities | 5% |
| Software & Electronic Facilities | If any person receives payment in foreign currency for providing software and similar other electronic facilities outside Nepal, BFIs and Money Transfer shall deduct TDS | 1% |
| Others | Payments of fees, royalties, commissions, bonus, rent, interest, windfall gains to non-residents after WHT will deemed to be final tax and it will not require the filing of tax returns | 15% |

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| TITLE | DETAIL | RATE |
|---|---|---|
| Withholding at Customs Point | • Custom Banding Category 1 (Live Animals)<br>• Custom Banding Category 3 (Fish and Crustaceans, Molluscs and Other Aquatic Invertebrates)<br>• Custom Banding Category 6 (Live Trees and Other Plants; Bulbs, Roots and The Like; Cut Flowers and Ornamental Foliage)<br>• Custom Banding Category 7 (Edible Vegetables and Certain Roots and Tubers)<br>• Custom Banding Category 8 (Edible Fruit and Nuts; Peel of Citrus Fruit or Melons) | 5% |
| Withholding at Customs Point | • Custom Banding Category 2 (Meat and Edible Meat Offal)<br>• Custom Banding Category 4 (Dairy Produce; Birds' Eggs; Natural Honey; Edible Products of Animal Origin, Not elsewhere specified or included)<br>• Custom Banding Category 10 (Cereals)<br>• Custom Banding Category 11 (Products of The Milling Industry; Malt; Starches; Inulin; Wheat Gluten)<br>• Custom Banding Category 12 (Oil Seeds and Oleaginous Fruits; Miscellaneous Grains, Seeds and Fruit; Industrial or Medicinal Plants; Straw and Fodder)<br>• Custom Banding Category 14 (Vegetable Plaiting Materials; Vegetable Products not elsewhere specified or included) | 2.5% |

## 2. TAX INCENTIVES

### SPECIAL ECONOMIC ZONES

The GoN aims at attracting native and foreign investment by establishing Special Economic Zone (SEZ) in potential places for exportable industries. GoN can prescribe any export processing area, special business area, tourism or entertainment area or any other area of Nepal as a Special Economic Zone (SEZ).

Certain privileges are provided in the SEZ laws, in terms of exemptions, facilities, tax benefits, etc. to industries in SEZ some of which are:

a. Special treatment for goods or services produced in SEZ
b. No nationalisation shall be made
c. Discount on the lease or rent of land or building
d. Exemption from income taxes, value added taxes, excise duty, customs duty and local taxes
e. Selling of raw materials or products to any industries in SEZ by any other industries will be deemed as export and such industries can enjoy facilities available for export
f. The foreign investment may be repatriated
g. Relaxation in visa provisions
h. Use of bonded warehouse
i. Sub-contracting within industries and accelerated rate of depreciation shall be available, along with such other facilities as may be specified by the GoN from time to time.

### INCOME TAX RATES

The tax laws provide various incentives to stimulate industrial growth and development. Following are the key tax incentives, inter alia, designed to attract inward investment:

| INDUSTRY | TAX RATES AND INCENTIVE |
|---|---|
| a. Special industries (mainly manufacturing other than alcoholic & tobacco producing industry) | 20% (Normal Rate) |
| b. Special industries and information technology industries providing direct employment to:<br>• 100 or more Nepalese citizens throughout the year<br>• 300 or more Nepalese citizens throughout the year<br>• 500 or more Nepalese citizens throughout the year<br>• 1000 or more Nepalese citizens throughout the year<br>Note: If among said employees there is involvement of at least 33% of females, Dalits and disabled employees then an additional 10% exemption shall be provided | 90% of normal rate<br>80% of normal rate<br>75% of normal rate<br>70% of normal rate |
| c. Industries established in very undeveloped areas, as defined in Industrial Enterprise Act 2020 | 10% of the normal rate (for 10 years from the year of commercial production) |
| d. Industries established in undeveloped areas, as defined in Industrial Enterprise Act 2020 | 20% of the normal rate (for 10 years from the year of commercial production) |

| INDUSTRY | TAX RATES AND INCENTIVE |
|---|---|
| e. Established in underdeveloped areas, as defined in Industrial Enterprise Act 2020 | 30% of the normal rate (for 10 years from the year of commercial production) |
| f. Special industry and tourism industry (except casino) established with an investment of more than one thousand million rupees and providing direct employment to more than five hundred employees | Full tax exemption for 5 years and 50% rebate in subsequent 3 years |
| g. Industries established in SEZ recognised in mountain areas or hill areas by the GoN | Up to 10 years 100% exempt and 50% rebate in subsequent years |
| h. Industries established in SEZ other than above locations | 100% exempt up to first 5 years and 50% rebate in subsequent years |
| i. Dividend distributed by the industry established in SEZ | 100% exempt for first 5 years and 50% rebate on subsequent 3 years |
| j. Income derived by the foreign investors from investment in SEZ (Source of income-use of foreign technology, management service fee and royalty) | 50% of applicable tax rate |
| k. On capitalisation of accumulated profit through bonus share by Special Industry, Manufacturing Industry, Agro-based industry or industry related with tourism for expansion of capacity of industry | No dividend tax |
| l. Industry related to software development, data processing, cybercafé, digital mapping established in the zoological, geological, biotech park operation and technology park specified by GoN | 50% of normal tax rate |
| m. Institutions licensed to generate, transmit, and distribute electricity shall be allowed if the commercial activities start in terms of electricity generation, generation and transmission, generation and distribution or generation, transmission, distribution before mid-April 2024 and these exemptions shall also be available for solar, wind and other alternative energy companies | 100% exempt up to seven years and 50% rebate on subsequent 3 years |
| n. If a person involved in the exploration and extraction of petroleum, natural gas and fuel starts commercial operation by mid-April 2024 | 100% exempt up to 7 years and 50% rebate in subsequent 3 years |
| o. Income from the export of goods produced by manufacturing industries | 65% of normal tax rate |
| p. Income from investment in tram and trolley bus, ropeway, cable car or sky bridge | 40% exempt on income earned (up to 10 years) |
| q. Income from construction and operation of roads, bridges, airports, railways and tunnels | 50% exempt on income earned (up to 10 years) |
| r. Income of manufacturing Industry, tourism service industry and hydropower generation, distribution and transmission industry listed in the security exchange (i.e. capital market) | 85% of applicable tax rate |
| s. Industries established in remote and underdeveloped areas producing brandy, wine, cider from fruits | 60% and 75% of applicable tax rate up to ten years |
| t. Royalties from the export of intellectual assets by a person | 75% of applicable tax rate |
| u. Income from the sale of intellectual assets by a person through transfer | 50% of applicable tax rate |
| v. Private company with capital of NRS 50 crore or more which conducts its operation by converting into a public company | 90% of applicable tax up to 3 years |
| w. Special industry or industry related to tourism sector if it capitalises its accumulated profit into shares for an increase in capacity of the same industry | Full exemption from dividend tax leviable in the distribution of dividends from such capitalisation |
| x. Domestic tea production and processing industry, dairy industry, garments industry concession of 50% on the normal rate | 50% of applicable tax |
| y. Health institutions operated by the community-based organisation | 80% of applicable tax |
| z. Micro entrepreneurial industry | 100% tax exemption up to 7 years of operation<br>Additional 3 year exemption shall be provided if such industry is operated by women. |
| aa. Income derived from agriculture business by registered firm, company, partnership and organised institutions | 50% rebate on the applicable tax rate |
| bb. Income derived by start-up business as prescribed by IRD having annual turnover of up to NRS 10 million based on innovative knowledge, skills, technology and methods | 100% tax exemption for the first 5 years from the date of commencement of the transaction |
| cc. Income earned from supplying raw materials and subsidiary raw materials manufactured in Nepal to special industries in Nepal | 20% rebate on the applicable tax rate |
| dd. Industries engaged in the manufacture of new products by using already used materials that have a direct impact on the environment as its raw materials | 50% rebate on the applicable tax rate for first 3 years from the date of commencement of transactions and 25% for the next 2 years |

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| INDUSTRY | TAX RATES AND INCENTIVE |
|---|---|
| ee. Establishment or relocation of special industries from area outside industrial area and industrial gram to industrial area and industrial gram | 50% rebate on the applicable tax rate for the first 3 years from the production date after the relocation and 25% rebate for the next 5 years |
| ff. Relocation of special industries from Kathmandu valley to outside valley | 100% exemption shall be provided for 3 years and 50% rebate for the next 2 years from the date of such relocation and operation |

## OTHER TAX INCENTIVES

a) Traditional cottage industries are not subject to income tax and VAT.

b) Dividends received from resident companies are taxed at 5% to resident and non-resident persons, as final tax.

c) Expenditure incurred on R&D and the installation of pollution control equipment or processes is immediately deductible up to 50% of adjusted taxable income from taxable income. The balance is available for deduction through tax depreciation (if qualifying).

d) Persons are allowed a deduction for donations to approved institutions (i.e. educational, religious and social organisations) up to a limit of 5% of their adjusted taxable income not exceeding NRS 100,000.

e) Seed capital up to NRS 100,000 each contributed for up to 5 start-ups not related to the contributor shall be allowed as a deductible expense.

f) No income tax shall be levied on the income of certain cooperatives incorporated under the Cooperative Act 2017 conducting agricultural, forestry and other agriculture-based activities. Similarly, savings and credit cooperatives operating in rural areas will be exempt from income taxes.

g) Dividend distributed by industry in SEZ will be exempt from tax for 5 years from the date of commercial transaction and will be taxed at 50% rebate for 3 years thereafter.

## OTHER INCENTIVES

a) Industries importing plant, machinery and equipment required for direct production process falling under chapter 84 of the harmonised customs classification will attract customs duty at 2.5% only.

b) Industry in SEZ will get full exemption from VAT while importing machinery, equipment, spare parts, and raw materials and up to 3 vehicles. Besides, these industries can avail certain other benefits under VAT Act.

c) No excise duty shall be levied on the goods to be produced by industries in SEZ.

d) Any duties or taxes levied on the raw materials, auxiliary raw materials, etc. used for producing goods for export/deemed export are entitled to get a refund of such duties and taxes based on the quantity of export. The application for this must be submitted within a year of the date of export for duty refund.

e) Export-oriented industries may obtain bonded warehouse facilities. The raw materials for the products of such nature can be imported without paying any customs duty or sales tax by just entering the details of such transactions in a passbook made available by the Department of Customs. The quantity of such raw materials used for manufacturing exportable products is deducted from the quantity entered in the passbook upon export of the finished product. However, the industry must also submit a bank guarantee sufficient to cover the duties. The finished product must be exported within 10 months from the date of import of raw materials. The industry that intends to avail such a facility must apply to the Department of Customs.

f) Sub-contracting within industries and accelerated rate of depreciation shall be available, along with such other facilities as may be specified by the GoN from time to time.

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## FOREIGN TAX RELIEF

A resident person may claim a foreign tax credit for an income-year for any foreign income tax paid by the person to the extent to which it is paid with respect to the person's assessable foreign income for the year.

A person may elect to relinquish a foreign tax credit for the year and claim a deduction for foreign income tax for which the credit is available.

## INDIRECT TAXES

## 3.1 VALUE ADDED TAX

### 3.1.1 INTRODUCTION

Value Added Tax (VAT) is a tax based on goods and services. This tax is levied on the sale, exchange, transfer, import, etc. of all goods and services apart from those specified by the law as tax-exempt. This means that this tax encompasses all types of goods and services produced in or imported into the country apart from those listed as tax-exempt by the law. VAT is considered an improvised form of sales tax. This tax is imposed on different levels of value addition in the production and distribution process of goods and services. In short, the difference between the purchase price and the sales price of any firm is the value added.

In practice, the tax-payer does not have to calculate his value addition for the purpose of VAT. But s/he has to collect VAT on the sales price at the rate specified by the VAT Act and after deducting the VAT paid on purchases from the amount thus collected and s/he has to pay the balance amount as VAT. Under VAT each registered manufacturer and distributor must collect tax on the sales of their goods and services.

### 3.1.2 RATE

VAT is levied at a flat rate of 13%, which is applied to the invoice value. Certain specified goods are outside the scope or exempt from VAT. Exports of both goods and services are taxed at zero %.

### 3.1.3 THRESHOLD

The threshold for compulsory registration under the VAT Act is a turnover exceeding NRS 5 million over the last 12 months in case of goods, and NRS 2 million for services or both services and goods. Exemptions apply *inter alia* to salaried employment, banking and financial services, education and health services, agriculture produce and certain non-profit making activities.

Certain businesses requiring compulsory registration for VAT in earlier years has been removed as from the current FY.

### 3.1.4 REVERSE CHARGE OF VAT

A person, whether registered or not in Nepal, that avails services from a non-resident is required to collect VAT on the value of services availed on a reverse charge system and to deposit the same with the tax authorities. VAT collected shall be permitted for input VAT credit.

Furthermore, according to Section 8(3) of VAT Act, if any person whether registered or not in Nepal is engaged in the construction of commercial buildings, apartments, shopping malls or similar other structures as specified by IRD with a value of more than NRS 5 million, then tax has to be deposited on the construction cost as if it has been constructed from a registered person. Construction should be for business purposes. Business purpose means for sale or for use in income generation.

### 3.1.5 TAX CREDIT

To avoid double taxation, a credit is given for VAT paid on goods and services used for the purpose of making any taxable supply (Input VAT). Credit is also given for VAT paid in respect of certain exempt supplies, e.g. exports. The principal mechanism for collecting the tax requires the taxable supplier to charge VAT on the goods or services supplied (Output VAT) to take credit for VAT paid on business expenditure (Input VAT), and to pay the net tax over to the authorities.

### 3.1.6 TAX REFUND

The excess credit after set off is available for refund if the amount remains unsettled for 4 months. Also, an immediate refund facility is available for industries that export more than 40% of total sales. VAT paid in Nepal by a diplomat of a foreign country to Nepal (as recognised by GoN, Ministry of Foreign Affairs), if the foreign country grants the same on a reciprocal basis, is available for set off under diplomatic refund facility.

Refund of VAT paid on the purchase of goods or services in Nepal by United Nations Organisation, its member organisation and specialised agencies while carrying out the activities as per their objectives if an application for refund is received within 3 years of such procurement.

VAT paid on the purchase of raw materials, auxiliary raw materials and packing material of medicines from domestic industry for manufacturing by medicine industry shall be refunded on a four-monthly basis upon application to the IRD. If an application for VAT refund is received by the tax officer, the refund shall be made within 60 days from the date of application.

VAT withheld and deposited on behalf of the contractors by a government entity (fully or partially owned), public institution, or association for the purchase of goods and services under the contract shall be adjusted against the VAT payable of the contractor. The VAT amount so deposited by the government entity, if there remains an excess after offsetting for a continuous period of 4 months, the contractor at his will shall submit an application for refund to the tax officer.

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### 3.1.7 REQUIREMENTS

VAT registrants are required to:

a) Update their details in the biometric system of Tax Office
b) Submit VAT return and pay tax within the 25th day of the following month
c) Provide their customers with a tax invoice
d) Maintain purchase book, sales book, VAT account
e) Keep their VAT records for a period of 6 years
f) Inform the IRO of changes to the business including new address, telephone number or a reorganisation of a partnership within 15 days.

### 3.1.8 PROCEDURES FOR APPROVAL OF ELECTRONIC BILLING FROM INLAND REVENUE OFFICE

Pursuant to the notice published by IRD on 12 November 2018 under section 14ka (2) and section 81(4) of the VAT Act 1996 and ITA, respectively, it is mandatory for every taxpayer with transactions in excess of NRS 350 million to issue an invoice from computerised billing system which needs to be approved by the respective Inland Revenue Office.

### 3.1.9 OFFENCES

Fines will be imposed if the taxpayer fails to file returns within the specified time. The VAT Act imposes fines for failing to register. Similarly, if a registrant fails to use the registration number or display the registration certificate on the business premises, a fine may be imposed. Other penalties may be imposed if, for example, a registrant fails to file a return, issue invoices, keep an up-to-date account of transactions, obstructs visits by a tax officer in the investigation, prepares false accounts and invoices or attempts to evade tax. Similarly, IRO/IRD may purchase or cause to purchase under invoiced goods.

### 3.1.10 OTHERS

a) In the case of import of service, the point of taxation is earlier of payment or receipt of services.
b) Mandatory VAT registration of entity engaged in transactions of liquors, cigarettes, sanitary, electronics and construction materials in the metropolitan and sub-metropolitan area.
c) Withdrawal of existing system of self-refund of VAT collected from consumers.
d) Withdrawal of existing system of refund of VAT paid on import of mobile sets by the importer in case of sales of such mobile set to VAT registered person.
e) Withdrawal of education service fee and health service tax. Also, withdrawal of existing provision of VAT levied by private hospitals on health services

f) Federal and provincial governments are also required to collect VAT on the sale of vatable goods and services.

g) Exemption in fines to be provided for taxpayers who have not been submitting VAT for a long period and are willing to pay regularly henceforth.

#### 3.1.11 ADMINISTRATIVE REVIEW

A taxpayer who is not satisfied with the tax assessment by the tax office can apply to the DG of IRD for administrative review within 30 days from the time of receiving such a decision. The taxpayer can approach the Revenue Tribunal if he is not satisfied with the IRD's decision.

## 3.2 CUSTOMS DUTIES

### 3.2.1 INTRODUCTION

Customs duties are calculated on transaction value which includes cost, insurance & freight up to the Nepal border on the import of goods. In case there is under invoicing, the customs official can revalue the goods based on current market value and collect customs duties on such amount or purchase the goods at the under invoiced value as it so considers.

Customs Service Fee (CSF) of NRS 500 per declaration form will be charged at the time of import of goods into Nepal. Similarly, CSF of NRS 100 per declaration form will be charged at the time of export of goods from Nepal.

### 3.2.2 RATE

Customs duties range from 0% to 80% on the transaction value depending on the products. Most raw materials fall within the 0% to 10% duty band, whereas finished goods and consumer items fall within the 5% to 30% duty band. Duties at the rate of 80% are levied on only a few items (i.e. motorcar, arms and ammunition and pipe tobacco). In the case of export, there are generally no duties except for certain products, like those originating from forests, certain agricultural products that are in short supply in Nepal or industrial raw materials and minerals.

### 3.2.3 EXIM CODE

Exim code is required to be obtained from the Department of Customs by all importers of goods. The timing for registration of an importer on EXIM code shall be 2-3 days provided that all the documentation is well provided. Exim Code is renewable every year.

### 3.2.4 OTHERS

a. Goods of Indian origin being imported from India can be imported on a concession of 5% on customs duties from 5% up to 30%. But a 3% concession can be obtained on goods for which customs duties are above 30% (where custom duty is levied on value).

b. Resident of Nepal returning from a foreign country can bring gold up to 100 gm after payment of NRS 9,500 per 10 gm up to 50 gm and NRS 10,500 per 10 gm for next 50 gm. Gold in excess of 100 gm shall be seized by the customs office.

c. 5% customs duties shall be levied on urine bags imported on the recommendation of the Ministry of Health and Population.

d. Abatement of 75% on customs duties on the purchase of a bus having seat capacity of 30 or more for community schools. The benefit is available for one bus per community school.

e. 50% rebate on customs duty for fertilized eggs under tariff Sub Heading 0407.11.00 and 0407.19.00 imported by poultry industry for the production of chicks.

f. 50% customs duty rebate on vehicles having only electric stroke engines under heading 87.02, 87.03, 87.04

g. 50% customs duty rebate on machinery for making face mask imported by industry producing face mask under heading 8449.00.10

h. Customs duty is exempted on import of equipment required for the establishment of oxygen industry, import of medicine used in the treatment of COVID19.

i. Exemption from applicable customs duty on import, manufacturing and distribution of oxygen gas, liquid oxygen, oxygen cylinder, oxygen concentrator and other lifesaving equipment and medicine up to 14 January 2022.

j. Waiver of applicable customs duty on import of machinery and their parts to be used in the sector of tea, motion picture, jute, pashmina, hatchery industry & agriculture and nursery farm.

### 3.2.5 MISCELLANEOUS

a. Import of old and used goods are prohibited except for the following:

b. Equipment and machinery under heading 84 up to 5 years old from the date of manufacture required for the operation of the industry. Printing Industry can import old printing machines for up to 10 years.

c. Metal scrap.

d. Parts and accessories of repaired and overhauled Air Planes and Helicopters approved by the Civil Aviation Authority of Nepal or other similar authorised authorities.

e. Old personal belongings imported as per provisions of baggage rules.

f. Old machinery imported under condition of re-export.

## 3.3 EXCISE DUTIES

### 3.3.1 INTRODUCTION

Excise duties are payable on the manufacture of movable goods and also on the import of certain goods. Excise duties are governed and regulated by the Excise Act 2058 (2002) and Excise Regulation 2059 (2003). As provisioned in the law, the excise commodities subject to physical control system are closely controlled and supervised by the GoN from their production to selling stage.

### 3.3.2 LICENCE REQUIRED

No one is allowed to manufacture, import, sell and store excisable goods without obtaining a licence. Likewise, the law prohibits the import of excisable services without having a licence. Person, firm or institutions who need such licence may submit a prescribed application form before excise officer at the concerned IROs.

### 3.3.3 RATE

The rate of excise duty ranges from 0% to 100%. Exports are exempt from excise duty.

### 3.3.4 OTHERS

a. Excise duty is waived on refrigerators, freezers and other refrigerating or freezing equipment, electric or other.
b. In the case of filtered cigarettes, the excise rate has been increased by approximately 25% based on the length of the filter.
c. Excise duty is waived on electro-mechanical domestic appliances such as rice cooker, fans, grinders etc., with self-contained electric motor, other than vacuum cleaners.
d. Excise duty has also been increased on the following items:

| Name of the Item | New Rate (NRS) | Old Rate (NRS) |
|---|---|---|
| Sakhhar (Gud) | 138/100 kg | 125/100 kg |
| Molasses resulting from the extraction of refining of sugarcane molasses | 96/100 kg | 80/100 kg |
| Pan Masala without tobacco | 812/kg | 650/kg |
| Kurkure, kurmure, lays & similar goods | 281/kg | 225/kg |
| Non-alcoholic beer | 20/ltr | 17/ltr |
| Beer made from malt | 198/ltr | 165/ltr |
| Cigars, cheroots and cigarillos containing tobacco | 21/khilli | 17/khilli |
| Cut tobacco, dust tobacco not for retail sale | 418/kg | 335/kg |

### 3.3.5 ADMINISTRATIVE REVIEW

Provision is made for an administrative review at IRD if the decision made by the excise officer is not acceptable to the taxpayer. In such a case, the taxpayer has to submit an appeal to DG of IRD within 30 days from the date of receipt of the decision made by the excise officer. The taxpayer has to deposit 100% of undisputed tax and one fourth of the disputed tax while applying for administrative review. A taxpayer can approach the Revenue Tribunal if he is not satisfied with the IRD decision.

## 3.4 PROPERTY TAX

Property taxes are levied as per Section 55 of the Local Government Operation Act 2074 (2017) and is calculated on the real property (land and building) based on municipal valuation of the land and the cost of the building (plinth area) at a fixed rate for the type of structure. The type of the land, building, market value of the land and depreciable cost of the building and the use for commercial or residential purpose is considered when determining the value of the property.

For the purpose of property tax, the land means the building and the area of land on which the building is constructed, or 5,476 sq. ft. land, whichever is lower.

## 3.5 LAND REVENUE

Land revenue is levied by the Municipality on the land on which property tax has not already been levied as per section 55 of the Local Government Operation Act 2074 (2017).



# NETHERLANDS

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Amsterdam | Eelco van der Vijver | +31 6 82 9009 64<br>eelco.van.der.vijver@pkf.nl |
| Rotterdam | Ruud van der Linde | +31 15 260 61 10<br>ruud.van.der.linde@pkf.nl |

## BASIC FACTS

| | |
|---|---|
| Full name: | The Kingdom of the Netherlands |
| Capital: | Amsterdam; Seat of Government: The Hague |
| Main languages: | Dutch |
| Population: | 17.59 million (2022 estimate) |
| Monetary unit: | 1 Euro (EUR) = 100 cents |
| Internet domain: | .nl |
| Int. dialling code: | +31 |

## KEY TAX POINTS

- Corporate income tax is payable by residents and non-residents at progressive tax rates.
- There is no special tax rate for capital gains, but gains and losses are included in the company's taxable base.
- There is withholding tax on dividends. As from 1 January 2021 there is also a (conditional) withholding tax on interest and royalties.
- Under the participation exemption, dividends and capital gains arising on qualifying shareholdings by a Dutch parent company are free from corporate income tax.
- The Netherlands operates an extensive treaty network.
- The Netherlands has transposed the ATAD1 and ATAD2 rules into its domestic tax law.
- Dutch entities engaged in so-called back-to-back financing and/or licensing activities are subject to specific Dutch substance requirements.
- The Netherlands has adopted the Danish cases into its anti-abuse legislation, thereby imposing substance requirements on foreign shareholding entities, e.g. in the Corporate Income Tax Act, Dividend Withholding Tax Act and Conditional Withholding Tax Act.
- Subject to certain conditions, group companies (parent and subsidiary, but subject to certain conditions also more indirect situations) may form a 'fiscal unity' (group consolidation).
- Companies and individuals are subject to a municipal tax on the ownership of real estate in the Netherlands, based on market value. Purchasers of real estate in the Netherlands are generally liable to real estate transfer tax.
- Individuals resident in The Netherlands are subject to personal income tax on their worldwide income. A credit is generally available for foreign taxes on foreign-sourced income either under double tax treaties or under Dutch unilateral rules. Non-residents are liable for personal income tax only on income derived from a limited number of Dutch sources
- Gift tax (on gifts received from a Dutch resident) and inheritance tax are payable by a person receiving a donation or the inheritance respectively. The rates are the same for both taxes and depend of the value of what is received and the degree of relationship.
- A special exemption may apply for the transfer of business assets due to inheritance or donation.

## A. TAXES PAYABLE

### COMPANY TAX

Corporate tax is payable by corporations in the Netherlands (resident taxpayers) and by certain corporations not established in the Netherlands that receive income from sources in the Netherlands (non-resident taxpayers). The term corporation includes companies whose capital consists of shares, co-operatives and other legal entities which conduct business.

The main types of corporations as referred to in the Corporate Income Tax Act are the joint stock company with limited liability (NV) and the closed company with limited liability (BV). Whether a corporation is resident in the Netherlands depends on the facts and circumstances. Relevant factors include the location of the effective management, the head office and the place where the general meeting of shareholders is held. Under the Corporate Tax Act, all corporations incorporated under Dutch law are resident in The Netherlands. However, this unilateral tax residency may be overruled by a tax treaty.



The corporate tax rates for 2021 are:

- Taxable profit up to and including EUR 395,000 = 15%; and
- Taxable profit above EUR 395,000 = 25.8%.

Note that the different rates apply to bands of income rather than to the profit of the company as a whole. A company with a taxable profit of EUR 400,000 would be taxed at 15% on the first EUR 395,000 and 25.8% on EUR 5,000. Taxpayers are obliged to file a tax return every year within five months following the end of the year concerned. An extension of this time limit may be permitted. Tax is payable within two months upon receipt of an assessment. A provisional assessment for the current year may be raised to lower or prevent up to 8% of Dutch tax interest on the net corporate tax payable.

### CAPITAL GAINS TAX

There is no special tax rate for capital gains but gains and losses are included in the company's general taxable income.

### BRANCH PROFITS TAX

Dutch source income of non-resident companies is taxed at the same rates as applicable to resident companies. There is no additional branch profit tax.

### VALUE ADDED TAX (VAT)

Value added tax (VAT) is a general consumer tax included in the price paid by consumers for goods and services. Consumers pay this tax indirectly and VAT entrepreneurs remit it to the tax department. Based on EU Directives, the general types of taxable activities are:

- The supply of goods;
- The rendering of services;
- The acquisition of goods by entrepreneurs;
- The importation of goods.

There are three rates of VAT:

- The standard rate is 21%;
- A reduced rate of 9%, which mainly applies to food, books, newspapers and drugs;
- The zero rate, which is mainly applied to goods and services involved in international trade, so that goods can be exported free of VAT.

The period to which VAT tax returns relate may be a month, a quarter of a year or a whole year. A quarterly VAT tax return is standard. The tax return must be submitted within a month of the end of the period to which it relates. The tax owed must also be paid within this period. Excise Duty is levied on certain consumer goods, including petrol and other mineral oils, tobacco products, alcohol, alcoholic beverages and non-alcoholic beverages. Like VAT, excise duty is included in the price paid by consumers for these goods. The tax is remitted by the manufacturers and importers of the goods concerned.

The basic rule for the place of service for services to businesses (B2B services), in principle, is deemed to be where the customer resides or is established. For services to consumers (B2C services), the basic rule is that VAT is levied in the country in which the supplier is established. However, for e-commerce services VAT is levied in the country in which the consumer is resident. The reverse charge mechanism is obligatory for VAT on cross-border services within the EU. EU listings for services provided intra-community must be completed. The rules provide a simplified procedure for reclaiming EU VAT for business established within the EU. In principle, these claims are filed with the business' own national tax authorities.

## FRINGE BENEFITS TAX

Bonuses to employees are taxed at the progressive income tax rates (specific rules do apply however, so please contact us directly for specific guidance). Another method of rewarding employees is to give them options instead of shares in the company. Options are taxed when exercised or sold on the difference between the market value and the option purchase price at normal tax rates. If a Dutch company issues options and/or shares, the costs are deemed to be non-deductible from the taxable income of the company (subject to certain exceptions).

## LOCAL TAXES

There are several municipal taxes of which real estate tax is the most important. Companies and individuals are subject to a municipal tax on the ownership and the use of real estate in The Netherlands, based on the market value of the property. The amount of tax due varies widely among municipalities but is generally a comparatively small percentage of value or income of the property in question. There are no local income taxes in The Netherlands.

## OTHER TAXES

The Netherlands does not levy capital tax on the issuance of share capital. An 8% transfer tax is levied on the acquisition of real estate situated in The Netherlands and rights related to Dutch real estate. For residences, a reduced rate of 2% applies, provided that the acquirer will reside in the property . There is an exemption for real estate purchasers between age 18 and 35, subject to certain conditions. It must be their first purchased real estate and it must be their residency. As from April 2021, the real estate also must be valued under EUR 400,000.

Transfer tax is also levied on the transfer of shares in a so-called qualifying real estate company and if the shareholding reaches a certain threshold. A double asset threshold will have to be met in order to qualify as a real estate company: owning more than 50% real estate (foreign and Dutch) and at the same time owning 30% or more Dutch real estate. Furthermore, 70% of the total real estate (Dutch and foreign) of the company has to be used in the "real estate business". Besides broadening the scope regarding qualifying companies, additional measures have been introduced to catch arrangements that would previously have escaped the transfer tax, such as by linking associated transactions. The purchaser is liable for this tax.



## B. DETERMINATION OF TAXABLE INCOME

Corporate tax is levied on the taxable amount. This is taxable profit received in a year minus deductible costs and losses. As of 2022 the carry-forward period changed. Please see further below in the section "Losses" for an elaboration.

The taxable profit is also reduced by extra allowances such as investment allowances.

## INVESTMENT ALLOWANCE

Dutch law provides that investments in qualifying fixed assets generate a deduction from taxable profits. For the 2022 tax year, the deduction is only available in respect of qualifying investments of between EUR 2,400 and EUR 332,994. The deduction is calculated as a percentage of up to 28% of the investment.

Higher investment allowances are permitted for energy investments (i.e. investments which are energy efficient). The investment deduction does not reduce the costs of the assets for tax depreciation purposes. The investment deduction is subject to repayment if assets are disposed of within a certain period of time.

## INNOVATION BOX

The innovation box is a corporate tax incentive introduced to promote innovative technology development activities and investments in new technologies. A number of conditions must be fulfilled in order to qualify.

A Dutch taxpayer has to be the owner of intellectual property which needs to be developed in-house. R&D contracting, i.e. outsourcing parts of R&D projects to other companies, is possible although not unlimited because at least a (qualitatively) substantial part of the R&D project management needs to be performed by the taxpayer in the Netherlands. In case of outsourcing of over 30% of a project to foreign group companies, the innovation box benefits could be limited. Since 2017 it is also mandatory to show an R&D-certificate covering the R&D process resulting in these IP rights. R&D-certificates are granted by RVO (a Dutch government agency) only when an R&D project has been tested as sufficiently innovative. (Note: R&D-certificates also provide for wage tax subsidy based on the amount of R&D hours and -costs per project).

Larger companies (>EUR 50 million annual revenue) also need additional IP protection such as a patent in order to apply for the innovation box, except when the IP is related to software. Profits in connection with this specific IP are eligible for innovation box benefits (qualifying profits). Methods to determine which part of the taxable annual profit this relates to is to be pre-discussed/negotiated with the Dutch Tax Authorities and laid down in a tax ruling. Qualifying profits are effectively only taxed at a 9% corporate income tax rate, instead of the general corporate income tax rate. Losses on innovative activities may be deducted at the standard rate.

## DEPRECIATION

In general, fixed assets can be depreciated. Dutch tax law includes specific rules that potentially limit the depreciation of assets (e.g. real estate, goodwill, and other fixed assets). Tax depreciation on real estate is limited so that the tax written down value cannot drop below certain thresholds. In practice this will mean that depreciation of real estate used for investment purposes cannot be depreciated below its value for the purposes of the Valuation of Immovable Property Act (known as WOZ-value).

Depreciation of purchased goodwill is limited to a maximum charge of 10% per annum. The general depreciation period of all other assets (such as cars, computers etc.) is limited to a maximum charge of 20% per annum. Certain business assets, not including business assets that are leased out, can be depreciated in an arbitrary manner.

## STOCK / INVENTORY

The following stock valuation methods are permitted: valuation based on cost, valuation based on cost or market value (whichever is lower), or the base stock method. The cost of the stock can be determined by either the FIFO or the LIFO method.

## CAPITAL GAINS AND LOSSES

Capital gains or losses are assessed as normal corporate income and taxed accordingly.

## DIVIDENDS

Dividends are assessed as normal income and taxed accordingly. Dividends qualifying for the participation exemption are tax exempt from the taxable income for corporate tax purposes. For Dutch residents, withholding tax can normally be subtracted from the total (personal or corporate) income tax to be paid. Foreign dividend withholding tax on dividends which are tax exempt under the Dutch participation exemption cannot be offset against corporate tax payable.

## INTEREST DEDUCTIONS

Under current law the following is applicable. Interest is generally deductible. However, when paid to shareholders or related parties or, in case of acquisition holdings and, in case of excessive interest, limitations may apply. Limitation on the deductibility of inter-company interest, inter alia, affects interest paid on debts arising from:

a) Dividends and capital repayments declared but unpaid;
b) Dividends and capital repayments declared and paid when financed through an inter-company loan;
c) The acquisition of the shares of a company from a group company through an inter-company loan. The interest deduction is not denied if the taxpayer demonstrates either an overriding business reason for the transaction or the interest received by the Dutch or foreign creditor is subject to tax at a rate which is reasonable by Dutch standards (“compensatory tax requirement”);
d) Deduction limitation for excessive interest (earnings stripping based on ATAD1). The rules, based on the first EU Anti-Tax Avoidance Directive, disallow the deduction of interest costs exceeding 20% of fiscal EBITDA. However, the first EUR 1,000,000 of interest is always deductible. In case part of the interest is not deductible under this rule, this amount can be carried forward to the following year.

## LOSSES

Before 2022, losses were offset against taxable profits of the preceding year and carried forward for a period of up to six years. The options for setting off losses for holding companies are limited.

As from 2022 the six-year restriction no longer exists. It is possible to offset losses against taxable profits of the preceding year and carry them forward for an unlimited period of time. However, the losses are only 50% deductible if the taxable profit in a year exceeds EUR 1,000,000. This means that losses up to an amount of EUR 1,000,000 will always be fully deductible. If the taxable profit exceeds EUR 1,000,000 EUR, the amount of losses exceeding 1,000,000 EUR will only be 50% deductible.

Grandfathering rules determine that the new regime will apply to all losses that can still be carried forward as of 1 January 2022. This means that the new regime will apply to all losses that can still be offset from 2013 and subsequent years. The 2011 loss will evaporate at the end of 2020 and the 2012 loss will therefore evaporate at the end of 2021.

## FOREIGN SOURCE INCOME

The following applies to profits and losses of foreign permanent establishments (PE):

- An object exemption for (active) foreign PEs, which removes the positive and negative results of the PE from the Dutch taxpayer’s tax base and therefore aligns the taxation of foreign PEs more closely with foreign exempt participations;
- A tax credit for foreign low-taxed passive Pes, which is applicable if the activities of the foreign PE consist primarily of passive investing or leasing and the profit of the foreign PE is not subject to a reasonable rate of taxation, (i.e. a tax rate generally of at least 10%); and
- A measure to allow the final liquidation losses of a PE from the Dutch taxable profit.

## TAX INCENTIVES

Tax incentives are offered towards the cost of education and training projects, improvements in working conditions and research projects. Tax incentives are also applicable to companies investing in specified locations or developing new ideas, processes or products. Beneficial tax rules are applicable to investments by individuals in companies that invest in environmentally friendly projects.

## PARTICIPATION EXEMPTION

The Dutch participation exemption provides for an exemption from corporate tax on dividends and capital gains arising in respect of (domestic or foreign) shareholdings owned by a Dutch parent company. Capital losses and acquisition and disposal costs are not deductible, except for a capital loss arising upon liquidation* of the participation. In general, a Dutch entity can benefit from the participation exemption if it holds at least 5% of the nominal paid-up capital of another company and one of the three below-mentioned tests is met:

a) The subsidiary is not held as a (deemed) portfolio investment (“Motive test”). This motive test should be met if the subsidiary is not merely held with the purpose to generate a return that can be expected from normal asset management; or

b) The subsidiary is subject to a profit tax resulting in a taxation that is reasonable according to Dutch standards ("Tax test"); or
c) The aggregated assets of the subsidiary consist of non-portfolio assets or of portfolio investment assets for more than 50% of which the proceeds are taxed at a reasonable tax rate according to Dutch standards ("Asset test"). For purposes of the asset test, real estate assets are deemed to be non-portfolio assets.

In case the applicability of the participation is based on the tax test or asset test, the subsidiary is considered to be a so called "qualifying portfolio investment". As of 1 January 2016 anti-hybrid rules are implemented via the participation exemption. The anti-hybrid rules aim to prevent double-non-taxation through the use of hybrid financing. The rules are however not limited to hybrid loans only. The participation exemption is no longer applicable to payments, or other forms of remuneration, received from a subsidiary to the extent that these payments are, legally or de facto, directly or indirectly, deductible for corporate income tax purposes in the payer's country. The rule applies to payments that are actually deducted and to payments that are, by their nature, deductible even if these payments are limited due to anti-abuse legislation. There are no grandfathering rules for existing financing arrangements. As of 1 January 2019, additional CFC-rules have been introduced as part of the implementation of the first EU Anti-Tax Avoidance Directive.

*The deduction of losses because of a liquidation of a participation will be limited as from 2021 in three cases:

1) When there is no decisive control, which is the case with a participation of less than or equal to 50%.
2) Deduction is limited to only liquidation losses of subsidiaries in the EU or EER.

   These two cases have a minimum amount of EUR 5,000,000.

3) The liquidation losses are only deductible if the liquidation was completed within three years of the year in which the dissolved company ceased (almost entirely) or, if it was earlier, the decision was taken. Should this three-year period be exceeded, then the losses may nevertheless be taken into account if the longer period of time for the liquidation is due to business reasons. However, the taxpayer will need to prove this. In this case there is no minimum amount.

Moreover, a transitional arrangement has been provided for the case in which the company is discontinued before 1 January 2021, or if the decision to liquidate was taken prior to this date, then the liquidation losses may be deductible if the liquidation takes place no later than 31 December 2023.

## C. FOREIGN TAX RELIEF

A resident company is taxed on its worldwide income. Certain types of foreign sourced income (for instance income derived from foreign real estate) are exempt from tax, either unilaterally or pursuant to treaty provisions. The exemption is calculated as a pro rata reduction of the amounts of tax computed on worldwide income. For the rules concerning the treatment of foreign permanent establishments see above under foreign source income. Other types of foreign income are normally fully taxable in the Netherlands but a credit for foreign tax may be granted under various tax treaties or, unilaterally, with respect to dividends, royalties and interest derived from certain developing countries.

## D. CORPORATE GROUPS

Subject to certain conditions, a parent company may form a 'fiscal unity' with one or more of its subsidiaries. For the purpose of corporation tax, this means that all the companies in the fiscal unity are taxed as one. The main conditions are as follows:

- The parent company must own (directly or indirectly) at least 95% of the shares of the Dutch subsidiary (95% of the voting rights and 95% of the profit rights);
- The parent company and the subsidiaries must have the same fiscal year;
- Creation and dissolution of the fiscal unity can take place at any moment within the year;
- A fiscal unity with a company which is established under the laws of a foreign country but having its place of effective management in The Netherlands is possible. A fiscal unity with a non-resident company carrying on a trade through a permanent establishment in The Netherlands is also possible;
- Following recent case law, the scope of the fiscal unity legislation has broadened. For example based on this case law it is now also possible to form a fiscal unity between Dutch sister companies owned by an EU/EEA parent or between a Dutch parent and its indirect Dutch subsidiary held via an EU/EEA intermediate company.

The main advantages of a fiscal unity are that the losses of one company can be set off against profits from another, that fixed assets can be transferred at book value from one company to another (subject to an anti-abuse provision) and that only one tax return has to be filed. Nevertheless, due to a conflict with EU law, as of 25 October 2017 new Dutch anti-abuse legislation has been announced which effectively disregards the Dutch fiscal unity when applying other Dutch corporate tax anti-abuse legislation.

As a result possibilities for a new fiscal unity are being examined. It is expected that a form of profit pooling will eventually replace the fiscal unity regime.

## E. RELATED PARTY TRANSACTIONS

Transactions between related parties that are not concluded at arm's length basis may be disregarded or may be adjusted appropriately for Dutch tax purposes. As of 1 January 2016 The Netherlands implemented supplementary transfer pricing documentation requirements in line with the OECD's BEPS Action Plan 13. In line with this the Netherlands implemented the standardized three-tiered approach for transfer pricing documentation consisting of the Country-by-Country report (group turnover in excess of EUR 750 million), the master file and the local file (group turnover in excess of EUR 50 million) and non-standardised transfer pricing documentation (group turnover below EUR 50 million). The requirements are applicable for fiscal years starting on or after 1 January 2016. The Netherlands also accepts documentation drawn up in English.

## F. WITHHOLDING TAX

### Interest and royalty

Interest and royalty payments to affiliated entities in low-tax jurisdictions are subject to withholding tax. Interest and royalty payments will also be subject to withholding tax in case of abuse. A structure or transaction artificially created with the main purpose to avoid Dutch withholding tax is considered a tax abuse situation. In order to – further – prevent that the Netherlands is used as a tax haven, there are no exceptions for cases with a 'real economic presence'.

The withholding tax rate for interest and royalties is 25.8 % or a reduced rate based on the applicable tax treaty. The tax will be withheld from the Dutch entity that makes the interest or royalty payments, but the tax inspector may issue an additional tax assessment to the recipient of the payment if the tax is not correctly levied.

**Dividends**

Dividends distributed by a Dutch resident entity with a capital divided into shares (note that certain other legal forms are treated similarly under the Dutch dividend withholding tax Act) are generally subject to 15% withholding tax.

Several exemptions may apply to the main rule, most of those flanked by specific anti-abuse rules. Should you need specific guidance on the application of the Dutch dividend withholding tax application, please contact us directly.

**Additional withholding tax on dividends 2024**

In 2021, the Dutch government introduced a new legislative proposal for an additional withholding tax on dividends flowing to low-tax countries which are listed as uncooperative tax-jurisdictions. In case too little, which means under 9%, or no tax at all is levied, the Netherlands will withhold tax on those dividend payments. The proposed withholding tax will be in addition to the Withholding Tax Act 2021. It is therefore expected that there will be two types of withholding tax on dividends as per 2024. The Dutch government aims to prevent financial flows through the Netherlands to other (low-tax) countries without being properly taxed.

## G. EXCHANGE CONTROL

There are no exchange controls currently in force in The Netherlands.

## H. PERSONAL TAX

Individuals resident in The Netherlands are subject to personal income tax on their worldwide income. Foreign taxes on foreign-sourced income are normally relieved, either under double tax treaties or under Dutch unilateral rules (if this is a designated developing country). Non-residents are liable for personal income tax only on income derived from a limited number of Dutch domestic sources such as income received for duties performed within The Netherlands and income from Dutch real estate. The residence of an individual is determined by actual circumstances. One of the most relevant considerations is whether the individual has his most permanent personal and/or economic ties within The Netherlands.

Income tax is a tax on the annual income of individuals which is levied at progressive rates. Personal circumstances are, however, taken into account and certain expenses are deductible. There is a personal allowance (by tax credits) dependent on individual circumstances. The Netherlands has a system of personal income tax known as the 'box system' which works as follows:

- There are three boxes of income each with its own tax rate, one of which is progressive (Box 1) and two of which are fixed (Boxes 2 and 3);
- If the income in a box is negative, it cannot be offset against positive income in another box;
- There is only one exemption to this rule. In very special circumstances, losses of Box 2 can be offset against positive income of Box 1.

The boxes are:

- Box 1: Taxable income from work and home (the main residence only);
- Box 2: Taxable income from substantial interests in companies (usually BV or NV);
- Box 3: Income from savings and investment.

**Box 1:** The taxable income which will be taxed in Box 1 includes business income, income from employment or former employment (pension), income derived from certain periodic payments, income from other activities and income from a person's main home. This income is reduced by a number of deductible items which, broadly speaking, are associated with this income. An important one is the interest paid on a mortgage for a main home. The interest on mortgage loans entered into as of 2013 will only be tax deductible if the loan is fully repaid within 30 years at least on an annuity basis. Loans entered into before 1 January 2013 will be grandfathered. The tax rates in Box 1 for 2022 are:

| Taxable income (EUR) | Under AOW-age[1] | Above AOW-age |
|---|---|---|
| 0 – 35,472[2] | 37.07% | 19.17% |
| 35,473 – 69,399[3] | 37.07% | 37.07% |
| Over 69,399 | 49.50% | 49.50% |

Notes:

1. Pension age according to the General Old Age Pensions Act.
2. For individuals born before 1 January 1946 the first bracket is 0 – 36,409.
3. For individuals born before 1 January 1946 the second bracket is 36,410 – 69,399.

If an individual leases a property to a company or equivalent in which he or she has a substantial interest (see hereinafter), the resulting income and capital gains on that property are also taxed in Box 1.

Personal allowances such as, for instance, pension premiums are generally tax deductible.

**Box 2:** The income from substantial interests is classified in this box. An individual who holds 5% or more of the shares (or profit-sharing certificates) of a private company with limited liability (BV) or a company limited by shares (NV) (or any equivalents) is considered to have a substantial interest. To determine whether an individual has a substantial interest, the shares of his partner, relatives or relatives by marriage are taken into consideration as well. Not only is income on the shares but also profits from the sale of such shares taxed in Box 2. As of 1 January 2022 the tax rate will be 26.9%.

**Box 3:** Income from savings and investments is taxed in this box and applies to both residents and non–residents. This box includes assets like investment portfolios, saving accounts and real estate (except the main residence which is classified in Box 1). Income from assets in this box was fixed at 4% of the total net value (assets minus liabilities) at 1 January of the fiscal year.

The rates are adjusted at the beginning of every tax year. The fixed tax rate for 2021 is 31%, with deemed yields varying up to 5.5% (depending on the net assets). The tax free allowance of 50,650 EUR is for one person and 101,300 EUR in case of tax partners.

Please note that the Supreme Court has recently ruled that this method of taxation is incorrect. As a result, the Dutch legislator is currently developing an alternative system which will in any case be in force from 1 January 2022.

There are no local income taxes. A withholding tax (called 'wage tax') is levied on employment income. The rate of the wage tax equals the Box 1 personal income tax.

## THE 30% RULING

In The Netherlands there are special conditions for certain foreign employees who work for an employer who is obliged to withhold Dutch wage tax for a maximum of five years (this used to be eight years until 31 December 2018; in this regard, there is a transitional arrangement in place until 31 December 2020). They can obtain a 30% tax free allowance for extra territorial costs provided they have a special knowledge or capability which is not, or is rarely, available on the Dutch domestic job market. As of 2012 the "specific knowledge" criterion in principle is fulfilled if a minimum salary requirement is met. Some other restrictions have been introduced, such that the 30% ruling no longer applies for people living in a radius of 150 km from the Dutch borders. (In February 2015 the EU Court of Justice ruled that the 150 km requirement in the 30% ruling in principle is not against the freedom of movement within the EU.)

## SHORT STAY IN THE NETHERLANDS

Based on a resolution of 12 January 2010 of the Secretary of Finance for employees who work within a worldwide group and are sent to The Netherlands for less than 60 days over a 12 month period, no Dutch taxes are levied under certain conditions.

## INHERITANCE TAX

An inheritance and gift tax apply in the Netherlands. In general, these taxes are payable by the person receiving a gift or an inheritance (from a person who lived in the Netherlands at the date of death or the gift, for up to ten years before). The rates are the same for both taxes and depend on the value of what is received and the degree of the relationship. There is a minimum rate of 10% and a maximum rate of 40%.

There are several exemptions for both gift tax and inheritance tax depending on the circumstances.

A special exemption applies to the transfer of business assets due to inheritance or gift. This exemption applies to the total value of the business assets up to EUR 1,134,403 (2022), and 83% of the value exceeding EUR 1,134,403. The exemption applies per business, not per beneficiary.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The Netherlands levies withholding taxes on (payments that qualify as) dividends, interest and royalties as of 2022.

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 15[1] | 0[2] | 0/15/25[3] | 25.8 |
| Individuals | 15 | -- | 0/15/25 | 25.8 |
| **Treaty countries:** | | | | |
| Albania | 15 | 0/5[5] | 0/5/10 | 10 |
| Algeria | 15 | 5[4] | 0/8 | 5/15 |
| Argentina | 15 | 10[6] | 0/12 | 3/5/10/15 |
| Armenia | 15 | 0/5[7] | 0/5 | 5 |
| Aruba | 15 | 5/7.5[8] | 0 | 0 |
| Australia | 15 | 15 | 10 | 10 |
| Austria | 15 | 5[9] | 0 | 0/10 |
| Azerbaijan | 10 | 5[10] | 0/10 | 5/10 |
| Bahrain | 10 | 0[11] | 0 | 0 |
| Bangladesh | 15 | 10[12] | 7.5/10 | 10 |
| Barbados | 15 | 0[13] | 5 | 0/5 |
| Belarus | 15 | 0/5[14] | 5 | 3/5/10 |
| Belgium | 15 | 0/5[15] | 0/10 | 0 |
| BES islands[58] | 15 | 0[57] | 0 | 0 |
| Bosnia and Herzegovina | 15 | 5[16] | 0 | 10 |
| Brazil | 15 | 15 | 10/15 | 15/25 |
| Bulgaria | 15 | 5[16] | 0 | 0 |
| Canada | 15 | 5[17] | 0/10 | 0/10 |
| China | 10 | 0[18]/5[16] | 10 | 6/10 |
| Croatia | 15 | 0[11] | 0 | 0 |
| Curaçao | 15 | 0[19]/15 | 0 | 0 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Czech Republic | 10 | 0[20] | 0 | 5 |
| Denmark | 15 | 0[11] | 0 | 0 |
| Egypt | 15 | 0[20] | 12 | 12 |
| Estonia | 15 | 5[16] | 0/10 | 0/5/10 |
| Ethiopia | 5/15 | 5/10/15[21] | 5 | 5 |
| Finland | 15 | 0[22] | 0 | 0 |
| France | 15 | 5[16] | 0/10 | 0 |
| Georgia | 15 | 0/5[23] | 0 | 0 |
| Germany | 15 | 5[15] | 0 | 0 |
| Ghana | 10 | 5[15] | 0/8 | 8 |
| Greece | 15 | 5[16] | 8/10 | 5/7 |
| Hong Kong | 10 | 0[24] | 0 | 3 |
| Hungary | 15 | 5[16] | 0 | 0 |
| Iceland | 15 | 0[11] | 0 | 0 |
| India | 15 | 5/10/15[25] | 10/15 | 10/20 |
| Indonesia | 15 | 5[16]/10[26] | 5/10 | 10 |
| Iraq[56] | 15 | 0[39] | 5 | 7.5 |
| Ireland[55] | 15 | 0[27] | 0 | 0 |
| Israel | 15 | 5[37] | 10/15 | 5/10 |
| Italy | 15 | 5/10[28] | 10 | 5 |
| Japan | 10 | 0/5[29] | 0/10 | 0 |
| Jordan | 15 | 0[30]/5[15] | 5 | 10 |
| Kazakhstan | 15 | 0/5[31] | 0/10 | 10 |
| Korea | 15 | 10[6] | 10/15 | 10/15 |
| Kosovo | 15 | 5[16] | 0 | 10 |
| Kuwait | 10 | 0[11] | 0 | 5 |
| Latvia | 15 | 5[16] | 10 | 0/5/10 |
| Lithuania | 15 | 5[16] | 10 | 5/10 |
| Luxembourg | 15 | 2.5[32] | 0/2.5/15 | 0 |
| Malaysia | 15 | 0[33] | 10 | 8 |
| Malta | 15 | 5[16] | 10 | 0/10 |
| Mexico | 15 | 0/5[34] | 0/5/10 | 10 |
| Moldova | 15 | 0[35]/5[16] | 0/5 | 2 |
| Montenegro | 15 | 5[16] | 0 | 10 |
| Morocco | 25 | 10[36] | 10/25 | 10 |
| New Zealand | 15 | 15 | 10 | 10 |
| Nigeria | 15 | 12.5[38] | 12.5 | 12.5 |
| North Macedonia | 15 | 0[11] | 0 | 0 |
| Norway | 15 | 0[39] | 0 | 0 |
| Oman | 10 | 0[11] | 0 | 8 |
| Pakistan | 20 | 10[6] | 10/15/20 | 5/15 |
| Panama | 15 | 0[40] | 0/5 | 5 |
| Philippines | 15 | 10[12] | 0/10/15 | 15 |
| Poland | 15 | 5[15] | 0/5 | 5 |
| Portugal | 10 | 0[15] | 10 | 10 |
| Qatar | 10 | 0[41] | 0 | 5 |
| Romania | 15 | 0[20]/5[15] | 0 | 0 |
| Russia | 15 | 5[42] | 0 | 0 |
| Saudi Arabia | 10 | 5[15] | 5 | 7 |
| Serbia | 15 | 5[16] | 0 | 10 |
| Singapore | 15 | 0[33] | 10 | 0 |

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| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Slovak Republic | 10 | 0[20] | 0 | 5 |
| Slovenia | 15 | 5[15] | 0/5 | 5 |
| South Africa | 0/10 | 0/5/10[43] | 0 | 0 |
| Spain | 15 | 5[44] | 10 | 6 |
| Sri Lanka | 15 | 10[6] | 5/10 | 10 |
| St. Maarten | 15 | 0[11, 30] | 0 | 0 |
| Suriname | 20 | 7.5/15[45] | 5/10 | 5/10 |
| Sweden | 15 | 0[20] | 0 | 0 |
| Switzerland | 15 | 0[11, 30] | 0 | 0 |
| Taiwan | 10 | 10 | 0/10 | 10 |
| Thailand | 25 | 5[16] | 10/25 | 5/15 |
| Tunisia | 20 | 0[11] | 7.5 | 7.5 |
| Turkey | 20 | 15[46] | 10/15 | 10 |
| Uganda | 5/15 | 0[47] | 0/10 | 10 |
| Ukraine | 15 | 0/5[48] | 0/2/10 | 0/10 |
| United Arab Emirates | 10 | 0[49]/5[15] | 0 | 0 |
| United Kingdom | 15/10 | 0[50] | 0 | 0 |
| United States | 15 | 0/5[51] | 0 | 0 |
| Uzbekistan | 15 | 0/5[52] | 0/10 | 0/10 |
| Venezuela | 10 | 0[20] | 0/5 | 5/7/10 |
| Vietnam | 15 | 5/7[53] | 5/10 | 5/10/15 |
| Zambia | 15 | 5[54] | 10 | 7.5 |
| Zimbabwe | 20 | 10[6] | 10 | 10 |

NOTES:

1. A final dividend withholding tax is levied on dividends, liquidation proceeds and other profit distributions, whether in cash or in kind, paid by resident companies to non-resident shareholders. The rate is 15%, unless a reduced rate applies under a tax treaty.
2. Under the domestic law implementing the provisions of the EU Parent-Subsidiary Directive, dividends, liquidation proceeds and other profit distributions paid by resident companies to their EU parent companies are exempt from dividend withholding tax. For this exemption, it is required that the EU parent is subject to corporate income tax in its state of residence and owns at least 10% of the capital (or 10% of the voting rights under tax treaties where this criterion is used, i.e. the treaties with Germany, Ireland, Italy and the United Kingdom) of the Netherlands subsidiary. The foreign parent may not be a transparent entity and may not have a function comparable with a Netherlands taxable or exempt investment institution.
3. Interest on participation loans are subject to a 15% withholding tax or 25%.
4. The 5% reduced rate applies if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the dividend-paying company.
5. The 5% reduced rate applies if the beneficial owner is a company which holds directly or indirectly at least 25% of the capital of the company the capital of which is wholly or partly divided into shares paying the dividends. The 0% rate applies if the beneficial owner is a company which holds directly or indirectly at least 50% of the capital of the company the capital of which is wholly or partly divided into shares paying the dividends and has invested more than USD 250,000 in the capital of the dividend-paying company.
6. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
7. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company. The 0% rate applies if the profits out of which the dividends are paid have been effectively subject to the normal rate of corporate income tax in the Netherlands and the dividends are exempt from tax in the hands of the recipient company in Armenia (item XI of the Protocol).
8. The 7.5% reduced rate applies if the dividend is derived by a company the capital of which is wholly or partially divided into shares and which is a resident of the other country and which holds at least 25% of the paid-up capital of the company owning the dividend. The 5% reduced rate applies if the dividend is subject to a tax on profits at a rate of at least 5.5% in the country of which the company deriving the dividend is a resident.
9. The 5% reduced rate applies if the company receiving the dividends holds directly or indirectly at least 25% of the capital of the dividend-paying company.
10. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company and provided that an investment of at least 200,000 EUR has been made in the capital of the dividend-paying company.
11. The 0% reduced rate applies if the beneficial owner is a company the capital of which is wholly or partly divided into shares and which holds directly at least 10% of the capital of the dividend-paying company.
12. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
13. The 0% reduced rate applies if the beneficial owner is (a) a company that, under conditions, owns directly 10% of the capital in the dividend-paying company (b) is a bank or insurance company (c) a contracting state, a political subdivision or local authority (d) a headquarter company of a multinational group owning at least 10% of the capital of the dividend-paying company or (e) a pension fund.
14. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the dividend-paying company. The 0% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least

50% of the capital of the dividend-paying company and provided that an investment of at least 250,000 EUR has been made in the capital of the dividend-paying company or which holds directly at least 25% of the capital of the dividend-paying company and whose investment in the capital of the dividend-paying company is, directly or indirectly, guaranteed or insured by the government of the other state.

15. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
16. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
17. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) that owns at least 25% of the capital of, or that controls directly or indirectly at least 10% of the voting power in the dividend-paying company.
18. The 0% rate applies if the beneficial owner is the government of the other contracting state, any of its institutions or any other entity the capital of which is wholly owned directly or indirectly by the other contracting state.
19. The 0% rate applies if (i) the receiving company owns at least 10% of the capital of the dividend-distributing company and the shares of the receiving company are regularly traded at the stock exchange or at least 50% of the shares of that company are owned by companies whose shares are regularly traded at the stock exchange (ii) the recipient is a pension fund (iii) the recipient is the government or a government body (iv) the receiving company is qualifying headquarters company or (v) a company with sufficient substance.
20. The 0% rate applies if the recipient is a company the capital of which is wholly or partly divided into shares and which is a resident of the other state and holds directly at least 25% of the capital of the dividend-paying company.
21. 10% if the dividend-paying company is Ethiopian, 15% if the dividend-paying company is Dutch. The 5% reduced rate applies if the beneficial owner of the dividends is (i) a company (other than a partnership) which is a resident of the other contracting state and holds directly at least 10% of the capital of the dividend-paying company or (ii) a pension fund.
22. The 0% rate applies if the Finnish company owns at least 5% of the capital in the Dutch company or for payments to a pension fund.
23. The 5% rate applies if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the dividend-paying company. The 0% rate applies if the beneficial owner is a company which holds directly or indirectly at least 50% of the capital of the dividend-paying company and has invested more than USD 2 million in the capital of the dividend-paying company.
24. The 0% rate applies if the beneficial owner is (a) a company (other than a partnership) holding at least 10% of the capital of the dividend-paying company (subject to conditions) (b) a pension fund or scheme (c) a contracting state or a political subdivision or local authority or an institution created by the government of a contracting state or a political subdivision or local authority thereof or (d) a company which does not qualify under the conditions mentioned under (a), provided certain requirements are met.
25. The rate under the treaty is 15%. However, under the application of a most favoured nation clause the rate is reduced to 10% (Germany-India treaty). The rate is further reduced to 5% on qualifying dividends, i.e. a minimum holding of 10% (the rate is 5% under the India-Slovenia treaty).
26. The 10% reduced rate applies if the beneficial owner is a pension fund, subject to certain conditions.
27. The 0% rate shall be applicable if the beneficial owner of the dividends is (a) a company (other than a partnership) which is a resident of the other state and holds directly at least 10% of the capital of the dividend-paying company throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend); or (b) a pension fund.
28. The 5% reduced rate applies if the beneficial owner is a company which has held more than 50% of the voting shares of the dividend-paying company for a period of 12 months preceding the date of the dividends were declared. The 10% rate applies if the beneficial owner is a company which has held at least 10% of the voting shares of the dividend-paying company for a period of 12 months preceding the date the dividends were declared.
29. The 5% rate applies if the beneficial owner is a company that has owned, directly or indirectly, shares representing at least 10% of the voting power of the dividend-paying company for the period of 6 months ending on the date on which entitlement to the dividends is determined. The 0% rate applies if the beneficial owner is (i) a company that has owned, directly or indirectly, shares representing at least 50% of the voting power of the dividend-paying company for the period of 6 months ending on the date on which entitlement to the dividends is determined or (ii) a pension fund, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension fund.
30. The 0% rate applies if the beneficial owner is a pension fund.
31. The 5% reduced rate applies if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the dividend-paying company. The 0% rate applies if (a) the Kazakhstan company owns at least 50% of the capital of the Dutch company and that participation has a value of at least USD 1 million and (b) Kazakhstan has secured the participation.
32. The 2.5% reduced rate applies if the recipient is a company the capital of which is, wholly or partly, divided into shares or corporate rights assimilated to shares by the taxation law of the other state, which company controls directly at least 25% of the capital of the dividend-paying company.
33. The 0% rate applies if the beneficial owner is a company the capital of which is wholly or partly divided into shares and which holds directly or indirectly at least 25% of the capital of dividend-paying company.
34. The 5% rate applies if the beneficial owner is a company which holds, directly or indirectly, at least 10% of the capital of the dividend-paying company. The 0% rate applies so long as a company resident in the Netherlands is not subject to tax in the Netherlands in respect of dividends received from a company resident in Mexico (Protocol, art. VII), which is currently the case, subject to conditions.
35. The 0% rate applies if (a) the Moldovan company holds at least 50% of the shares of the Dutch company and the investment amounts to at least USD 300,000 or (b) the investment is guaranteed or insured by the Dutch government or its agency or instrumentality.
36. The 10% rate applies if the recipient is a company the capital of which is wholly or partly divided into shares and holds directly at least 25% of the capital of the dividend-paying company, on conditions that the relationship between the two companies was not established or is not maintained principally for the purposes of benefiting from this reduced rate.
37. The 5% reduced rate applies with respect to dividends paid by a company which is a resident of one of the States to a company the capital of which is wholly or partly divided into shares and which is a resident of the other State and holds directly at least 25% of the capital of the dividend-paying company.
38. The 12.5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
39. The 0% rate applies if the beneficial owner is a pension fund or a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
40. The 0% rate applies if (a) the beneficial owner is a company which owns directly at least 15% of the capital and certain other conditions are met (b) the dividends are received by a contracting state, a political subdivision or local authority thereof or (c) the beneficial owner is a company which holds directly at least 15% and is the headquarter company of a multinational corporate group.
41. The 0% rate applies if the beneficial owner is a company the capital of which is wholly or partly divided into shares and which holds directly

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at least 7.5% of the capital of the dividend-paying company.

42. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company and has invested at least 75,000 EUR in it.
43. The rates under the treaty are 5% and 10%. However, under the application of a most favoured nation clause (introduced by the 2008 Protocol), the rates are reduced to 0% for all dividends. Under the MFN clause in the South Africa-Sweden treaty (introduced by the 2010 protocol), the rates for all dividends are reduced to 0%. The rates under the South Africa-Sweden treaty are reduced to 0% by way of the South Africa-Kuwait treaty. Please note that this only applies in the Netherlands, by way of the Dutch Court Decision No. AWB - 15 395, Lower Court, Zeeland-West Brabant, 19 October 2015.
44. The 5% rate applies if the Spanish company owns at least 50% of the capital in the Netherlands company or if the Spanish company owns at least 25% of the capital in the Netherlands company and another Spanish company also owns at least 25% of such shares.
45. The 7.5% rate applies if the recipient is an entity the capital of which is wholly or partly divided into shares and which has direct control of at least 25% of the capital of the dividend-paying entity, provided that the relationship between the two companies has not been created or maintained in the first place for the purpose of enjoying the benefit of that reduced rate. The 15% rate applies if the 7.5% rate does not apply, if such dividends are not included in the base on which the tax is levied in the country of which the recipient is a resident. The 20% rate applies in all other cases.
46. The 15% reduced rate applies if the recipient is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
47. The 0% rate applies if the Ugandan company owns directly at least 50% of the capital in the Netherlands company as long as a company resident in the Netherlands is not subject to tax in the Netherlands in respect of dividends received from a company resident in Uganda (Protocol, article IX), which is currently the case, subject to conditions.
48. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company. The 0% rate applies if the beneficial owner is a company (other than a partnership) (i) which holds directly at least 50% of the capital of the dividend-paying company and provided that an investment of at least USD 300,000 has been made in the capital of the dividend-paying company or (ii) whose investment in the capital of the dividend-paying company is guaranteed or insured by the government of the other state, the central bank or any agency or instrumentality (including a financial institution) owned or controlled by that government.
49. The 0% rate applies to dividends paid to a public body or pension fund.
50. The 0% rate applies if the UK company receiving the dividends owns at least 10% of the voting power of the company distributing the dividends, or when the dividends are received by a pension fund, or a cultural, scientific or educational organization.
51. The 0% rate applies if the US company (i) owns at least 80% of the voting power in the Dutch company for the 12-month period ending on the date the dividends are declared and (ii) owned at least 80% of such voting power prior to 1 October 1998 or qualifies under certain provisions of the limitation on benefits article of the treaty. The 5% rate applies if the US company owns directly at least 10% of the voting power in the Dutch company.
52. The 5% rate applies if the Uzbek company owns directly at least 25% of the capital in the Netherlands company. The 0% rate applies so long as a company resident in the Netherlands is not subject to tax in the Netherlands in respect of dividends received from a company resident in Uzbekistan (Protocol, article VII), which is currently the case, subject to conditions.
53. The 5% reduced rate applies if the Vietnamese company owns at least 50% of the capital in the Dutch company or if the value of the participation is at least USD 10 million. The 7% rate applies if it owns at least 25% of the capital. The 7% rate applies so long as a company resident in the Netherlands is not subject to tax in the Netherlands in respect of dividends received from a company resident in Vietnam (Protocol, article VII), which is currently the case, subject to conditions.
54. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company or if the beneficial owner is a pension fund.
55. Effective date: 1 January 2021.
56. This treaty is not yet in force.
57. Dividends are exempt from tax in the Netherlands if the company paying the dividends is a resident of the Netherlands and the beneficial owner of the dividends is a pension fund resident in the BES islands. Dividends paid by a company may also not be taxed under the applicable tax laws in the Netherlands if such company is a resident of the Netherlands and the beneficial owner of the dividends is a company the capital of which is wholly or partly divided into shares, which is a resident of the BES islands and which immediately owns at least 10% of the capital of the company paying the dividends.
58. The Caribbean Netherlands are the three special municipalities of the Netherlands that are located in the Caribbean Sea. They consist of the islands of Bonaire, Sint Eustatius and Saba.

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# NEW ZEALAND

## MEMBER FIRMS

| City | Name | Contact Information |
|---|---|---|
| Wellington | Susan Robertson | +64 21 817 855<br>susan.robertson@pkfkendons.co.nz |

## BASIC FACTS

| | |
|---|---|
| Full name: | New Zealand |
| Capital: | Wellington |
| Main languages: | English, Māori |
| Population: | 5.1 million (2022 estimate) |
| Monetary unit: | 1 New Zealand Dollar ($NZD) = 100 Cents |
| Internet domain: | .nz |
| Int. dialling code: | +64 |

## KEY TAX POINTS

- Income tax is payable by resident individuals on their worldwide income. Non-resident individuals pay tax on New Zealand-sourced income only.
- Income tax is payable by New Zealand resident companies on income derived from all sources. Non-resident companies pay tax on income sourced in New Zealand.
- There is no comprehensive capital gains tax. However, where a capital asset is bought for the clear purpose of resale, any profits or gains are regarded as ordinary income. There are also specific income tax provisions in relation to certain land transactions and overseas financial investments that are similar to a capital gains tax.
- A broad-based, value added tax called goods and services tax (GST) is levied on the supply of goods and services in New Zealand at a rate of 15%.
- There is a controlled foreign company (CFC) regime, a foreign investment fund (FIF) regime, and there are transfer pricing and thin capitalisation rules.
- Credits are available in New Zealand for the lesser of foreign tax paid or New Zealand tax payable on foreign income, regardless of whether a Double Taxation Agreement (DTA) is in place, provided they are of the same nature as income tax. The credits may be subject to limits imposed by DTAs.
- Where there is at least 66% common ownership, revenue losses can be transferred between New Zealand tax resident companies. Where there is 100% common ownership between New Zealand tax resident companies, dividends between companies can be exempt, consolidated returns can be lodged and revenue and capital items can be transferred. Company losses can be carried forward indefinitely so long as the same shareholders hold more than 49% of the shares from the date of the losses are incurred until they are utilised. Losses can also be carried forward where the company meets a new “same or similar business” test, even if the 49% shareholding continuity requirements have been breached.
- A look through company (LTC) regime exists whereby small closely held companies who elect to become an LTC must pass profit or losses directly to shareholders. LTC losses are unable to be carried forward. A foreign company cannot be an LTC. Non-resident shareholders can hold shares in an LTC. However, if a non-resident holds more than 50% of the shares, any foreign-sourced income must not exceed the greater of NZD 10,000 or 20% of the LTC’s gross income for the year.
- Dividends, interest and royalties paid to non-residents are subject to non-resident withholding tax (NRWT) at varying rates.
- NZ has also recently introduced a specific set of rules that apply to residential rental properties.

## A. TAXES PAYABLE

### COMPANY TAX

Income tax is payable by New Zealand resident companies on non-exempt income derived from all sources. Non-resident companies are required to pay tax on income sourced in New Zealand. Resident companies are companies that are incorporated in New Zealand or have their head office or centre of management in New Zealand, or control of the company is exercised by directors in New Zealand. The tax year usually runs from 1 April to 31 March, although different balance dates are available in certain circumstances (one example is to align with an overseas parent’s balance date). Tax is payable in instalments (referred to as ‘provisional tax’) if a company’s residual income tax (total tax less available credits) exceeds NZD 5,000 from 1 April 2020.

Income tax returns must be filed with Inland Revenue within four months of balance date or by 31 March of the following year where the entity is enrolled with a tax practitioner that has an extension of time arrangement. The tax rate for companies is 28%. Tax paid is added to an “Imputation Credit Account” (ICA) for New Zealand resident companies and is available to shareholders as a tax credit in New Zealand when dividends are “imputed”.

### PARTNERSHIPS

General partnerships are not separate legal entities. This means that they have no existence separate from the individual partners that comprise them. Limited partnerships have both separate legal status and flow through tax treatment.

### TRUSTS

Taxation of trusts is complex and based on the tax residence of the settlor. In general terms, distributions to beneficiaries of resident trusts are taxed at beneficiaries’ marginal tax rates, provided that distributions are made in the income year or within a defined period after the end of the income year (maximum 12 months). In contrast, distributions made to New Zealand tax resident beneficiaries of foreign trusts are classified as ‘taxable distributions’ unless they are made from trust corpus or unrelated party capital gains. Taxable distributions are taxed at beneficiaries’ marginal tax rates regardless of the distribution date. Trustee income is taxed at the flat rate of 33%. The trust regime does not apply to unit trusts. Unit trusts are deemed to be companies and are taxed accordingly. Foreign trusts (no resident settlor) are not taxed on foreign sourced income but can be subject to tax at a penal rate of 45% on both revenue and capital distributions in certain circumstances.

From 1 April 2022, trustees of trusts must file income tax returns for all income earned as a trustee of the trust together with:

- A statement of financial performance and a statement of financial position;
- The amount and nature of each settlement made on the trust in the income year and the name and details of each settlor (date of birth, country of tax residence and IRD number (or equivalent));
- Details of each distribution made by the trust and information about the beneficiary receiving it, including name, date of birth, IRD number (or equivalent) and country in which they are a tax resident;
- Name and details of every person with the power to appoint or remove trustees or to add or remove beneficiaries.

### CAPITAL GAINS TAX

There is no comprehensive capital gains tax in New Zealand. However, where a capital asset is bought for the clear purpose of resale, any profits or gains will be regarded as ordinary income.

There are special tax rules that apply to the taxation of land (including buildings fixed to the land). The rules tax not only land bought with the intention of resale but certain land that is developed/subdivided or land sold by entities in the business of land dealing,

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developing or building. Land sold by "associates" of these entities in business will also be taxable if sold within 10 years of either acquisition or building completion in the case of builders. Land where more than 20% of the profit is attributable to a re-zoning will be taxable if the sale occurs within 2 years. There are certain exemptions available.

As a catch all provision, bright-line rules apply to tax any gain on sale from residential property that is bought and sold within a certain time period. The time-period varies depending on the original date of purchase, and will either be 5 or 10 years. There is an exemption for a person's "main home". There are strict disclosure rules that must be completed before a sale can be completed. Certain sales made by non-tax residents will be subject to withholding tax.

## BRANCH PROFITS TAX

There is no branch profits tax in New Zealand. New Zealand branches of foreign companies are taxed on New Zealand-sourced income only at the corporate tax rate of 28%.

## SALES TAX / GST (VALUE ADDED TAX)

There is no sales tax in New Zealand, although there are levies on sales of certain products such as alcohol, tobacco and fuel.

A value added tax called Goods and Services Tax (GST) is levied at 15% on the supply of almost all goods and services in New Zealand. There are a few exceptions such as exported goods and services which are charged at 0%. Most land and buildings transactions are also zero-rated as are the sale of businesses as a going concern between GST registered parties. A non-tax resident business that has a "taxable activity" in New Zealand and makes "taxable supplies" exceeding NZD 60,000 (registration threshold) must register for GST. A non-resident business may be able to register for GST in New Zealand even if it does not have a taxable activity in New Zealand. This will enable them to claim back New Zealand GST paid on purchases. The entity must have an activity in its own country that is similar to a "taxable activity" as defined in New Zealand GST legislation.

GST also applies to cross-border "remote services" supplied by non-New Zealand resident suppliers (including e-books, music, videos and software purchased from offshore websites) to New Zealand-resident consumers, by requiring the offshore supplier to register and return GST on these supplies if they exceed the registration threshold.

Supplies of remote services by non-resident suppliers to New Zealand GST-registered recipients for their taxable activity are treated as being supplied outside New Zealand and therefore not subject to GST, unless the supplier chooses otherwise. Where the supplier chooses to treat the supply as made in New Zealand, the supply is zero-rated. The non-resident supplier is then able to claim back any New Zealand GST costs incurred in making the zero-rated supplies. Note that supplies of remote services to a non-registered person resident (consumers) in New Zealand cannot be zero-rated and 15% GST will apply if the supplier is registered for GST (this will be compulsory if the zero-rated supplies and supplies to consumers exceed NZD 60,000).

Overseas businesses that sell low value goods (NZD 1,000 or less) to consumers in New Zealand may need to register for, collect and return GST. A consumer is a person who buys low value goods delivered to New Zealand and is not registered for New Zealand GST or is registered for GST and uses the low value goods for personal use.

## FRINGE BENEFITS TAX (FBT)

FBT is payable by employers on benefits provided to employees. The rate is up to 63.93% of the taxable value of the benefit provided. The FBT year runs from 1 April to 31 March. FBT is payable and returns must generally be filed by the 20th day of the month following the quarters ending 30 June, 30 September, 31 December and 31 March.



## KIWISAVER

KiwiSaver is a workplace savings scheme designed to help New Zealanders save for their retirement. It is primarily aimed at employees, but all New Zealand residents may join a KiwiSaver scheme. All eligible employees starting a new job are automatically enrolled in a KiwiSaver scheme and must opt out if they do not want to be part of the scheme. Employees contribute either 3%, 4%, 6%, 8% or 10% of their gross earnings. Employers are required to contribute to their employee's KiwiSaver account at the minimum of 3% of the employee's gross salary or wage.

## OTHER TAXES

### GIFT DUTY

New Zealand no longer has a gift duty regime.

### ESTATE DUTY

New Zealand has no asset tax imposed on death nor on inheritance.

### LAND TAX

New Zealand does not impose a land tax, although local authorities impose "rates" to pay for their services.

### STAMP DUTY

New Zealand does not impose stamp duty on the transfer of property.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is determined by ascertaining gross income less all allowable deductions. Generally, to be deductible, expenses and losses must relate directly to the derivation of gross income. Certain expenditure is specifically non-deductible and special rules apply in respect of the categories listed below.

### DEPRECIATION

Depreciation rates are set by Inland Revenue. Application can be made for a special rate. Straight line or diminishing value depreciation methods can be used for each particular asset. Assets acquired which cost less than NZD 1,000 can be expensed immediately. No depreciation allowance is available for residential buildings having a useful life of more than 50 years while commercial buildings can be depreciated at 2% diminishing value or 1.5% straight line.

## RESEARCH AND DEVELOPMENT (R&D) TAX DEDUCTIONS

Taxpayers are allowed to allocate certain R&D tax deductions to tax years arising after the year in which the related expenditure is incurred. This means that deductions will not be lost if there is a shareholding change (that breaches the 49% continuity requirement) between when the expenditure is incurred and when the deduction is recognised by the taxpayer.

Further, there is an R&D Tax Incentive which operates as a tax credit, rewarding business and individuals who perform eligible R&D activities. The sole purpose of the R&D must seek to solve scientific or technological uncertainties in areas other than social sciences, arts, humanities and generic market research. A 15% tax credit is available to a business with minimum eligible R&D expenditure of NZD 50,000 per year up to a maximum of NZD 120 million.

There is also an R&D loss tax credit regime that was introduced for innovative start-ups to enable them to “cash out” an amount of their tax losses arising from qualifying R&D expenditure. Instead of carrying the tax loss forward to apply against future assessable income, the company receives a refundable tax credit. To qualify a company must be resident in New Zealand (and not be treated as non-resident under a double tax agreement). Companies that eventually earn assessable income or make a successful return on their investment through a non-taxable capital gain will have their cashed-out losses reinstated as losses to carry forward by repaying the value of the cashed-out loss out of the gain made. The regime specifically defines qualifying R&D expenditure and there are a number of eligibility requirements that must be met.

## STOCK / INVENTORY

Trading stock is generally valued in accordance with accounting principles. Livestock is valued under specified schemes.

## CAPITAL GAINS AND LOSSES

Capital gains and losses on disposal of assets are neither assessable nor deductible. The disposal of depreciable assets will involve tax adjustments where there is a loss on sale or depreciation recovered.

## DIVIDENDS

Generally, dividends received by resident companies from other resident companies are taxable. Dividends can be imputed by attaching credits arising from tax paid by the company. The maximum rate at which imputation credits can be attached to dividends will be 28% of the gross dividend (cash dividend plus imputation credits).

A credit for overseas tax paid by a company is limited to the NZ tax payable (28%). Foreign dividends received by NZ companies are wholly exempt. Tax on dividends received from entities with Portfolio Investor Entity (PIE) status are capped at 28% and are exempt income to the recipient if tax has been deducted at the correct rate.

## INTEREST DEDUCTIONS

No interest deduction is allowed unless it is payable in deriving gross income or necessarily payable in carrying on a business for the purpose of deriving gross income. Companies (except in limited circumstances) are entitled to automatic interest deductions. Thin capitalisation rules limit the interest deduction available to New Zealand entities controlled by a single non-resident. Transfer pricing rules also apply to the rate of interest.

From October 2021, interest limitations also apply in relation to residential properties. The extent of the interest limitation depends on if it is a New Zealand or offshore lender, the location of the residential property, the property date of purchase, and the year of property construction completion.



## LOSSES

Broadly, a company can carry forward net losses indefinitely provided a continuity of ownership (49% of minimum voting, dividend and capital rights) is maintained from the beginning of the year of the net loss, to the end of the year of carry forward.

From the start of the 2021 tax year an alternative “business continuity test” was introduced where a company fails the 49% shareholder continuity test. This can allow a company to carry forward tax losses provided there have been no major changes in the company’s “business activities”.

A temporary tax loss carry-back scheme was in place because of COVID-19. This allowed a taxpayer to offset a potential or actual loss incurred in the 2021 or 2020 tax year against a profit from the immediate year prior (2020 or 2019) – resulting in a refund of tax paid in the previous profitable year.

## INVESTMENT ALLOWANCES

There are no investment allowances in New Zealand.

## CONTROLLED FOREIGN COMPANIES

New Zealand operates a controlled foreign companies’ (CFC) regime to ensure that foreign-sourced income is included in the New Zealand resident’s tax return. CFCs with less than 5% attributable income (e.g. passive income such as rent, royalties, dividends and interest) or CFCs that are Australian resident and subject to Australian tax are not required to calculate CFC attributed income.

Broadly a foreign company will be regarded as a CFC where five or fewer New Zealand residents hold at least a 50% interest or have ‘de facto’ control.

## FOREIGN INVESTMENT FUNDS

The Foreign Investment Fund regime complements the CFC regime and seeks to tax New Zealand residents on an accrual basis where the resident holds a non-controlling interest in a foreign entity.

## C. FOREIGN TAX RELIEF

Credits are generally available for the lesser of the foreign tax paid or the New Zealand tax payable on the foreign income.

## D. CORPORATE GROUPS

Where there is 66% (or greater) common ownership, tax losses can be transferred by New Zealand resident companies by way of subvention payments (where a profitable company makes a payment to a loss company up to the amount of that loss) or direct offset. Dividends between New Zealand resident companies with 100% common ownership (a wholly owned group) are exempt. Where there is 100% common ownership of New Zealand resident companies, consolidated tax returns can be lodged, and revenue and capital items transferred within the group.

## LOOK-THROUGH COMPANY

A look-through company has separate legal personality for corporate law purposes, but shareholders are taxed on the underlying profit and loss based on their proportionate share of interests held at the applicable marginal tax rate for that entity.

## E. RELATED PARTY TRANSACTIONS

New Zealand has comprehensive transfer pricing and thin capitalisation rules to counter arrangements that seek to reduce the taxable income of New Zealand entities by shifting profits to related entities not resident in New Zealand.

## F. WITHHOLDING TAXES

A 33% withholding tax is required to be deducted from dividends with a credit for imputation credits attached (subject to the exceptions referred to under 'Dividends' above). Withholding tax is also deducted from interest with limited exemptions. Dividend, interest and royalty payments made to non-residents are subject to non-resident withholding tax (NRWT). The NRWT rate depends on whether the non-resident is a taxpayer of a country which has a double tax agreement with New Zealand. (Please refer to Section I below).

NRWT (Non-Resident Withholding Tax) payable on a fully imputed dividend paid to a non-resident is 0% if the non-resident has a 10% or more direct voting interest in the paying company; or the non-resident has less than a 10% direct voting interest in the company but the post-treaty tax rate for the dividend is less than 15%. Non-resident shareholders with less than 10% direct voting interests in the paying company are able to receive a supplementary dividend and foreign investor tax credit with imputed dividends. The foreign investor tax credit offsets the 15% non-resident withholding tax deducted.

Withholding tax is also deductible from payments made to non-resident contractors, with exemptions available in certain circumstances. Where interest is paid to non-associated parties resident overseas, a 2% approved issuer levy (AIL) can apply on election instead of NRWT.

## G. EXCHANGE CONTROL

There are no exchange controls in New Zealand. While foreign investment into New Zealand is encouraged, sensitive assets are protected by the Overseas Investment Act 2005. Consent must be obtained from the Overseas Investments Office for the acquisition of most land, fishing quotas and significant business assets (exceeding NZD 100 million).

## H. PERSONAL TAX

Income tax is payable by New Zealand residents on their worldwide income. Non-resident individuals pay tax on New Zealand-sourced income only. An individual is resident in New Zealand if personally present for more than 183 days in any 12-month period or if the individual has a 'permanent place of abode' in New Zealand. Individuals arriving to live in New Zealand may qualify for a temporary tax exemption on foreign income as a transitional resident. All foreign-sourced income will be exempt, except for employment income connected with employment performed while resident in New Zealand and income from services. The exemption applies to the first 48 months (four years) following arrival in New Zealand. To qualify, an individual cannot have been tax-resident in New Zealand during the previous ten years.



Income tax is payable on gross income less any allowable deductions. Gross income includes employment income, business income, rents, interest and dividends. Employment income (salary/wages) has tax payments (PAYE) deducted from each salary/ wage payment by the employer. Self-employed individuals and those receiving income with no tax deducted at source pay provisional tax in instalments based on their previous year's taxable income. The income tax rates for individuals are as follows:

| Taxable Income (NZD) | Rate of Tax |
|---|---|
| 0 - 14,000 | 10.5% |
| 14,001 - 48,000 | 17.5% |
| 48,001 - 70,000 | 30% |
| 70,001 – 180,000 | 33% |
| 180,001 and over | 39% |

## ACCIDENT COMPENSATION (ACC) LEVIES

All employees must pay an ACC earner's levy to cover the cost of non-work-related injuries. Earner's levy is charged at a flat rate which may vary for each year. For employees, the levies are collected by the employer and paid to Inland Revenue as part of PAYE payments. Employers are liable to pay a residual claims levy. Self-employed persons pay a self-employed work levy and the earner levy. The residual claims levy rate is determined by the type of activity carried on by the self-employed person.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Resident corporations** | 33[1] | 28[1] | 0 |
| **Resident individuals** | 33 | max 33 | -- |
| **Non-resident corporations and individuals** | | [2] | |
| *Non-treaty* | 0/15/30[3] | 15[4] | 15 |
| *Treaty* | | | |

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Australia | 0/5/15[5] | 0/10[5] | 5 |
| Austria | 15 | 10 | 10 |
| Belgium | 15 | 10 | 10 |
| Canada | 5/15[6] | 10 | 5/10[6] |
| Chile | 15 | 10/15[7] | 5 |
| China | 15 | 10 | 10 |
| Czech Republic | 15 | 10 | 10 |
| Denmark | 15 | 10 | 10 |
| Fiji | 15 | 10[8] | 15 |
| Finland | 15 | 10 | 10 |
| France | 15 | 10 | 10 |
| Germany | 15 | 10 | 10 |
| Hong Kong | 0/5/15[9] | 0/10[9] | 5 |
| India | 15 | 10 | 10 |
| Indonesia | 15 | 10 | 15 |
| Ireland | 15 | 10 | 10 |
| Italy | 15 | 10 | 10 |
| Japan | 0/15[10] | 0/10[10] | 5 |
| Korea (South) | 15 | 10 | 10 |
| Malaysia | 15 | 15 | 15 |
| Mexico | 0/5/15[11] | 10 | 10 |
| Netherlands | 15 | 10 | 10 |
| Norway | 15 | 10 | 10 |
| Papua New Guinea | 15 | 10 | 10 |
| Philippines | 15/25 | 10 | 15 |
| Poland | 15 | 10 | 10 |
| Russian Federation | 15 | 10 | 10 |
| Samoa | 5/15[12] | 10 | 10 |
| Singapore | 5/15[13] | 10 | 5 |
| South Africa | 15 | 10 | 10 |
| Spain | 15 | 10 | 10 |
| Sweden | 15 | 10 | 10 |
| Switzerland | 15 | 10 | 10 |
| Taiwan | 15 | 10 | 10 |
| Thailand | 15 | 10/15[14] | 10/15[14] |
| Turkey | 5/15[15] | 10/15[15] | 10 |
| United Arab Emirates | 15 | 10 | 10 |
| United Kingdom | 15 | 10 | 10 |
| United States | 0/5/15[16] | 0/10[16] | 5 |
| Vietnam | 5/15[17] | 10 | 10 |

Notes:

1. RWT applies to both interest and dividends. Unless the recipient holds an exemption certificate, and if the recipient provides a tax file number, the default rate of RWT on interest is 28%. Recipients can elect for the rate of RWT on interest to be 28% or 33%. The rate of RWT on interest is 33% where the recipient does not provide a tax file number.

   The rate of RWT on dividends paid is 33%, but the tax is reduced by the aggregate imputation and withholding payment credits attached to the dividend or taxable bonus share. Interest and dividends paid between group companies and in certain other limited circumstances are exempt from the NRWT. Where a fully imputed dividend is paid to a corporate shareholder, there is no requirement to withhold RWT or NRWT.
2. Resident corporations paying interest to non-associated, non-resident corporations and individuals need not withhold tax if they have approved-issuer status and the security under which interest is payable is registered with Inland Revenue. In this case, the resident corporation pays a 2% levy (tax deductible) on the interest payments instead of the NRWT otherwise applicable.
3. NRWT is imposed on dividends at the following rates, regardless of the jurisdiction to which the dividends are paid:
   - 0% for fully imputed dividends paid to a shareholder holding 10% or more of the direct voting interests in the company and fully imputed non-cash dividends.
   - 15% for fully imputed cash dividends paid to a shareholder holding less than 10%.
   - 30% in most other cases, subject to any relief available under a DTA.
4. Net interest income is subject to reassessment at the company tax rate where the payer and the recipient are ‘associated persons’, but the NRWT imposed is the minimum liability. NRWT is not imposed where the recipient of the interest has a fixed establishment in New Zealand

and the relevant interest is attributable to this fixed establishment, or where the recipient is a bank that has a fixed establishment in New Zealand and is not associated with the borrower.

5. NRWT on dividends is reduced from 15% to 5% for an investing company that has at least a 10% shareholding in the company paying the dividend. The rate reduces to 0% if the investing company holds 80% or more of the shares in the other company and meets other criteria. The NRWT rate on interest is 10% but is reduced to 0% if it is payable to eligible financial institutions.
6. The NRWT on dividends is reduced from 15% to 5% for an investor who holds at least 10% of the shares in the company that pays the dividend. The NRWT rate on royalties is reduced from 15% to 10% generally, with a further reduced rate of 5% for royalties relating to copyright, computer software, and others.
7. The NRWT on interest is reduced to 10% if the interest received is derived from loans granted by banks or insurance companies. In all other cases, 15%.
8. The NRWT on interest may differ in accordance with the rates prescribed by New Zealand legislation for interest paid to 'associated persons'.
9. The NRWT on dividends is reduced from 15% to 5% for an investing company that has at least a 10% shareholding in the company paying the dividend. The rate reduces to 0% if the investing company holds 50% or more of the shares in the other company and meets other criteria. The NRWT rate on interest is 10% but is reduced to 0% if it is payable to eligible financial institutions.
10. The NRWT rate on dividends is reduced from 15% to 0% for an investor who holds at least 10% of the voting power in the company paying the dividend (subject to certain conditions being met). The NRWT rate on interest is 10% generally and 0% if it is payable to eligible financial institutions.
11. The 0% NRWT rate applies where the foreign company owns at least 80% of the voting rights in the paying company (directly or indirectly) for 12 months prior to the date the dividend is paid and meets other criteria. The 5% rate applies if the foreign company has a direct interest of at least 10% of the voting rights in the paying company.
12. The NRWT rate on dividends will reduce from 15% to a maximum of 5% for an investor who holds at least 10% of the shares in the company that pays the dividend.
13. The standard NRWT rate on dividends reduces to 5% for an investing company that has at least a 10% shareholding in the company paying the dividend.
14. The NRWT rate on interest is reduced to 10% if it is received by a financial institution or it is paid with respect to debt arising from a sale on credit of any equipment, merchandise, or services. The NRWT rate is reduced to 10% for certain types of royalty.
15. The NRWT rate on dividends is reduced to 5% if the beneficial owner is a company holding at least 25% of the capital of the company paying the dividends and 15% in all other cases. The NRWT rate on interest is reduced to 10% if the interest is paid to a bank and 15% in all other cases.
16. The NRWT rate on dividends is 5% for an investor who holds at least 10% of the shares in the company that pays the dividend; 0% if the investor holds 80% or more of the shares in the company and meets other criteria; 15% in all other cases. The NRWT rate on interest is 10% but is reduced to 0% if it is payable to eligible financial institutions.
17. The NRWT rate on dividends is reduced to 5% if the beneficial owner is a company holding at least 50% of the voting power in the company paying the dividends and 15% in all other cases.

# NICARAGUA

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## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Managua | Aldo Eli Guerra L. | +505 8886 6076<br>aldo.guerra@pkfnicaragua.com.ni |

## BASIC FACTS

| | |
|---|---|
| Full name: | Nicaragua |
| Capital: | Managua |
| Main languages: | Spanish |
| Population: | 6,77 million (2022 estimate) |
| Monetary unit: | Nicaraguan Cordoba (NIO) |
| Internet domain: | .ni |
| Int. dialling code: | +505 |

## KEY TAX POINTS

- The general corporate income tax rate is 30%. However, where the annual gross income derived from business activities is lower than NIO 12 million, progressive tax rates may apply.
- The standard VAT rate is 15%, except for exports of domestic production goods and services abroad, which will be zero-rated.
- Operating losses may be carried forward against operating profits of the subsequent 3 years. Loss carry-back is not allowed.
- Dividends paid to a non-resident are subject to a 15% withholding tax. The rate increases to 17% if the payment is made to a resident of a tax haven jurisdiction.
- Interest paid to a non-resident or non-financial institution is subject to a 15% withholding tax. The rate increases to 17% if the payment is made to a resident of a tax haven jurisdiction.
- A 15% withholding tax applies to patent royalties paid to a non-resident. The rate increases to 17% if the payment is made to a resident of a tax haven jurisdiction.
- Technical service fees paid to a non-resident are subject to a 15% withholding tax. The rate increases to 17% if the payment is made to resident of a tax haven jurisdiction.
- There is no branch remittance tax in Nicaragua.

## A. TAXES PAYABLE

### COMPANY TAX

The main Nicaraguan taxes are:

1) Income tax.
2) Value Added Tax (VAT).
3) Selective consumption tax.

A company is resident in Nicaragua if it is incorporated or domiciled in the country or has its place of effective management in Nicaragua. Nicaragua has introduced the concept of a permanent establishment (PE), under which a PE may be treated as a resident for tax purposes.

CIT is levied only on domestic-sourced income at a flat rate of the higher of:

- 30% of net taxable income (i.e. gross taxable income less allowed deductions), or
- a final minimum tax of 1% to 3%* on gross income obtained during the fiscal year, subject to the following exceptions:
  - o the first three fiscal periods of recently incorporated entities; for tax purposes, the beginning of business operations is when a company generates taxable income;
  - o Taxpayers whose sales prices are controlled by the government.
  - o Taxpayers that ceased operations on account of force majeure;
  - o Investments subject to a period of development; the competent Ministry must approve said period.

* Until taxable year 2019, resident companies that carry out business activities were subject to an alternative minimum income tax at a flat rate of 1% on the annual gross income as defined by law. Law 987 of 2019 amended the above-mentioned flat rate as follows:

- 3% for large taxpayers (gross annual income over NIO 160 million), except those performing fishing activities along the Caribbean coastline, for which a 2% tax rate applies;
- 2% for principal taxpayers (*principales contribuyentes* – gross annual income over NIO 60 million and under NIO 160 million); and
- 1% for other taxpayers.

**Territoriality principle:**

The income tax system is based on the territoriality principle. Companies are subject to income tax only on their Nicaraguan-source income. Nicaraguan-sourced income comprises:

- income from property located in Nicaragua;
- income from services supplied to Nicaraguan residents (including services provided by persons not physically present in Nicaragua);
- income from assets or rights and any other type of passive income in Nicaraguan territory; and
- income from businesses activities carried out in Nicaragua, regardless of where that income is received.

**Tax period:**

The tax period is the calendar year. However, taxpayers may request approval from the tax authorities to adopt a different tax period ending on 31 March, 30 June, or 30 September. However, the tax period may not exceed 12 months.

Resident companies must file an annual income tax return without exception. Income tax is computed by self-assessment. As from the entry into force of Law 987 of 2019, the tax return must be filed by the last calendar day of the second month following the end of the taxable period.

Tax returns and tax payments must be submitted via the internet through the virtual tax centre (ventanilla electrónica tributaria, VET).

**Classification of income**

- Income or taxable gross income. Taxable income is defined as gross income, less costs and expenses allowed by Nicaraguan legislation. Taxable income includes labour income, income from economic activities and capital income and capital gains (or losses). Certain income is exempt.
- Non-taxable income or gross income (not constitutive of income).

### RENTAL INCOME

- Rental income earned by residents is taxed at the ordinary income tax rates. The tax base is 70% of the gross rent. Consequently, only 30% of the gross rent can be deducted for the purpose of income-generating expenses;
- For rental income earned from real property on which no buildings have been erected, the tax base is 80% of the gross rent (only 20% of the gross rent can be deducted).

### CAPITAL GAINS TAX

A withholding tax rate of 10% is levied on capital gains realized by non-resident individuals through selling real estate property located in Nicaragua.

### BRANCH PROFITS TAX

Branches of foreign companies are taxed in the same manner as subsidiaries. There is no branch remittance tax.

### VALUE ADDED TAX (VAT)

VAT is an indirect tax levied for acts performed on Nicaraguan territory on the following activities:

- The sale of goods, provision of services, or use or enjoyment of property, the payment shall be made monthly to the tax administration within the fifteen (15) days to the taxable period, or in smaller instalments;
- The import or admission of goods or merchandise, in the Declaration or customs form of import, prior to removal of the goods or merchandise of the enclosure or customs warehousing; and
- The disposal back on imports or internment of goods or goods with customs exemption.

**Filing and payment**

The VAT return must be filed in the month following the tax period and any VAT due must be paid at that time. Taxpayers falling within the scope of the large taxpayer regime must submit a VAT return every 15 days.

**Taxable persons:**

Taxable persons are individuals, legal entities and any economic unit that performs taxable transactions, including the state, autonomous regions, national institutions and municipalities.

Tax-exempt persons include: universities and centres for superior technical education, central government and its municipalities, the army and national police forces, members of diplomatic or consular posts of foreign nations (under reciprocity treatment), as well as international organizations and missions, churches and religious foundations, and entities declared exempt from tax by the Constitution. Tax exemptions are also granted by specific laws in respect of certain activities (e.g. tourism, exports and free zones).

**Rates**

The standard VAT rate is 15%, except for exports of domestic production goods and services abroad, which will be zero-rated.

## SELECTIVE CONSUMPTION TAX

A selective consumption tax is applied to goods that are considered to be non-essential. The tax base is the cost, insurance, and freight (CIF) price for imported items, and the tax is levied and paid only at that stage.

## LOCAL TAXES

Nicaragua's income tax law affects the whole national territory equally.

## OTHER TAXES ON CORPORATIONS

**Capital duty**

There is no capital duty.

**Payroll tax**

Payroll tax must be withheld at progressive rates, ranging from 0% to 30%.

**Real property tax**

The municipalities levy a 1% tax on the value of real estate.

**Stamp duty**

Stamp duty is levied on certain types of documents issued in Nicaragua or abroad that produce effects in Nicaragua. The amount varies depending on the transaction.

**Transfer tax**

There is no transfer tax.

**Other**

Mining and oil companies are subject to taxes in addition to the income tax.

## OTHER TAXES ON INDIVIDUALS

**Capital Duty**

There is no capital duty.

**Real property tax**

The municipalities authorities levy a real property tax on the occupation of real property.

**Social security**

Social security contributions are levied at 7% at the level of employees and at 21.5% at the level of employers and are determined on the basis of wages and salaries.

**Stamp duty**

Stamp duty is levied on certain types of documents issued in Nicaragua or abroad that produce effects in Nicaragua. The amount varies depending on the transaction.

**Capital acquisitions tax**

There is no capital acquisitions tax.

**Inheritance/estate tax**

If the property is required to be registered with the Public Record of Property, an occasional withholding tax will apply at rates ranging from 1% to 4%.

## INCENTIVES

- The Nicaraguan government is focusing on attracting foreign retirees to buy properties and then move to the country full-time for their retirement. It has become easy to become a permanent resident of Nicaragua, taking approximately one year. An individual applying for residency must satisfy the following qualifications:
  - an investor with at least USD 40,000 of property; or
  - a demonstrated monthly income of at least USD 500 per month in the country of origin.
- Another attractive residency package scheme is Nicaragua´s Pensionado program. Foreign retirees are allowed to bring USD 10,000 of household goods and other personal items duty-free on first arrival and bring a vehicle into the country tax-free once every five years.

  Foreign investors under the Foreign Investment Law 344, may (but are not required) to register investments and negotiate a foreign investment agreement with the Ministry of Economy and Development. This guarantees the investor repatriation of foreign capital, remittance abroad of the net profits and effective compensation in the case of expropriation.

## B. DETERMINATION OF TAXABLE INCOME

The net taxable income of a corporation or partnership is determined by subtracting all allowable deductions from gross taxable income. Generally, expenditures and/or losses are deductible provided they are incurred in gaining or producing taxable income, or preserving the source of income. Special rules apply in respect of certain expenditures.

## DEPRECIATION

Depreciation is allowed in regard of tangible fixed assets. Depreciation is generally calculated at a fixed annual percentage in accordance with the straight-line method. However, an accelerated depreciation regime is available for exporters under a specific law to promote exports. Maximum depreciation rates for assets are as follows:

| **Buildings:** | **Rate (%)** |
|---|---|
| Used for commercial purposes | 5 |
| Used for industrial purposes | 10 |
| Fixed installations used for agricultural purposes | 20 |
| Buildings for rent | 1 |

| **Equipment and machinery** | **Rate (%)** |
|---|---|
| Used for industrial purposes in general | |
| Fixed machinery | 10 |
| Not permanently attached to buildings | 15 |
| Other | 20 |
| Used in agricultural industries | 20 |

| **Transportation equipment** | **Rate (%)** |
|---|---|
| Collective or cargo | 20 |
| Other | 12.5 |

Amortisation of intangible assets or deferred expenses is allowed as a deduction.

## STOCK / INVENTORY

The Income Tax regulations only allow the use of the average-cost method according to the normal course of operations. No other method is allowed.

## CAPITAL GAINS AND LOSSES

A withholding tax rate of 10% is levied on capital gains realised by non-resident individuals through selling real estate properties located in Nicaragua.

## LOSSES

Losses may be carried forward for three years. The carry-back of losses is not permitted.

## FOREIGN SOURCE INCOME

Both residents and non-residents are subject to tax on Nicaragua-sourced income only (however, residents have a base amount that is exempt from taxes). All foreigners who intend to reside indefinitely in Nicaragua are considered residents for tax purposes.

The applicable income tax rates are:

- Employment Income of Residents: progressive up to 30% (base amount is tax-exempt);
- Employment Income of non-residents: flat 20%;
- Taxation on interest: 10% withholding tax;
- Taxation on dividends: 10% withholding tax;
- Taxation on capital gains: the same as employment income.

## TAX INCENTIVES

Reduced tax rates are available to companies operating in the tourism and energy sectors.

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**Incentives Act for Tourism Industry in Nicaragua**

The Law of Incentives for the Tourism Industry of Nicaragua provides a number of tax incentives for investment in this sector ranging from investment in the areas of accommodation, food and beverage, travel agencies to tourist transportation, airlines, among others. These incentives are:

- Exemption of 80 to 100 % of the income tax (IR) for a period of ten years.
- Exemption of property tax for a period of ten years.
- Exemption of Value Added Tax (VAT) applicable to design services, engineering and construction services.
- Exemption of import tax and VAT on the local purchase of goods, furniture, equipment, ships and vehicles of 12 passengers or more or cargo vehicles, this must be declared necessary for the establishment and operations of the tourism activity by the Tourism Board; and on the purchase of equipment that contribute to save water and energy and those necessary for the safety of the project.
- Exemption of import tax and VAT on the purchase of non-luxury materials and fixtures of the building.
- In case of reinvestment: if at the end of the incentive regime for ten years, the investor decides to reinvest at least 35% of the value of the originally approved investment, he/ she can receive all the benefits for ten additional years.

## C. FOREIGN TAX RELIEF

The Nicaraguan tax system is based on the territoriality principle. Foreign-sourced income is not taxed and thus no foreign tax credit is granted.

## D. CORPORATE GROUPS

Group taxation is permitted only when previously approved by the tax authorities. The economic group must submit a business case to the tax administration justifying the economic reason of their request.

**Thin capitalisation**

The Nicaraguan tax system does not impose any form of thin capitalisation rules.

**Controlled foreign companies (CFCs)**

Nicaragua does not have CFC rules.

## E. RELATED PARTY TRANSACTIONS

Transfer pricing provisions have come into effect on 30 June 2017 (enacted by Law No. 822).

The transfer pricing rules apply to transactions conducted between an individual or legal entity domiciled or resident in Nicaragua and its related entities resident abroad and entities operating under a special tax regime.

The TP rules: (1) include the arm's-length principle and related-party definition; (2) regulate the criteria that taxpayers must follow to perform a comparability analysis; and (3) establish the transfer pricing methods to apply when assessing the arm's-length principle. The tax authorities are authorized to adjust prices when taxpayers do not comply with the arm's-length principle.

The TP rules also include provisions for Advance Pricing Agreements. Taxpayers are able to request an APA for up to five tax periods.

Taxpayers must prepare transfer pricing documentation on an annual basis. Law No. 822 sets out a general framework for the supporting documentation requirement. Taxpayers must have the transfer pricing documentation prepared by the time they file their tax returns. They must maintain the transfer pricing documentation in case it is requested by the tax authorities. If the tax authorities request the documentation, taxpayers have 10 business days to submit it.

## F. WITHHOLDING TAX

**Withholding taxes on domestic payments**

Dividends and interest payments made by resident companies to Nicaraguan residents are subject to a final withholding tax rate of 15% on 70% of the gross income. Before the entry into force of Law 987 of 2019, the withholding tax rate was 10% on 50% of the gross income.

Royalties paid to Nicaraguan residents are subject to a final withholding tax rate of 15% on the gross income. Before the entry into force of Law 987 of 2019, the withholding tax rate was 10%.

Income from immovable property derived by Nicaraguan residents is taxed at a final withholding tax rate of 15% on 80% of the gross income. Before the entry into force of Law 987 of 2019, the withholding tax rate was 10% on 70% of the gross income.

In addition, there is a general withholding tax system applicable to payments exceeding NIO 1,000 made to Nicaraguan residents regarding:

- the purchase of assets and furnishing of services in general, including construction works, leases, rentals and publicity agents: 2%;
- the purchase and sale of agricultural products not traded on the agro market: 3%;
- the purchase of goods and services when paid with credit or debit cards: 1.5%;
- leases: 2%;
- wood commercialisation: 5%; and
- furnishing of technical services, professional services rendered by individuals, and all other activities in general: 10%.

**Withholding taxes on payments to non-residents**

- Dividends paid to a non-resident are subject to a 15% withholding tax. The rate increases to 17% if the payment is made to a resident of a tax haven jurisdiction.

- Interest paid to a non-resident or non-financial institution is subject to a 15% withholding tax. The rate increases to 17% if the payment is made to a resident of a tax haven jurisdiction.
- A 15% withholding tax applies to patent royalties paid to a non-resident. The rate increases to 17% if the payment is made to a resident of a tax haven jurisdiction.
- Technical service fees paid to a non-resident are subject to a 15% withholding tax. The rate increases to 17% if the payment is made to resident of a tax haven jurisdiction.
- There is no branch remittance tax in Nicaragua.
- Other: a 1.5% withholding tax is levied on reinsurance premiums. Income from insurance premiums and income from maritime and air transport are subject to a 3% withholding tax. The rate in other cases generally is 15%. Income from immovable property derived by non-resident companies is subject to a final withholding tax rate of 15% on 70% of the gross amount

## G. FOREIGN EXCHANGE CONTROL

There are foreign exchange controls, and the Nicaraguan Central Bank issues foreign exchange rates on a monthly basis. There are no restrictions on the import or export of capital.

Repatriation payments may be made in any currency. In principle, residents may hold bank accounts in any authorised currency, and non-residents may do so in special cases.

## H. PERSONAL TAX

### Basis

Residents and non-residents are taxed on Nicaraguan-sourced income only.

### Residence

A national or a foreign individual who remains in Nicaragua for more than 180 day during the calendar year, even if not continuously, is considered a resident for tax purposes.

### Filing status

A married couple living together may elect joint or separate assessment.

### Taxable income

Taxable income includes income from employment, trading income and income from investments in Nicaragua that exceed NIO 100,000.

### Capital gains

Capital gains are subject to a 10% tax.

### Deductions and allowances

A deduction equal to 25% of education, health and professional services expenses is granted annually up to a maximum of NIO 20,000, provided supporting invoices are maintained.

### Rates

The rates for a resident individual are progressive up to 30%. The rate is 15% for a non-resident individual deriving Nicaraguan-sourced income.

| Taxable income (NIO) | Minimum tax charge (NIO) | Tax on excess (%) |
|---|---|---|
| 0 – 100,000 | 0 | 0 |
| 100,000 – 200,000 | 0 | 15 |
| 200,000 – 350,000 | 15,000 | 20 |
| 350,000 – 500,000 | 45,000 | 25 |
| Above 500,000 | 82,500 | 30 |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Nicaragua has not concluded any double tax treaties.

# NIGER

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Niamey | Antoine Lawson | +225 21 32 05 85<br>antoine.lawson@pkf-fwa.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of the Niger |
| Capital: | Niamey |

| | |
|---|---|
| Main languages: | French |
| Population: | 25.97 million (2022 estimate) |
| Monetary unit: | West African CFA Franc (XOF) |
| Internet domain: | .ne |
| Int. dialling code: | +227 |

## KEY TAX POINTS

- The standard corporate income tax rate is 30%.
- VAT is levied at a standard rate of 19%.
- Losses may generally be carried forward for up to 3 years.
- Dividends paid to non-resident companies are subject to a 10% final withholding tax on the gross amount.
- Interest derived by a non-resident company is subject to a final withholding tax on the gross amount at the same rates as residents.
- Royalties and technical assistance fees paid to non-resident companies are subject to a 16% final withholding tax rate on the gross amount.

## A. TAXES PAYABLE

### COMPANY TAX

Niger operates a territorial tax system. Profits generated by companies established in Niger are subject to corporate income tax on commercial, non-commercial and other profitable activities. Where a company carries on business activities both in Niger and abroad, the profits realised have to be calculated separately to determine the portion of profits that would be subject to tax in Niger.

The standard corporate income tax rate is 30%.

Natural or legal persons subject to tax on the basis of actual profits *(régime réel)* are liable for a minimum tax lump-sum. The minimum flat tax is assessed annually on the realised turnover (exclusive of VAT) during the last accounting year. The rates are as follows:

- 1% for industrial companies;
- 1.50% for other activities;
- 3% for companies for which the minimum tax is calculated on the gross margin (other than independent marketers and promoters of the hydrocarbon sector).

For independent marketers and promoters of the hydrocarbon sector, the minimum tax is determined on the gross margin according to the following scale:

| Turnover in FCFA | Rate applicable on the gross margin |
|---|---|
| 0 – 5 billion | 8% |
| 5 billion – 10 billion | 7% |
| 10 billion – 20 billion | 6% |
| Over 20 billion | 5% |

### CAPITAL GAINS TAX

Generally, capital gains are taxed as ordinary income and are subject to business income tax. However, specific final taxes apply to gains from shares and other equity securities (7%), gains from bonds (5%) and gains from the transfer or expropriation of real estate (5%).

### BRANCH PROFITS TAX

There is no branch profits tax in Niger.

### VALUE ADDED TAX (VAT)

VAT is levied at each stage of the production and distribution process. It is payable on transactions carried out in Niger either on a regular or occasional basis by persons who purchase goods for resale or who carry out activities other than employment or agricultural activities, including the rendering of services.

VAT is levied at a standard rate of 19%. A 5% reduced rate is applicable as from 1 January 2018 to the import and domestic sale of sugar, cooking oil, animal feed, processed milk, maize, millet, sorghum, rice, wheat and computer equipment, excluding consumables, for technical and vocational educational establishments.

## B. DETERMINATION OF TAXABLE INCOME

The taxable profit is the net operating profit, calculated on an accrual basis. The net taxable profit is determined by deducting all costs and expenses from gross revenue.

### DISALLOWED EXPENSES

Non-deductible costs and expenses include fines and all sorts of penalties imposed for violating regulations governing pricing, supplies and the distribution of certain products, entry and exit, as well as for failure to pay taxes and other levies within the prescribed deadlines.

## DEPRECIATION

The most common method of depreciation is the straight-line method. Depreciation and amortisation rules for corporate income tax purposes generally follow the accounting rules with few exceptions.

| Asset | Rate (%) |
|---|---|
| Residential or commercial buildings | 2 |
| Vehicles | 25 |
| Industrial buildings | 5 |
| Office furniture | 10 |
| Computer hardware and software | 50 |
| Industrial equipment and tools | 10 |
| Set-up costs | 20 |

## INTEREST DEDUCTIONS

Interest paid to related companies or arising from a loan secured by an associated or related company is deductible for business income tax purposes if the following conditions are met:

- The amount of loans may not exceed twice the amount of equity (debt-to-equity ratio 2:1); and
- The interest rate may not exceed more than 3 percentage points the interest rate provided by the BCEAO (Central Bank of West African States).

## LOSSES

Losses may generally be carried forward for up to 3 years.

## C. FOREIGN TAX RELIEF

There is no double taxation relief method under domestic tax law.

## D. CORPORATE GROUPS

Tax consolidation is allowed in Niger. The accounts of separate members of a group of companies may be combined for tax purposes and assessed for tax purposes on a consolidated basis at the level of the head company. Non-resident group members, however, are excluded from tax consolidation.

## E. PERSONAL TAX

Tax on wages and salaries is levied according to a progressive scale as follows, with effect from 1 January 2010.

| Monthly taxable salary or wage (FCFA) | Rate (%) |
|---|---|
| Up to 25,000 | 1 |
| 25,001 – 50,000 | 2 |
| 50,001 – 100,000 | 6 |
| 100,001 – 150,000 | 13 |
| 150,001 – 300,000 | 25 |
| 300,001 – 400,000 | 30 |
| 400,001 – 700,000 | 32 |
| 700,001 – 1,000,000 | 34 |
| Over 1,000,000 | 35 |

## F. WITHHOLDING TAX

- Dividends paid to non-resident companies are subject to a 10% final withholding tax on the gross amount.
- Interest derived by a non-resident company is subject to a final withholding tax on the gross amount at the same rates as residents.
- Royalties and technical assistance fees paid to non-resident companies are subject to a 16% final withholding tax rate on the gross amount.

## G. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-treaty countries** | | | |
| Companies | 7/10[2] | 0/3/6/10/15/20 | 16[4] |
| Individuals | 10 | 0/3/6/10/15/20 | 16 |
| **Treaty countries:** | | | |
| France | --[1] | --[1] | --/0 |
| WAEMU[3] | 10 | 15 | 15 |

Notes:

1. No reduction under the treaty, the domestic rate applies.
2. The lower 7% rate applies to WAEMU recipients according to domestic tax law.
3. West African Economic and Monetary Union (French acronym: UEMOA): member countries of the WEAMU are Benin, Burkina Faso, Guinea-Bissau, Ivory Coast, Mali, Niger, Senegal and Togo.
4. Technical assistance fees paid to non-resident companies are subject to a 16% final withholding tax rate.

## NIGERIA

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Lagos | Tajudeen Akande | +234 903 000 1352 |
| | | +234 802 303 9317 |
| | | tajudeen.akande@pkf-ng.com |

### BASIC FACTS

| | |
|---|---|
| Full name: | Nigeria |
| Capital: | Abuja |
| Main language: | English |
| Population: | 214.49 million (2022 estimate) |
| Monetary unit: | Nigerian Naira (NGN) |
| Internet domain: | .ng |
| Int. dialling code: | +234 |

### KEY TAX POINTS

- The Finance Act 2021, signed into law in December 2021, amended the various tax laws in the country which were last reviewed in the Finance Act 2020. The Finance Act 2021 introduces changes to the Companies Income Tax Act, Value Added Tax Act, Personal Income Tax Act, Capital Gains Tax Act, Customs Excise Tariff etc. (Consolidated) Act, Tertiary Education Trust Fund (Establishment) Act, Federal Inland Revenue Service (Establishment) Act, Fiscal Responsibility Act, National Agency for Science and Engineering Infrastructure Act, Finance (Control & Management) Act, Insurance Act, Nigeria Police Trust Fund (Establishment) Act, and Stamp Duties Act.
- The amendments aim to:
  - promote fiscal equity by mitigating instances of regressive taxation;
  - reform domestic tax law to align with global best practice;
  - introduce tax incentives for investment in infrastructure and capital markets;
  - support small businesses in line with the ease of doing business reforms; and
  - raise revenue for government, by various fiscal measures.
- Profits of companies engaged in educational activities are now taxable.
- Capital gains from the disposal of stocks and shares in Nigerian companies are taxable at 10% for aggregate proceeds amounting to NGN 100 million.
- The exported goods of companies in petroleum operations across all levels are now taxable.
- The rate of tertiary education tax has been increased from 2% of assessable profits to 2.5%, other than a small company.
- Excise duty on non-alcoholic, carbonated and sweetened beverages shall be charged at a specific rate of NGN10 per litre.
- Companies engaged in the business of banking, mobile telecommunications, ICT, aviation, maritime, oil and gas, with a turnover of NGN 100 million and above are now to pay National Agency for Science and Engineering Infrastructure (NASENI) tax of 0.25% of their profits before tax and the tax is to be administered by the Federal Inland Revenue Service.

### A. TAXES PAYABLE

### COMPANY TAX

All companies operating in Nigeria outside the oil and gas sector of the economy are required to pay income and education tax.

The rate of Company Income Tax is 30% and 20% of total profit for large and medium companies respectively and 2.5% of assessable profit for education tax. Small companies are completely exempt from paying income and education taxes.

Total profit is profit after deducting previous year losses carried forward and capital allowances. Assessable profit is obtained prior to deducting capital allowances.

Small companies are companies with turnover of less than NGN 25 million. Medium-sized companies are those with turnover between NGN 25 million and NGN 100 million and Large companies are those with turnover above NGN 100 million.

Resident companies pay tax on their worldwide income. Non-resident companies are taxed on the proportion of their income earned in Nigeria. Companies are deemed to be resident companies if they are registered or incorporated in Nigeria. The fiscal year runs from 1 January to 31 December. A company can choose any date for its accounting year-end but must file returns not later than six months after its accounting year-end.

Filing of Income Tax within 90 days after the accounting year-end grants taxpayers a bonus of 2% and 1% on Company Income Tax for Medium-sized and Large companies respectively. Tax can be paid in instalments provided that the final instalment shall be paid on or before the due date.

Unclaimed dividends in a listed company and unutilised amounts in a dormant bank account outstanding for 6 years or more shall be transferred to the Unclaimed Funds Trust Fund as a special debt to the Federal Government to be managed by the Debt Management Office and shall be available to the shareholder or account holder at any time together with the yield thereon.

Minimum tax is payable where a company has no taxable profit or the tax payable is less than the minimum tax calculated as 0.5% of gross turnover less franked investment income. However, the rate is reduced to 0.25% for any 2 concurrent years from 1 January 2019 to 31 December 2021.

Exemption from Minimum tax: a company would not be liable for minimum tax if it meets any of the following conditions:

- it carries on primary agricultural production;
- it has turnover of less than NGN 25 million for the relevant year of assessment;
- it is still within its first four calendar years of operations.

## PETROLEUM PROFIT TAX

Companies in the oil and gas sector are regulated by separate tax laws. Tax rates are different for resident companies in the upstream sector of the oil and gas industry. The rates range from 50% for some of the new production sharing contracts to 65.75% for others in the first five years, during which all pre-operation expenses are expected to be fully amortised, and 85% of their chargeable profits thereafter. The tax rate in the downstream sector is 30%.

Chargeable profit is profit of the company after deducting allowances. Petroleum companies are required to file their returns of estimated tax within two months into a new accounting year and commence payment of the tax in 12 monthly instalments pending determination of the result of their operations at the close of the year. Both estimated and final taxes are computed in US dollars and payment made in US dollars in accordance with returns filed.

## CAPITAL GAINS TAX

Capital gains and losses are treated differently from regular business transactions of individuals, partnerships and companies in Nigeria. Gains arising from the disposal of chargeable assets are taxed at a rate of 10%.

Inflation is rarely considered in determining capital gains. Payment of capital gains tax can be postponed if the proceeds on disposal of an asset are reinvested in acquiring similar assets. Capital losses cannot be charged against normal trading income but can be carried forward to offset against future capital gains tax from the same source.

Chargeable assets include land and buildings situated in Nigeria, as well as plant and machinery.

Sums obtained by way of compensation for loss of office shall not be chargeable gains, except where the amount of such compensation exceeds NGN 10 million (previously NGN 10,000).

Inflation is rarely considered in determining capital gains. Payment of capital gains tax can be postponed if the proceeds on disposal of an asset are re-invested in acquiring similar assets. Capital losses cannot be charged against normal trading income but can be carried forward to offset against future capital gains tax from the same source.

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The deadlines for self-assessment, payment and filing of CGT returns are 30 June and 31 December of the relevant year.

Effective from 2022, capital gains from the disposal of stocks and shares in Nigerian companies for aggregate proceeds amounting to NGN 100 million or more in any period of 12 consecutive months is liable to CGT at 10% where the proceeds have not been re-invested within the same year of assessment in the acquisition of shares in the same or other Nigeria companies.

## BRANCH PROFITS TAX

Non-Nigerian companies operating branches, which are exempted from local incorporation by the Federal Government, are treated as separate entities and taxed on income earned from their activities in Nigeria. Activities of non-Nigerian companies, which would attract tax in Nigeria and other special issues, are spelt out in the laws. Examples are turnkey projects, allocation of income and expenditure between the foreign company and its branch in Nigeria, transfer pricing, etc.

## VALUE ADDED TAX (VAT)

VAT is imposed on non-exempt supplies of goods and services within Nigeria as well as on goods imported. Export goods and services are non-taxable. The standard rate is 7.5%. VAT is generally assessed by a taxable person who supplies taxable goods and services and payment is made when filing monthly returns.

Transactions on basic food items produced within the country, books and educational materials, plant and machinery for use in Export Free Zone, agricultural equipment, and all medical and pharmaceuticals products and services, amongst others, are exempt from VAT.

Non-resident companies that carry on business in Nigeria shall register for the tax with the Board, using the address of the person with whom it has a subsisting contract, as its address for the purposes of correspondence relating to the tax. Non-resident persons that make a supply of taxable goods or services in Nigeria may appoint a representative for the purposes of their tax obligations.

All goods and services consumed or otherwise utilised in Nigeria are subject to VAT in Nigeria. This is in line with the "destination principle" of VAT.

Taxable persons with taxable supplies of NGN 25 million and above are required to charge, collect, remit the tax and file monthly returns to the Federal Inland Revenue Service.

Commercial aircrafts, commercial aircrafts engines, commercial aircraft spare parts and airline tickets sold by commercial airlines registered in Nigeria are exempt from VAT.

## OTHER TAXES

### CUSTOMS AND EXCISE DUTY

Customs duties are levied on goods coming into the country at varying rates from 5% to 75% of the import value at each port of entry. Excise duties are payable on designated locally manufactured goods in the country. Goods and raw materials that are not locally available in Nigeria are exempted.

Finance Act 2020 exempts the importation of aircrafts, engines, spare parts and components purchased or leased by commercial airlines registered in Nigeria from customs duties. Finance Act 2020 reduces import duty rates and levies on various classes of motor vehicles.

Finance Act 2021 charges excise duty on non-alcoholic, carbonated and sweetened beverages at a rate of NGN 10 per litre.

### STAMP DUTIES

Several transactions attract stamp duties. These include incorporation of companies, increase in companies' authorised share capital, mortgage bonds, debenture and dealing in securities, settlement of estates and conveyance of property. Recently, the Central Bank of Nigeria directed that electronic transfers and teller deposits from NGN 10,000 and above paid into any account shall be liable to NGN 50 stamp duty. This charge will apply to each eligible transaction and is payable by the receiving account.

### LOCAL TAXES

States in Federation (there are now 36 states) have a variety of local taxes in their areas of jurisdiction. Local taxes include motor vehicles' licence/registration, consent fees for transfer of property in real estate, property tax, gaming/casino tax, water rates etc. Local Councils impose charges and several other taxes.

## B. DETERMINATION OF TAXABLE INCOME

Taxable profit of a company is determined by ascertaining its income on ordinary activities and subtracting all allowable deductions based on financial results of the preceding year. To be deductible, expenses must be of a revenue nature and incurred wholly, exclusively, necessarily and reasonably for earning the income reported. Donations to certain bodies are not allowable for tax purposes.

### CAPITAL ALLOWANCES / DEPRECIATION

Capital allowances are granted to companies against taxable income in lieu of the wear and tear of business assets. Rates of capital allowances are highest (95%) for expenditure on replacement plant and machinery for mining, agricultural production, industrial plant and machinery, and motor vehicles used for public transportation. In addition, reconstruction investment allowance of 10% is available to companies in their first year of acquisition of plant and equipment and investment allowance at 15% for companies in gas utilisation.

The capital allowance to be claimed in any year of assessment will be limited to the amount relating to the qualifying capital expenditure incurred in generating the assessable profits.

The capital allowance for any assessment year for a small company or medium-sized company computed together with any unabsorbed allowances brought forward from previous years shall be deemed to have been made and consumed by such company in each such year of assessment and the residue shall be carried forward into subsequent years.

Companies and other organisations engaged in research and development activities also enjoy 20% investment tax credit on their qualifying expenditure for that purpose.

Other business assets such as Plant and Machinery and Motor vehicle enjoy capital allowances at lower rates but generally at 50% initially and 25% annually in other cases.

### STOCK / INVENTORY

Closing stocks have to be appropriately valued at the lower of cost or net realisable value. Accepted valuation methods are first-in-first-out (FIFO) and weighted average but last-in-first-out (LIFO) valuation is not acceptable. Valuation method once adopted must be consistently followed.

### CAPITAL GAINS AND LOSSES

Capital gains and losses as discussed above are excluded from regular trading operation of a company and assessed separately under different tax laws.

### DIVIDENDS

Dividends received by a Nigerian company from other domestic companies are excluded in the determination of taxable income to the extent that such distribution has suffered withholding tax in the hands of the recipient. Dividends paid to non-resident companies and investors attract withholding tax of 10%, which is the final tax, while dividends distributed by Unit Trusts and pioneer companies during the pioneer period are tax-exempt in the hands of recipients and withholding tax is not deductible for such dividend.

Where a company has no total profits during the year or where dividend declared exceeds the total profits, the dividend declared is deemed to be the total profits of the company and it is taxed accordingly, except where the dividend is declared from retained earnings which had been previously subjected to tax.

### INTEREST

Interest paid on loans used for business operations are allowable for tax purposes. For a new business, such interest is capitalised prior to starting commercial production. Interest income received by lending institutions on loans to companies engaged in agricultural businesses, fabrication of any local plant and machinery and providing working capital for cottage industry established by such a company are granted tax exemptions depending on tenure and moratorium of the loans.

### LOSSES

Normal business losses can be carried forward indefinitely for relief against assessable profit.

## TAX INCENTIVES:

## GOVERNMENT INCENTIVES TO INDUSTRY

These incentives fall within the following broad categories:

1. General Tax based Incentives;
2. Sector Specific Incentives;
3. Tariff based Incentives;
4. Export Incentives;
5. Special Economic Zones.

Enterprises which fulfil the required criteria are free to apply for the following specific incentives:

### 1. PIONEER STATUS

100% tax-free period for an initial three-year period and additional two years upon renewal for pioneer industries that produce items declared as “pioneer products” under the Industrial Development (Income Tax Relief) Act and by the Federal Government of Nigeria periodically.

### 2. RURAL INVESTMENT ALLOWANCE

There is tax relief of between 15% to 100% of the cost of providing basic infrastructure such as roads, water, electricity, where such facilities are located at least 20 km from similar facilities provided by the government and is tax deductible once and for all.

### 3. RESEARCH AND DEVELOPMENT (R&D)

There is an incentive of 120% tax deductible expenses provided the research and development is carried out in Nigeria; and 140% for R&D on local raw materials.

Expenses incurred by other companies in respect of R&D are tax deductible for a company, but the amount deducted must not exceed 10% of the company’s total profit for that year of assessment.

### 4. ABOLITION OF EXCISE DUTY

In order to boost local industries, stimulate trade and reduce business costs, the Government decided that all excise duties be abolished with effect from 1 January 1998 but from 1 January 1999 excise duties were re-introduced on the following specific products:

- Spirits and other spirit-based alcohol;
- Cigarettes, cigars, cheroots and cigarillos;
- Other manufactured tobacco and tobacco-manufactured substitutes.

### 5. EXPORT PROCESSING ZONE INCENTIVES

For duly approved enterprises operating within export processing zones, the following incentives are applicable;

i. Exemption from federal, state made local government taxes, levies and rates
ii. 100% foreign ownership of investment
iii. Free transferability of capital, profits and dividends by foreign investors
iv. Rent free land at construction stage
v. Duty free, tax free on import of raw materials for goods destined for re-export
vi. Waiver on all import and export licences
vii. Waiver on expatriate quotas for foreign personnel
viii. Any company within the export processing zone that has incurred expenditure in respect to building and plant equipment in an approved manufacturing activity is liable to be granted 100 per cent capital allowance in any year of assessment.

### 6. TAX RELIEF TO EXPORT ORIENTED ENTERPRISES

a. The profit or gains of 100% of export-oriented undertakings established outside an export free zone shall be fully exempted from income tax for three consecutive assessment years provided that:

i. The undertaking is 100% oriented;
ii. The undertaking is not formed by splitting up or the reconstruction of a business already in existence;
iii. It manufactures, produces and exports during the relevant year, and the proceeds or goods exported during the year are not less than 75% of its turnover for the year;
iv. The undertaking is not formed by transfer of machinery or plant previously used for any purpose to the new undertaking or, where it does, the written down value does not exceed 25% of the total value of the plant and machinery;
v. That the undertaking repatriates at least 75% of the export earnings to Nigeria and places this in the domiciliary account with a bank in Nigeria.

b. There is also an export expansion grant scheme which provides a post-shipment incentive designed to stimulate export-oriented activities.

### 7. OIL & GAS FREE ZONE INCENTIVES

For duly approved enterprises operating within oil and gas free zones, the following incentives are applicable:

i. Exemption from federal, state and local government taxes, levies and rates
ii. 100% foreign ownership of investment

iii. Free transferability of capital, profits and dividends by foreign investors
iv. Rent free land at construction stage
v. Exemption from federal, state and local government taxes, levies and rates
vi. Duty free import of goods
vii. Waiver on import and export licensing
viii. Waiver on expatriate quota for foreign personnel.

### 8. SOLID MINERALS INCENTIVES

Companies engaged in the mining of solid minerals are entitled to claim initial and annual allowances as follows:

- Initial Allowance: 95%;
- Annual Allowance: Nil.

In addition, they are to enjoy a tax-free holiday for the first three years of operation.

### 9. TAX INCENTIVES FOR COMPANIES IN GAS UTILISATION (DOWNSTREAM OPERATIONS)

Companies engaged in the marketing and distribution of natural gas for commercial purposes, are eligible for;

i. Tax exemption for a three-year period in the first instance and an additional period of two years subject to satisfactory performance;
ii. Dividend paid during this tax-free period which will also not suffer withholding tax deductions where the investment for the business was in foreign currency or imported plant and machinery during the period was not less than 30% of its share capital;
iii. As an alternative to (i) above, an additional investment allowance of 35% which shall not reduce the value of the asset;
iv. Accelerated capital allowance after the tax-free period in I above; an annual allowance of 90% with 10% retention for investment in plant and machinery;
v. Investment allowance of 15% which shall not reduce the value of the asset;
vi. Tax deductibility of any loan obtained with the prior approval of the Minister charged with the responsibility for Finance.

The Finance Act 2020 restricts the incentive to apply only with regard to gas utilisation operations of a company, as opposed to the whole company. In addition to this, once a company claimed an incentive under any law, such company cannot enjoy the gas utilisation incentive for the same qualifying capital expenditure.

### 10. TAX INCENTIVES FOR HOTELIERS AND TOURISM SERVICES

25% of income derived from tourism by hotels in convertible currencies will be exempted from tax with effect from 1996 provided such incomes are set aside and put in a reserve fund to be utilised within five years in expansion or the construction of new hotels, conference centres and new facilities useful for tourism development.

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### 11. TAX EXEMPTION ON INTEREST ON BONDS AND SHORT-TERM-SECURITIES AND PROCEEDS FROM DISPOSAL OF GOVERNMENT AND CORPORATE SECURITIES

There is tax exemption for interest earned on;

i. Short term Federal Government securities such as treasury bills and promissory notes;
ii. Bonds issued by Federal, State and Local Government and their agencies;
iii. Bonds issued by corporate bodies including supra-nationals.

With the exception of bonds issued by the Federal Government, the exemption is for a ten-year period.

The incentives set out in this section are in no way exhaustive and neither are the quantum nor percentage of relief mentioned fixed for all time. There is the need therefore to ascertain the current operative figures at the time of making investments.

### 12. EXEMPTION OF SMALL COMPANIES FROM COMPANY INCOME TAX

In line with the Finance Act 2020, Small companies with a turnover of less than NGN 25 million are exempted from Companies Income Tax.

### 13. REDUCTION OF RATE OF INCOME TAX FOR MEDIUM-SIZED COMPANY

A lower CIT rate of 20% is applied to medium-sized companies with turnover between NGN 25 million and NGN 100 million.

### 14. INDUSTRIAL DEVELOPMENT (INCOME TAX RELIEF)

Small or medium-sized companies engaged in primary agricultural productions are eligible for an initial tax-free period of four years, which may be extended for an additional two year-period subject to satisfactory performance.

## C. CORPORATE GROUPS

There are no provisions for consolidation of accounts for group taxation in Nigeria.

## D. RELATED PARTY AND ARTIFICIAL TRANSACTIONS

Related party transactions are required by the tax laws to be disclosed separately and the tax officials are given power to determine whether the transactions are at arm's length and the necessary adjustment to be made to make-up the liability. When a disposition is not, in fact, given effect to and the transaction is artificial or fictitious, the transaction may be set aside by the Revenue authorities.

Related party and artificial transactions are guided by the revised income Tax (Transfer Pricing) Regulations, 2018 effective 12 March 2018, which repealed the (old) 2012 Regulations which took effect on 2 August 2012.

The Regulations were issued to ensure alignment with the developments in international tax practice as it relates to Transfer

Pricing (TP), in particular the Base Erosion and Profit Shifting (BEPS) project embarked upon by the Organisation for Economic Cooperation and Development (OECD) on the request of the finance ministers of the G20 countries.

## E. EXCHANGE CONTROL

Exchange control regulations have been abolished in Nigeria. Under the new foreign exchange and investment promotion laws, a foreign investor is guaranteed unconditional transferability of funds through an authorised dealer in freely convertible currencies in respect of:

- Dividends or profit (net of taxes) attributable to the investment;
- Payment in respect of loan serving where a foreign loan has been obtained;
- The remittance of proceeds (net of all taxes) and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to the investment. Authorised dealers of foreign currencies need to notify the Central Bank of Nigeria of any cash transfer to or from a foreign country of any sum in excess of USD 10,000.

A tax clearance certificate and certificate of capital importation may have to be obtained by anyone wishing to remit dividend and interest funds outside the country.

## F. WITHHOLDING TAXES

Certain payments to domestic companies and individuals and non-resident companies and investors are subject to withholding tax at the following rates:

| | Corporate Bodies (%) | Individuals (%) |
|---|---|---|
| Dividends | 10 | 10 |
| Interest | 10 | 10 |
| Director Fees | 10 | 10 |
| Rent (including hire of equipment) | 10 | 10 |
| Royalties | 10 | 5 |
| Construction (roads, buildings, bridges and power plant construction contracts) | 2.5 | 5 |
| All aspects of contract activities or agency arrangements including contracts for supply (excluding survey, design and deliveries) | 5 | 5 |
| Management services | 10 | 5 |
| Consultancy and professional fees | 10 | 5 |
| Technical services | 10 | 5 |
| Commissions | 10 | 5 |

Withholding tax paid by a resident person and companies in Nigeria is payment on account of tax and can be used to offset part of personal and companies' income tax except in the case of dividend and interest (franked investment income) where withholding tax becomes a final tax. Withholding tax paid by non-resident individuals and companies is a final tax.

## G. PERSONAL TAX

While the above outline applies mainly to companies, different tax rules and principles apply to individuals in employment, sole traders, partners in a partnership and trustees as outlined below. The concept of residence determines the extent to which the income of taxpayer is liable to Nigerian tax.

A resident person is assessable to tax on his global income, i.e. income accruing in, derived from, brought into or received in Nigeria. An individual is regarded as resident in Nigeria in an assessment year if he/she:

a) Is domiciled in Nigeria;
b) Sojourns in Nigeria for a period or aggregate period amounting to 183 days or more in a 12-month-period;
c) Serves as a diplomat or diplomatic agent of Nigeria in a country other than Nigeria; or
d) Has a permanent place available for his domestic use in any State in Nigeria.

The profit of a trade, profession or vocation is liable to tax in Nigeria regardless of the period such a trade, profession or vocation has been carried on. Income from employment, however, is liable for tax when a person becomes a resident. Non-resident persons pay tax on the portion of their income sourced in Nigeria. They become liable for tax from the day they begin to carry on a trade, business, profession or vocation in Nigeria. Double tax treaties have been concluded with a number of countries and double tax relief applies to such income. The pay-as-you-earn (PAYE) system of collection is in operation.

There are a number of allowances against total income.

## INCOME TAX TABLE

(1) Relief shall be granted thus:
- Higher of 1% of gross income;
- Or a consolidated relief allowance on income at a flat rate of NGN 200,000 plus 20% of gross income.

(2) Tax Exempt Income: The following deductions are tax exempt:
(a) National Housing Fund Contribution;
(b) National Health Insurance Scheme;
(c) Life Assurance Premium;

(d) National Pension Scheme;
(e) Gratuities.

(3) After the relief allowance and exceptions have been granted in accordance with paragraphs 1 and 2 of the Schedule to the New Personal Income Tax (Amendment) Act 2011, the balance of income shall be taxed as specified in the following tax table, subject to a minimum of 1% of gross income whichever is higher.

- First NGN 300,000 at 7%;
- Next NGN 300,000 at 11%;
- Next NGN 500,000 at 15%;
- Next NGN 500,000 at 19%;
- Next NGN 1,600,000 at 21%;
- Above NGN 3,200,000 at 24%.

Note:

- Gross income is defined to mean income from all sources excluding the following:
  i. all non-taxable income;
  ii. income on which no further tax is payable;
  iii. tax exempt items listed in the Personal Income Tax Act; and
  iv. all allowable business expenses and capital allowances.
- Principal place of residence to include places where branch offices and operational site of companies are situated.
- Deduction is allowed on the annual amount of any premium paid by an individual to an insurance company in respect of insurance on his life or the life of his spouse in the year preceding the year of assessment.
- Operational sites are defined in the bill to include oil terminals, oil platforms, flow stations, construction sites, etc. with a minimum of 50 workers.
- Full tax exemption to be granted on interest from bonds issued by Federal, State and Local Governments and their Agencies, corporate entities and interest earned on short-term securities.
- Interest for default in tax remittance to be charged at the bank base lending rate on an annual basis.
- Individual tax clearance certificates (TCC) to be required for change of ownership of vehicles and application for land title transfer or perfection.
- The due date for filing employer's annual returns (Form H1) is 31 January.
- Stiffer criminal penalties for non-compliance. The penalty for late filing by corporate bodies is NGN 500,000 and NGN 50,000 for individuals.
- Tax officers to apply for a warrant from the High Court before levying any distress on a taxpayer.
- "Itinerant worker" includes an individual irrespective of his status who works at any time in any state during a year of assessment (other than as a member of the armed forces) for wages, salaries or livelihood by working in more than one state for a minimum of 20 days in at least three months of every assessment year. The relevant tax authorities are empowered to collect taxes from an itinerant worker.
- Individual earning the minimum wage or less is exempt from income tax.

## SOCIAL SECURITY

Nigeria operates a national contributory pension scheme. The required rate to be contributed by the employer has been increased to a minimum of 10% (previously 7.5%) of the employee's monthly emoluments while the required rate to be contributed by the employee increased to a minimum of 8% (previously 7.5%) of his/her monthly emoluments.

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-treaty countries** | 10 | 10 | 10 |
| **Treaty countries:** | | | |
| Belgium | 7.5 | 7.5 | 7.5 |
| Canada | 7.5 | 7.5 | 7.5 |
| China | 7.5 | 7.5 | 7.5 |
| Czech Republic | 7.5 | 7.5 | 7.5 |
| France | 7.5 | 7.5 | 7.5 |
| Netherlands | 7.5 | 7.5 | 7.5 |
| Pakistan | 7.5 | 7.5 | 7.5 |
| Philippines | 7.5 | 7.5 | 7.5 |
| Romania | 7.5 | 7.5 | 7.5 |
| Singapore | 7.5 | 7.5 | 7.5 |
| Slovak Republic | 7.5 | 7.5 | 7.5 |
| South Africa | 7.5 | 7.5 | 7.5 |
| Spain | 7.5 | 7.5 | 7.5 |
| United Kingdom | 7.5 | 7.5 | 7.5 |

# NORTH MACEDONIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Skopje | Nikolaki Miov | +389 2 2465 243<br>n.miov@pkf.mk |
| Skopje | Kristina Tilic | +389 2 322 0054<br>kristina@novakonsalting.mk |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of North Macedonia |
| Capital: | Skopje |
| Main languages: | Macedonian |
| Population: | 2.08 million (2022 estimate) |
| Monetary unit: | Macedonian denar (MKD) |
| Internet domain: | .mk |
| Int. dialling code: | +389 |

## KEY TAX POINTS

- Companies resident in North Macedonia are subject to tax on their worldwide income. Non-resident companies are subject to tax on income sourced in North Macedonia only.
- There is no separate capital gains tax except for individuals, who pay 15%.
- A transfer pricing regime imposes record-keeping requirements and provides for income to be adjusted on an arm's length basis. A report on transfer pricing and possible effects on income tax should be submitted with the Public Revenue Office at the latest by 30 September of the current year related to the previous year for companies that have total income equal to or over MKD 300 million and for transactions with non-resident related parties.
- VAT is applied on the supply of goods and services in North Macedonia by a taxable person, subject to exemptions. The standard rate is 18% and a reduced rate of 5% applies to specific goods and services. Starting from 2021 a reduced rate of 10% applies to restaurant and catering services.
- Resident individuals are subject to personal income tax on their worldwide income while non-residents are liable for tax on North Macedonian-sourced income only. Progressive taxation is applied to personal income tax, tax rates of 10% and 18%, for the following types of income: income from work, income from an independent activity, income from copyright and related rights and income from the sale of own agricultural products. A single rate of 15% is applied for taxation of: industrial property rights income, rental income and sublease, capital gains, gains from games of chance, insurance income and other income. These rates won't apply for income derived in the period from 1 January 2020 until 31 December 2022: for this period all personal income tax rates are replaced by a flat rate of 10%, except for income from games of chance, which remains subject to a 15% rate.
- Greenfield investments: Technological–Industrial Development Zones exempt to a large extent from taxes and other benefits: zero-rated personal and corporate income tax for up to the first 10 years (10% thereafter), no VAT and customs duties for export production, subsidy of up to EUR 500,000 for building costs, land lease for up to 99 years at attractive concessionary rates, free connection to utilities, Green Customs Channel expediting exports to the EU, advantageous location, access to pan-European corridors 8 and 10, railroad, and international airport.
- Brownfield investments may benefit from some tax exemptions regarding employees for about two years.

## A. TAXES PAYABLE

### COMPANY TAX

Profit tax is paid by resident legal entities both on the profit arising from activities performed on the territory of North Macedonia and from income generated abroad. A legal entity is considered to be a resident if registered in accordance with Company Law, or if it has a head office on the territory of North Macedonia. Residents are taxed on the profit they generate both in-country and abroad, while non-residents are taxed only on the profit they generate from business activities on the territory of North Macedonia.

The tax year for profit tax purposes is the calendar year. The corporate income tax rate is 10%. Basis for calculation of corporate income tax is the profit determined in the tax return. The basis for calculating the tax payable is determined as the difference between total revenue and total expenditure of the taxpayer, in amounts determined in accordance with accounting regulations and accounting standards increased by non-deductible expenses for tax purposes.

Companies are required to make monthly advance tax payments based on the previous year's income.

Corporate tax returns should be submitted to the Public Revenue Office no later than 28/29 February of the following year at the latest, after the year for which tax is incurred. The tax returns may be submitted by 15th of March, if the taxpayer has submitted the annual accounts with the Central Registry of Republic of North Macedonia in an electronic form. Tax is payable no later than 30 days after the deadline for submitting the tax return.

Companies that perform economic activities, except for banking, financial, insurance activities and games of chance and entertainment games and whose overall revenue generated in the last three years from any source does not exceed MKD 3 million on an annual basis, shall calculate but will not pay annual tax on total revenue amounting to 1% of the amount of earned total revenue presented in the income statement in the Annual statement for the previous calendar year. For total revenue of up to MKD

6 million the company may voluntary apply for payment of 1% of this amount as corporate tax.

Non-profits are subject to 1% tax on their income from business activities, if such income is higher than MKD 1 million (approximately 16,260 EUR).

The users of a Technological Industrial Development Zone can benefit from a corporate income tax exemption within the framework of state assistance under the conditions and procedure established by the law for Technological Industrial Development Zones.

There are no specific or separate taxes added by the municipalities for business enterprises in North Macedonia.

## CAPITAL GAINS TAX

There is no specific tax treatment for capital gains or losses at the level of business enterprises, i.e. any such gains or losses will be included in the profit or loss for the year and taxed if such profits are distributed.

When making a sale of shares an individual is obliged to pay 15% tax on capital gains. The basis for the calculation of tax is 90% of the difference between cost and sales value of the shares (for details see below under 'Capital gains and losses').

## BRANCH PROFITS TAX

Branches of non-resident companies are subject to 10% profit tax, like resident companies. There is no branch remittance tax in North Macedonia.

## SALES TAX / VALUE ADDED TAX (VAT)

The following sales are subject to North Macedonian VAT: sales of goods and services for consideration in the country within the business activities of the taxpayer and import of goods.

The VAT rates are as follows:

- Standard rate: 18%;
- Reduced rate: 5% and 10%.

VAT credit is the amount to be deducted from VAT that should be paid on the supplies made in a certain VAT period. The VAT credit refers to the VAT on supplies made by other VAT registered businesses to the taxpayer and to VAT paid upon the import of goods. The right to a VAT credit is available in case the following conditions are cumulatively met:

- The taxpayer uses supplied goods or rendered services for the purpose of its business activity; and
- The taxpayer is able to present an invoice from the supplier issued in accordance with the VAT law or a customs declaration appropriately recorded in its accounting.

No right to a VAT credit exists in respect of the following purchases:

- Procurement or import of goods and services for VAT exempted sales;
- Procurement, production, and import of bicycles, motor vehicles with less than 4 wheels, passenger cars and services related to their utilization;
- Hospitality expenses;
- Transportation of passengers;
- Procurement or import of refrigerators, audio and video appliances, carpets and art works used for equipping office space;
- Hotel or other type of accommodation and food expenses.

Taxpayers without headquarters or fixed establishments in North Macedonia that do not perform any VAT applicable sales in the country may be refunded for VAT paid on their procurements in North Macedonia upon their request. Tax exemptions and incentives: For donations given in the public activities; and tax exemption on the supply of goods and services for the purpose of implementation of projects funded by foreign donors and by IPA funds.

Registration threshold for VAT: taxpayers are obliged to register for VAT purposes in case the total taxable sales during the calendar year exceed MKD 2 million (approximately EUR 32,500) or they may choose to register at the beginning of the business activity or at the beginning of each calendar year. If they decide to opt out of the VAT system, they are taxed as final consumers and do not have the right to a VAT refund.

## PAYROLL TAXES

Payment of the following social security contributions are to be made on gross salary by the employer, in addition to personal income tax of 10%:

- Pension fund: 18.80%;
- Health insurance: 7.50%;
- Insurance in case of unemployment: 1.20%;
- Occupational and work related illness: 0.50%.

Overall one third of the average gross salary is required to be withheld by the employer and paid for specific funds and taxes. Social security contributions are not levied if they exceed twelve average monthly salaries.

## OTHER TAXES

Real estate transfer tax (RETT) at a rate of 2% to 4% is determined by the Council of the relevant municipality or the Skopje City Council. Property tax is levied on owners of immovable property at a rate of 0.10% to 0.20% on the market value of the property determined by the Commission established by the Council of a specific municipality or by the City Council.

## FRINGE BENEFITS TAX

In general, fringe benefits are taxable as amounts paid to the employee in cash. A company has the responsibility to pay the income tax on account of the employee. The tax rate is 15%.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company is determined by ascertaining assessable income and then subtracting all allowable deductions. The basis for calculating the tax payable is determined as the difference between total revenue and total expenditure of the taxpayer, in amounts determined in accordance with accounting regulations and accounting standards including:

- Employees' related expenditures such as: organized transportation to/from work, food provided to employees, business trip allowance, field allowance, family separation allowance, one-off severance payment, retirement allowance, annual holiday allowance, anniversary awards etc. are tax deductible up to the amount prescribed by the law and the applicable Collective Agreements;
- The premiums paid for insurance of the tax payer's business property and all kinds of compulsory non-life insurance determined by law.

Non-deductible expenses for tax purposes, such as stated below, are added back to the tax base:

- Expenses that are not connected with a business entity and that are not an immediate condition to carry out that activity and are not a result of performing that activity;
- Remuneration paid to a member of the management board or supervisory board is deductible up to the amount of 50% of the average monthly salary;
- Expenses incurred on behalf of a member of the management board or a shareholder for the use of private cars, food, drinks or gifts, as well as for the procurements of movable or immovable property on behalf of them;
- Insurance premiums paid by the employer for the benefit of employees up to the amount of two average monthly gross salaries, paid in the previous year in North Macedonia, per year per employee (for 2022 = EUR 1,392);
- Voluntary contributions to a voluntary pension fund paid by the employer for the benefit of employees up to the amount of two average monthly gross salaries, paid in the previous year in North Macedonia, per year per employee (for 2022 = EUR 1,392);
- Voluntary health insurance paid by the employer for the benefit of employees up to the amount of one average monthly gross salary, paid in the previous year in North Macedonia, per year per employee (for 2022 = EUR 696);
- 90% of entertainment expenses;
- Write-off on unpaid receivables;
- Difference between transfer and market price achieved between related parties;
- The amount on accrued interest between related parties;
- Withholding tax paid on behalf of third parties charged at cost of the taxpayer;
- Cash and tax penalties and penalty interest for late tax payments and cost of enforced collection;
- Paid fees and other expenses of personal income from the employer that exceed the amount specified by law. (as regress for vacation, using own car to employees for business purposes, New Year's compensation etc.;
- Hidden payments of profits. Delivery of certain products and services of the partners or shareholders or persons connected to them at a price lower than the market, including lower interest on approved loans, payments for goods and services received by the partners or shareholders or persons connected to them, at prices higher than the market and enabling the acquisition of gains from the partners or shareholders or persons connected to them ;
- Shortage of assets which are not caused by extraordinary events (theft, fire or other natural disasters), which are not at cost of the salary of the responsible person;
- Costs for donations, sponsorship, scholarship;
- Interest on loans for purchasing cars, furniture, carpets, pieces of fine and applied art and other decorative items, as well as interest on loans that are used to perform the activity on the taxpayer;
- Cost of dispersing and scattering on assets over amounts determined by law;
- Reimbursement of expenses for hotels with over four stars amounting to MKD 6,000 (approximately EUR 100) per day per person and undocumented travel expenses for unemployed persons doing business in the name of the company;
- Payment over MKD 8,000 (approximately EUR 130) for internships;
- Amortisation costs of the revalued value of tangible and intangible assets.

### DEPRECIATION

The annual depreciation/amortisation expense is calculated in accordance with the applicable accounting standards. Generally, the straight-line method of depreciation is used.

The cost of depreciation/amortisation of tangible and intangible assets is recognised as an expense in the tax return up to the amount calculated on the cost of the assets by applying the depreciation rates determined by the Nomenclature of depreciation prescribed by the Government.

Unrecognised expenditures for tax purposes are the cost of depreciation on the revalued value of tangible and intangible assets.

### STOCK/INVENTORY

Inventory includes raw materials, work-in-progress, finished goods and payments on account. Each item of inventory must be valued at acquisition cost or cost of production. All valuation methods (FIFO, LIFO, average prices) are accepted.

### CAPITAL GAINS AND LOSSES

Capital gains are treated as ordinary taxable income.

### DIVIDENDS

Dividends received from other North Macedonian resident companies are included in the tax base, unless a withholding tax has been levied. With effect from 31 January 2014, dividends paid to resident companies are subject to a withholding tax at a rate of

10%. Before that date, such dividends were not subject to withholding tax. Other payments to resident companies are not subject to withholding tax. Dividends paid to non-resident companies are subject to a final withholding tax of 10%, unless a double tax treaty provides for a lower rate.

### INTEREST DEDUCTIONS

Interest on loans granted between related parties at arm' length (except for loans granted by banks or other financial institutions) is recognised for tax purposes. In case the taxpayer cannot produce satisfactory evidence that the interest on related parties' loans is on an arm's-length basis, the interest income/expense from these loans will be determined for tax purposes by applying EURIBOR plus 1% (SKIBOR plus 1% for loans extended in MKD).

Penalty interest between related parties is not recognised for tax purposes (except penalty interest incurred with regards to a bank or other financial institutions).

Interest on loans granted by direct shareholders holding at least 25% of a company's share capital ("qualifying shareholder") is considered non-deductible for profit tax purposes should the loan amount exceed threefold the amount of the equity attributable to that shareholder (debt-to-equity ratio of 3:1).

The same rule applies to loans granted by a third party, while guaranteed by a qualifying shareholder or granted in relation to a deposit provided by the qualifying shareholder to the third party.

The amount which is not recognised for tax purposes is the amount of interest on the part of a loan which exceeds threefold the amount of the equity attributable to the qualifying shareholder.

The thin capitalization rules do not apply to loan facilities granted by direct shareholders which are banks or other financial institutions, as well as loan facilities granted by direct shareholders to newly established entities in the course of the first three years of their establishment.

### LOSSES

As from 1 January 2015, losses may be carried forward for a period of 5 years. The taxpayer carrying forward losses can exercise this right subject to approval from the tax authorities. A written request must be submitted by 31 March of the year following the year in which the losses were incurred. Prior to that date, losses could not be carried forward for tax purposes.

### FOREIGN SOURCED INCOME

Resident companies are subject to profit tax on their worldwide income and capital gains.

### INVESTMENT ALLOWANCE/INCENTIVES

The tax base for income tax is decreased for the amount of realized investments from the profits (reinvested earnings) for development, i.e. investment in tangible assets (property, facilities and equipment) and intangible assets (patents and computer software) intended to expand the activity of the taxpayer. Exception: investments in passenger cars, furniture, carpets, audio visual devices, appliances (white goods), pieces of fine and applied arts and other investments that serve for administrative purposes.

A taxpayer that is obliged, in accordance with the Law on Registration of Cash Payments, to introduce and use approved equipment for registering cash payments, shall be granted a reduction in the calculated corporate income tax for the procurement of up to ten fiscal machines, in the amount of their value.



## C. FOREIGN TAX RELIEF

Unilateral relief from double taxation is granted under the form of a foreign tax credit. Foreign taxes (withholding tax and income/profit tax) paid on dividends/profits from a foreign branch may be credited against the North Macedonian profit tax due, limited to the level of this North Macedonian tax. A tax credit is also allowed for foreign tax paid on dividends received from a foreign subsidiary. The double taxation relief provided by a tax treaty (usually also a credit) supersedes domestic relief.

## D. CORPORATE GROUPS

There is no possibility for parent and subsidiary companies to be recognised as a group for corporate tax consolidation purposes. However, grouping is possible for VAT purposes. Two or more entities may be registered as one based on relations from ownership, management and organisation.

## E. RELATED PARTY TRANSACTIONS

Transactions between related parties are recognised for tax purposes at arm's length, i.e. should transactions deviate from the market level, the differences could lead to additional income being assessed or an expense being disallowed for tax purposes. An unrecognised expense and a less pronounced income for tax purposes are:

- Positive difference between the costs of executed business or financial transaction between related parties (transfer price) and market price as follows:
- The amount of the positive difference between the costs arising from:
  - o The transfer transaction and the costs arising from that transaction after price determined in accordance with the arm's-length principle, or
  - o The amount of the positive difference between the revenue derived from transaction at a price established in accordance with the arm's-length principle and income derived from that transaction at the transfer price.

The arm's-length principle applies to all transactions between related parties, including those relating to: tangible and intangible property, business and financial services, intra-group services, royalties, shares, derivatives, other securities, other financial instruments and any other transactions that may affect the profits or losses of related parties.

When determining the price of transactions in accordance with the arm's-length principle the following methods are used:

- Comparable uncontrolled price method;
- Method of resale price;

- Cost-price method;
- Method of transactional net margin;
- Method of dividing profit;
- any other method if the application of the above-mentioned methods is not appropriate.

Furthermore, interest on loans granted between related parties (except for loans granted by banks or other financial institutions) is recognised for tax purposes at arm's length. In case the taxpayer cannot produce satisfactory evidence that the interest on related parties loans is on an arm's length basis, the interest income/expense from these loans will be determined for tax purposes by applying EURIBOR plus 1% (SKIBOR plus 1% for loans extended in MKD).

Penalty interest between related parties is not recognised for tax purposes (except penalty interest incurred with regards to a bank or other financial institutions).

The definition of related parties for tax purposes is the one as per the Trading Company Law.

**Transfer Pricing Documentation**

Taxpayers are obliged to prepare and submit transfer pricing (TP) documentation along with the tax return.

Taxpayers with an annual total revenue not exceeding MKD 300 million (approximately EUR 5 million) during the fiscal year and taxpayers that only have transactions with related parties resident in North Macedonia are exempt from the obligation to submit a TP Report.

Taxpayers having transactions with related parties during the fiscal year at an amount that does not exceed MKD 10 million can submit a short form report. Other taxpayers that do not fall into either of the two abovementioned categories must submit a full report, which should contain:

- a Master file: information regarding global business operations;
- a Local file: detailed TP documentation specific to the local taxpayer;
- Attachments: consolidated group financial statements, individual financial statements of the local taxpayer, copies of all contracts signed between related parties, and copies of advance pricing agreements (APAs).

## F. WITHHOLDING TAX

Legal entities resident in North Macedonia, registered for carrying out an activity, as well as a foreign legal entity having a branch in North Macedonia are obliged, when paying certain types of income to a foreign legal entity, to withhold tax and to pay the tax withheld to the revenue authorities simultaneously with the payment of the income. Withholding tax is applied to the following outbound payments: dividends, interest, royalties, income from entertainment or sporting activities in North Macedonia; income from management, consulting, financial services, services related to research and development, income from insurance or reinsurance premiums, income from telecommunication services between North Macedonia and a foreign country and income from the lease of immovable property in North Macedonia.

Tax shall not be withheld on the following payments: transfer of the profit of the permanent establishment/branch of a foreign legal entity in North Macedonia, for which profit tax has been previously paid (no branch remittance tax), revenue from interest on debt instruments issued and/or guaranteed by the North Macedonian Government, the National Bank of North Macedonia and banks or other financial institutions acting as a representative of the North Macedonian Government, income from interest on deposits in a bank located in North Macedonia and income from intermediation or consulting regarding government securities on the international financial market.

N

The withholding tax rate is 10% and is levied on the gross income, subject to the application of a double tax treaty.

## G. EXCHANGE CONTROL

There are no exchange control requirements.

## H. PERSONAL TAX

The personal tax rates provided for in tax legislation have been postponed until 31 December 2022. During the period from 1 January 2020 until 31 December 2022 all personal income tax rates are replaced by a flat rate of 10%, which will be applicable on an individual's income from work, self-employment income, income from sale of own agricultural products, income from capital, rental income, insurance income, capital gains, income from royalties and industrial property rights, as well as other taxable income not categorised separately. Gains derived from games of chance will remain subject to a 15% rate during this period.

Personal income tax is payable by North Macedonian resident individuals on their worldwide income, excluding tax-exempt income. Non-resident individuals are required to pay tax on North Macedonian-sourced income only. A person is considered a North Macedonian tax resident if he/she stays continuously or intermittently on the territory of North Macedonia for 183 days or more within any 12-month period.

Tax-exempt income consists of certain employment related expenses, awards, scholarships granted by the Government, damages, alimony, certain types of interest etc. and is exhaustively listed in the Law on Personal Income Tax.

Taxable income comprises the following types of revenue: income from work, income from an independent activity, income from copyright and related rights, income from the sale of own agricultural products, income from industrial property rights, rental income and sublease, income from capital, capital gains, gains from games of chance, insurance income and Other income.

The tax base for determining the income tax is the sum of the gross income realised by any means (in money, securities, in kind or in some other type), in the country and abroad during the tax period, reduced by:

- Contributions from mandatory social insurance;
- Tax reduction (for 2019: 96,000 MKD / 12 = 8,000 per month); and
- Standardised or actual costs stipulated by this Law.

With effect from 1 January 2023, progressive taxation will be applied at tax rates of 10% and 18% on the following types of income: income from work, income from an independent activity, income from copyright and related rights and income from the sale of own agricultural products (as of 1 January 2020 until 31 December 2022, a 10% flat tax rate will be applicable).

| Tax base on annual basis (MKD) | Monthly tax base (in case of advance payment (MKD) | Rate (%) |
|---|---|---|
| Up to 1,080,000 | Up to 90,000 | 10 |
| Over 1,080,000 | Over 90,000 | 18 |

A unique rate of 15% will be applied to taxation of: industrial property rights income, rental income and sublease, capital gains, gains from games of chance, insurance income and other income.

### Income from Salary

According to the Law on Minimum Wage in the Republic of Northern Macedonia, the minimum gross salary is EUR 428. Salaries are computed and paid at least once a month. Social contributions and personal taxes are withheld by the employer along with the payment of salaries to employees. As of April 2022, the average monthly gross salary is MKD 43,509 (approximately EUR 706). Personal tax is calculated at a flat rate of 10% (starting from 2023 personal income tax will be levied at progressive rates; rate of 10% on the gross salary up to 90,000 MKD (EUR 1,480) per month and 18% on the excess).

### Income Property and Property Rights

A statutory deduction of 10% of gross rent for unfurnished and 15% for furnished premises is given to account for income-generating expenses. Alternatively, taxpayers can opt for itemised deduction instead of availing the standard deduction. Personal income tax is calculated at a rate of 10% (15% as from 2023) of the gross amount minus deductions.

### Income from Copyrights and Industrial Property Right

Based on the type of the original work, different statutory deductions are given from 20 % for forms of performance art related to popular music up to 50% for sculptors. Alternatively, taxpayers can also opt for itemised deduction instead of availing the standard deduction. The basis for calculating the income tax is the realised gross income reduced by the amount of the determined costs at a flat rate of 10% (as from 2023 at progressive rates of 10% and 18%).

### Capital Gains for Individuals

These refer to the gains from sales of securities, shares of capital and real estate, i.e. the difference between the sales price and purchase price. The tax base is 90% of the realised capital gains. Capital gains are subject to 15% tax payable in advance. Capital gains (100%) from the sale of immovable property sold before the expiration of five years from the date of acquisition are taxed at a rate of 15% if the taxpayer did not live in the premises.

### Other Income

Other income, such as online e-commerce, income from marketing, internet services, unused financial assistance, unused donated funds, shortfalls in trade, and other income (other personal earnings) of employees are taxed at a rate of 10% (15% as from 2023). Basis for calculating income tax on other income is gross income.

As an exception, the basis for calculating income tax on the sale of useful solid waste is gross income reduced by standardised costs at an amount of 50%.

N

### Gains from Games of Chance for Individuals

These refer to:

- Income from games of chance and other prize games (TV quizzes, competitions, etc...), which constitutes taxable income. The tax is payable on the total gain at a 10% rate (15% as from 2023). The tax is not paid in case the single realised gain is less than MKD 5,000 (approximately 81 EUR); and
- Income from games of chance from casino, betting and slot machine clubs, which also constitutes taxable income.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies[1] (%) | | |
| **Domestic rates** | | | | |
| Companies | 10 | 10 | 10 | 10 |
| Individuals | 10 | -- | 10 | 10 |
| **Treaty countries:** | | | | |
| Albania | 10 | 10 | 10 | 10 |
| Austria | 15 | 0[2] | 0 | 0 |
| Azerbaijan | 8 | 8 | 8 | 8 |
| Belarus | 15 | 5 | 10 | 10 |
| Belgium | 15 | 10 | 15 | 10 |
| Bosnia and Herzegovina | 15 | 5 | 10 | 10 |
| Bulgaria | 15 | 5 | 10 | 10 |
| China | 5 | 5 | 10 | 10 |
| Croatia | 15 | 5 | 10 | 10 |
| Czech Republic | 15 | 5 | 0 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies[1] (%) | | |
| Denmark | 15 | 5 | 0 | 10 |
| Estonia | 5 | 0 | 5 | 5 |
| Finland | 15 | 0[2] | 10 | 0 |
| France | 15 | 0[2] | 0 | 0 |
| Germany | 15 | 5[2] | 5 | 5 |
| Hungary | 15 | 5 | 0 | 0 |
| India | 10 | 10 | 10 | 10 |
| Iran | 10 | 10 | 10 | 10 |
| Ireland | 10 | 0/5 | 0 | 0 |
| Israel | 15 | 5 | 10 | 5 |
| Italy | 15 | 5 | 0/10 | 0 |
| Kazakhstan | 15 | 5 | 10 | 10 |
| Kosovo | 5 | 0 | 10 | 10 |
| Kuwait | 0 | 0 | 0 | 15 |
| Latvia | 10 | 5[2] | 5 | 5/10 |
| Lithuania | 10 | 0[2] | 10 | 10 |
| Luxembourg | 15 | 5 | 0 | 5 |
| Moldova | 10 | 5 | 5 | 10 |
| Montenegro | 15 | 5 | 10 | 10 |
| Morocco | 10 | 10 | 10 | 10 |
| Netherlands | 15 | 0[2] | 0 | 0 |
| Norway | 15 | 10 | 5 | 5 |
| Poland | 15 | 5 | 10 | 10 |
| Qatar | 0 | 0 | 0 | 5 |
| Romania | 5 | 5 | 10 | 10 |
| Russia | 10 | 10 | 10 | 10 |
| Saudi Arabia | 5 | 5 | 5 | 10 |
| Serbia | 15 | 5 | 10 | 10 |
| Slovak Republic | 5 | 5 | 10 | 10 |
| Slovenia | 15 | 5 | 10 | 10 |
| Spain | 15 | 5[2] | 5 | 5 |
| Sweden | 15 | 0 | 0/10 | 0 |
| Switzerland | 15 | 5 | 0/10 | 0 |
| Taiwan | 10 | 10 | 10 | 10 |
| Turkey | 10 | 5 | 10 | 10 |
| Ukraine | 15 | 5 | 10 | 10 |
| United Arab Emirates | 5 | 5 | 5 | 5 |
| United Kingdom | 15 | 0/5[3] | 0/10 | 0 |

Notes:

1. Unless stated otherwise, the reduced rate applies in case the recipient company (in)directly holds at least 25% of the capital or the voting power of the distributing company.
2. The reduced rate applies in case the recipient company (in)directly holds at least 10% of the capital or the voting power of the distributing company.
3. The 5% rate applies if the holding is at least 10% of the capital. The 0% rate applies if the recipient is (a) a company that has owned shares representing at least 25% of the capital of the North Macedonian company continuously for at least 12 months or (b) a pension scheme.

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# NORWAY

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Oslo | Rolf Arentz-Hansen | +47 465 00 764<br>rah@pkf.no<br>pkf@pkf.no |

## BASIC FACTS

| | |
|---|---|
| Full name: | Kingdom of Norway |
| Capital: | Oslo |
| Main languages: | Norwegian |
| Population: | 5.5 million (2022 estimate) |
| Monetary unit: | Norwegian Krone (NOK) |
| Internet domain: | .no |
| Int. dialling code: | +47 |

## KEY TAX POINTS

- The tax rate on income in Norway has gradually been reduced from 28% to 22% from 2014 to 2019. To offset the shortfall in revenues, tax on dividends has been increased correspondingly, keeping the combined tax on company revenue and dividends at approximately the same level, between 46.5 and 49.5%.
- Company tax is payable by Norwegian resident companies on income from all sources. Non-resident companies pay tax on income sourced in Norway.
- There is no separate capital gains tax. Capital gains are treated as ordinary income and capital losses are treated in the same way as trading losses.
- A credit is available for overseas tax payable against Norwegian tax on the same income. Foreign tax on business income may be deducted as an alternative to taking a tax credit.
- Group companies cannot file consolidated tax returns. Where there is more than 90% common ownership, income can be transferred between resident companies as a means of off-setting profits with losses within the group.
- The arm’s length principle generally applies to transactions between related parties.
- Withholding tax must be deducted from dividends paid to non-residents, although there is no withholding on dividends paid to corporate shareholders resident in and performing real economic activities in the EEA. Interest and royalties are not subject to withholding tax.
- Income tax in payable by residents on income derived from all sources. Non-residents only pay tax on Norwegian-sourced income.

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## A. TAXES PAYABLE

### COMPANY TAX

Company tax is payable by Norwegian resident companies on non-exempt income derived from all sources. Non-resident companies are required to pay tax on income sourced in Norway. A company is treated as resident if it has its central management and control or head office located in Norway and, for all practical purposes, a company registered in Norway is also considered a resident.

The company tax rate on income is 22% (unchanged from 2020). The tax year is usually the calendar year, although this can be deviated from in certain circumstances, such as to align with non-Norwegian parent company’s financial year. The tax year follows the financial year. Tax is payable in four instalments in the year following the tax year.

The first two instalments on 15 February and 15 April, are based on the last tax assessment, normally being the year before the tax year. The balance after the final tax assessment is payable in two instalments, three and eight weeks after the final tax assessment is made, but not earlier than 20 August. Company tax returns must be filed by the end of May for the preceding tax year. It is possible to get an agreed postponement.

### CAPITAL GAINS TAX

There is no separate capital gains tax. Capital gains are treated as ordinary income and capital losses are treated in the same way as trading losses. However, gains on the disposal of shares of resident companies are exempt from tax (and losses on such disposals are not deductible). 3% of dividends received from companies that are tax residents in EEU is taxed as ordinary income unless the receiving part holds more than 90% of the shares and voting power in the company paying the dividend. Dividends are fully taxable if received from a non-EEU resident or if the dividend is deductible for the distributing company.

### BRANCH PROFITS TAX

There is no separate branch profits tax in Norway. Non-resident companies carrying on a business in Norway are taxed on the profits of that business in the same way as resident companies.

### VALUE ADDED TAX (VAT)

VAT is levied on the sale of most merchandise and services and on imported goods and services. The VAT rate is 25%, (15%

on food, 12% on passenger transport, broadcasting, cinema tickets, sports events, leisure parks and experience centre tickets and letting of rooms in hotels, motels and tourist cabins, etc.). Some goods are exempt but VAT on the purchase of materials and goods is still deductible for these businesses. This also applies to exports, newspapers, certain periodicals and international transportation. Other areas are exempt without any credit for input tax. This is the case for health services and financial services.

## FRINGE BENEFITS TAX (FBT)

Both residents and non-residents are taxed on fringe benefits. The value of the benefits is taxed as the top slice of employment income. The highest marginal tax rate is 47.4%.

## SOCIAL SECURITY CONTRIBUTIONS

Employers are liable to pay social security contributions relating to salaries and benefits paid to their employees. The fee levied is 14.1% in central areas. Lower rates are available for certain employees in areas in the north of Norway. Social security tax is payable at a rate ranging from 5.1% to 11.2% for self-employed individuals, see 'H. Personal Tax; Other Taxation' below.

## WEALTH TAX

Individuals pay a wealth tax of 0.95% on net assets from NOK 1.7 million up to 20 million NOK while individuals with exceeding net assets pay a wealth tax of 1.1% on the exceeding amount.

## LOCAL TAXES

Property taxes in some urban areas are levied at a maximum 0.7% of the tax value of the property, with a 0.4% maximum for residential property.

## OTHER TAXES

Real estate transactions are subject to 2.5% Stamp Duty.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company is determined by ascertaining assessable income and then subtracting all allowable deductions. Generally, to be deductible, losses and expenses must relate to producing the assessable income. Some items such as entertainment expenses and gifts are specifically non-deductible. Only realised expenses are deductible. Special rules apply to the categories listed below.

## DEPRECIATION

Book depreciation is not allowable for tax purposes. Assets with an expected life of more than three years and costing more than NOK 15,000 should be depreciated on a declining-balance method using the following maximum rates:

| Description | Rate (%) |
|---|---|
| Office machinery | 30 |
| Purchased Goodwill | 20 |
| Trucks, trailers, buses, taxis and vehicles for disabled persons | 24/30[1] |
| Cars, agricultural tractors, machinery, tools, instruments etc. | 20 |
| Ships, drilling platforms, vessels, etc. | 14 |
| Aeroplanes | 12 |
| Power stations, power lines | 5 |
| Industrial buildings, hotels, restaurants | 4/ (6/10/20)[2] |
| Office buildings | 2 |
| Technical installations in buildings | 10 |

NOTES:

1. Electrical powered vans: 30%.
2. Buildings and installations with an economic life less than 20 years: 10%. Buildings for farm animals: 6%. Establishing costs for berry/fruit fields: respectively 10% and 20%.

## STOCK / INVENTORY

All trading stock held at the beginning of the tax year and at the end of the tax year must be taken into account when determining taxable income. Stock is valued at cost without regard to real value. Work in progress and finished products are valued at direct variable cost of materials and labour. Real value is not taken into account. Accepted valuation method is FIFO not average cost or LIFO.

## CAPITAL GAINS AND LOSSES

See text above.

## DIVIDENDS

Dividends are not deductible for income tax purposes for the dividend paying company. Dividends received from other Norwegian companies are tax-exempt under the participation exemption. However, 3% of the dividend is added to the recipient's taxable income unless it holds more than 90% of the shares and voting power in the company paying the dividend. See also "H. Personal Tax" below.

## INTEREST DEDUCTIONS

All interest costs on business debt are deductible. As from 2014, there is a 'thin capitalisation' limitation applicable for companies that have net interest expenses (interest expense less interest income from both external and from related parties) exceeding NOK 5 million. The same goes for group companies with net interest expenses not exceeding NOK 25 million.

Net interest expenses exceeding 25% of taxable EBITDA is non-deductible to the extent there are related-party interest expenses. Interest on debt guaranteed by a related party is in this context regarded as related-party interest expense. Non-deductible interest expense after application of this rule can be carried forward for up to 10 years. There is no carry-forward of unused allowable interest expense. Additional rules apply in oil and gas production.

## LOSSES

Losses may be carried forward. Losses may generally not be carried back but, when a company liquidates, the losses of the year of liquidation may be offset against profits of the two preceding years. There are certain limitations on the usage of losses carried forward after sale or merger of a company and after a company has ceased operating a line of business.

## FOREIGN SOURCED INCOME

Norway has rules designed to ensure that profits sourced in low tax countries are included in the controlling Norwegian company's taxable income. Generally, income from a foreign company will be included if 50 % or more of the company is owned or controlled by Norwegians. A low tax jurisdiction applies where the tax payable is less than two-thirds of the tax that would have been payable in Norway.

## INCENTIVES

Generally, there are no special incentives, although research and development credits are granted to small and medium sized companies under qualifying circumstances.

## C. FOREIGN TAX RELIEF

Deductions are available for foreign tax paid or, as an alternative, a credit may be available against Norwegian tax payable on that income.

## D. CORPORATE GROUPS

Group companies cannot file consolidated tax returns. Under special circumstances, taxable income can be transferred between companies residing in Norway. The requirement is that there is more than 90 % common ownership of the companies.

## E. RELATED PARTY TRANSACTIONS

Transfer pricing should be based on an arm's length principle. Norwegian tax law gives the tax authorities the power to raise assessments if transactions between the taxpayer and associated companies are not based on an arm's length principle.

## F. WITHHOLDING TAX



Withholding taxes must be deducted from dividends paid to non-residents in a country without a tax treaty at a rate of 25%, although there is no withholding on dividends paid to corporate shareholders resident in and performing real economic activities in the EEA. See section "I. Treaty and non-Treaty withholding tax rates on dividends from Norway" below for the applicable withholding tax rates.

As from 1 July 2021, withholding tax on interest and royalty payments to related companies in low-tax jurisdictions must be deducted at a rate of 15%. Similarly, from 1 October 2021, withholding tax on lease payments for certain tangible fixed assets paid to such entities must be deducted at a rate of 15%. However, payments to low-tax jurisdictions within the EEA may be exempt from withholding tax, provided that the receiving company is genuinely established and fulfils certain substance requirements. The application of withholding tax on royalties and interest will also be subject to the application of double tax treaties concluded by Norway.

## G. EXCHANGE CONTROLS

Most exchange controls were phased out in 1990. However, all imports of capital in cash exceeding NOK 25,000 should be reported to the Bank of Norway. Other transfers of capital need not be reported.

## H. PERSONAL TAX

Income tax is payable by Norwegian residents on income derived from all sources world-wide. Non-residents are only required to pay tax on Norwegian-sourced income. Residency is determined by domicile or where the individual has spent, or intends to spend, more than six months of the tax year. Under almost all Norwegian tax treaties, foreign-earned income is exempt from Norwegian tax. Where there is no treaty, credit for foreign taxes is given up to the amount of Norwegian tax on foreign income. Income tax is payable on assessable income less allowable deductions. Assessable income includes business income, employment income, certain capital gains, rent and interest income. Some expenses incurred in earning the assessable income are deductible. Some actual expenses can be replaced by standard deductions.

The general combined rate of the national and municipal income taxes is 22%. A lower rate of 18.5% applies for the counties of Finmark and Nord-Troms. A personal allowance of NOK 58,250 is deducted before calculation of the taxes.

## OTHER TAXATION

All income from capital is taxable at 22%. However, the value of dividends chargeable to tax is reduced by an amount representative of a risk-free return on the invested capital. The rate was 0.5% for the 2021 tax year. The rate is published in January in the year following the tax year. However, dividends and gains and losses from sale of shares and other investments are multiplied by a factor to arrive at the taxable amount. The factor is 1.6 in 2022.

An additional progressive national income tax is payable on "gross personal income" (which includes gross income from employment or self-employment, including pensions). Effective 1 January 2022 the rates of the national income tax are:

| Taxable income (NOK) | Rate (%) |
|---|---|
| 0 – 190,349 | 0 |
| 190,350 – 267,899 | 1.70 |
| 267,900 – 643,799 | 4.00 |
| 643,800 – 969,199 | 13.40* |
| 969,200 – 1,999,999 | 16.40 |
| From 2,000,000 | 17.40 |

* Reduced rate of 11.4% in Northern Norway.

In addition, social security taxes are paid. Employees pay 8.0% of gross salary income. For self-employed individuals, the rate is 11.2%. For persons below the age of 17 years, or above the age of 69 years, the rate is 5.1%. Wealth tax is charged on the net tax value of assets above NOK 1,700,000 but below NOK 20 million at a rate up to 0.95%. Additionally, net assets exceeding NOK 20 million are subject to a wealth tax of 1.1% on the exceeding amount. Property transferred by gift or on death after 31 December 2013 is no longer subject to inheritance tax.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Non-treaty countries:** | | | | |
| Companies | 25 | 0 | 15[1] | 15[1] |
| Individuals | 25 | -- | 15[1] | 15[1] |
| **Treaty countries:** | | | | |
| Albania | 15 | 5[2] | 10 | 10 |
| Argentina | 15 | 10[3] | 12/12.5 | 3/5/10/15 |
| Australia | 15 | 0/5[4] | 0/10 | 5 |
| Austria | 15 | 0[5] | 0 | 0 |
| Azerbaijan | 15 | 10[6] | 10 | 10 |
| Bangladesh | 15 | 10[7] | 10 | 10 |
| Barbados | 15 | 5[8] | 5 | 5 |
| Belgium | 15 | 0/5[9] | 10 | 0 |
| Benin | 18 | 18 | 25 | 0 |
| Bosnia and Herzegovina | 15 | 15 | 0 | 10 |
| Brazil | --[10] | --[10] | 15 | 15/25 |
| Bulgaria | 15 | 0/5[11] | 5 | 5 |
| Canada | 15 | 5[12] | 10 | 0/10 |
| Chile | 15 | 5[13] | 4/5/10/15 | 2/5/10/15 |
| China | 15 | 15 | 10 | 10 |
| Croatia | 15 | 15 | 0 | 10 |
| Cyprus | 15 | 0[14] | 0 | 0 |
| Czech Republic | 15 | 0[14] | 0 | 0/5/10 |
| Denmark | 15 | 0[15] | 0 | 0 |
| Egypt | 15 | 15 | –/15 | –/15 |
| Estonia | 15 | 5[2] | 10 | 0/5/10 |
| Faroe Islands | 15 | 0[15] | 0 | 0 |
| Finland | 15 | 0[15] | 0 | 0 |
| France | 15 | 0/5[16] | 0 | 0 |
| Gambia | 15 | 5[2] | 15 | 12.5 |
| Georgia | 10 | 5[8] | 0 | 0 |
| Germany | 15 | 0[17] | 0 | 0 |
| Greece | 20 | 20 | 10 | 10 |
| Greenland | 15 | 5[8] | 0 | 10 |
| Hungary | 10 | 10 | 0 | 0 |
| Iceland | 15 | 0[15] | 0 | 0 |
| India | 10 | 10 | 10 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Indonesia | 15 | 15 | 10 | 10/15 |
| Ireland | 15 | 5[8] | 0 | 0 |
| Israel | 15 | 5[18] | 25 | 10 |
| Italy | 15 | 15 | 15 | 5 |
| Ivory Coast | 15 | 15 | 16 | 10 |
| Jamaica | 15 | 15 | 12.5 | 10 |
| Japan | 15 | 5[19] | 10 | 10 |
| Kazakhstan | 15 | 5[8] | 10 | 10 |
| Kenya | 25 | 15[20] | 20 | 20 |
| Korea (South) | 15 | 15 | 15 | 10/15 |
| Latvia | 15 | 5[2] | 10 | 0/5/10 |
| Lithuania | 15 | 5[2] | 10 | 0/5/10 |
| Luxembourg | 15 | 5[2] | 0 | 0 |
| Malawi | 15 | 5[8] | 10 | 5 |
| Malaysia | 0 | 0 | – | 0 |
| Malta | 15 | 0[21] | 0 | 0 |
| Mexico | 15 | 0[17] | 10/15 | 10 |
| Montenegro | 15 | 15 | 0 | 10 |
| Morocco | 15 | 15 | 10 | 10 |
| Nepal | 15 | 5/10[2, 7] | 10/15 | 15 |
| Netherlands | 15 | 0[22] | 0 | 0 |
| Netherlands Antilles | 15 | 5[2] | – | – |
| New Zealand | 15 | 15 | 10 | 10 |
| North Macedonia | 15 | 10[3] | 5 | 5 |
| Pakistan | 15 | 15 | 10 | 12 |
| Philippines | 25 | 15[23] | 15 | 10 |
| Poland | 15 | 0[21] | 5 | 5 |
| Portugal | 15 | 5[24] | 10 | 10 |
| Qatar | 15 | 5[8] | 0 | 5 |
| Romania | 10 | 5[8] | 5 | 5 |
| Russia | 10 | 10 | 10 | 0 |
| Senegal | 16 | 16 | 16 | 16 |
| Serbia | 15 | 5[2] | 10 | 5/10 |
| Sierra Leone | 5 | 0[18] | 0 | 0 |
| Singapore | 15 | 5[2] | 7 | 7 |
| Slovak Republic | 15 | 5[2] | 0 | 0/5 |
| Slovenia | 15 | 0[25] | 5 | 5 |
| South Africa | 15 | 5[2] | 0 | 0 |
| Spain | 15 | 10[26] | 0/10 | 5 |
| Sri Lanka | 15 | 15 | 10 | 10 |
| Sweden | 15 | 0[15] | 0 | 0 |
| Switzerland | 15 | 0[14] | 0 | 0 |
| Tanzania | 20 | 20 | 15 | 20 |
| Thailand | 15 | 10[7] | 10/15 | 5/10/15 |
| Trinidad and Tobago | 20 | 10[27] | 15 | 15 |
| Tunisia | 20 | 20 | 12 | 5/15/20 |
| Turkey | 15 | 5[28] | 5/10/15 | 10 |
| Uganda | 15 | 10[3] | 10 | 10 |
| Ukraine | 15 | 5[2] | 10 | 5/10 |
| United Kingdom | 15 | 0[29] | 0 | 0 |
| United States | 15 | 15 | 0 | 0 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Venezuela | 10 | 5[8] | 5/15 | 9/12 |
| Vietnam | 15 | 5/10[30] | 10 | 10 |
| Zambia | 0/15 | 0/5[2, 31] | 10 | 10 |
| Zimbabwe | 20 | 15[32] | 10 | 10 |

Notes:

1. As from 1 July 2021, a withholding tax on interest and royalty payments to related companies in low-tax jurisdictions must be deducted at a rate of 15%. Similarly, from 1 October 2021, a withholding tax on lease payments for certain tangible fixed assets paid to such entities must be deducted at a rate of 15%. However, payments to low-tax jurisdictions within the EEA may be exempt from withholding tax, provided that the receiving company is genuinely established and fulfils certain substance requirements. The application of withholding tax on royalties and interest will also be subject to the application of double tax treaties concluded by Norway.
2. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership in certain treaties) which holds directly at least 25% of the capital of the dividend-paying company.
3. The 10% reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company.
4. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the voting power in the dividend-paying company. The 0% rate applies if more than 80% of the voting power is held, subject to several conditions.
5. The 0% rate applies if dividends are derived and beneficially owned by the Austrian national bank or a statutory body or any institution wholly or mainly owned by the Government of Austria.
6. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 30% of the capital of the dividend-paying company, and has invested in the aggregate in Norway an amount no less than equivalent to UDS 100,000.
7. The 10% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company.
8. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership in certain tax treaties) which holds directly at least 10% of the capital of the dividend-paying company.
9. The 5% reduced rate applies if the beneficial owner is a pension fund. The 0% rate applies if the beneficial owner is (i) a company which holds, for an uninterrupted period of at least 12 months, shares representing directly at least 10% of the capital of the dividend paying company or (ii) a Belgium political subdivision or local authority, the National Bank of Belgium, the Federal Holding and Investment company, a statutory body or any institution wholly or mainly owned by Belgium, or a political subdivision or local authority thereof.
10. No reduction under the treaty. The domestic rate applies.
11. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company. The 0% rate applies if the beneficial owner is the Bulgarian National Bank or a statutory body or any institution owned more than 75% by the Government of Bulgaria.
12. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the voting power of the dividend-paying company.
13. The 5% reduced rate applies if the beneficial owner is a company that controls directly or indirectly at least 25% of the voting power in the dividend-paying company.
14. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
15. The 0% rate applies if the beneficial owner is a company (other than a partnership or an estate of a deceased person) which owns directly at least 10% of the capital of the dividend-paying company.
16. The 5% reduced rate applies if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the dividend-paying company. The 0% rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company.
17. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
18. The 5% reduced rate applies if the recipient company controls directly or indirectly at least 50% of the entire voting power of the dividend-paying company.
19. The 5% reduced rate applies if the beneficial owner is a company which owns at least 25% of the voting shares of the dividend-paying company during the period of 6 months immediately before the end of the accounting period for which the distribution of profits takes place.
20. The 15% reduced rate applies if the recipient is a company which owns at least 25% of the voting shares of the dividend-paying company during the period of 6 months immediately preceding the date of payment of the dividends.
21. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company on the date the dividends are paid and has done so or will have done so for an uninterrupted 24-month period in which that date falls.
22. The 0% rate applies if the beneficial owner is (i) a pension fund or (ii) a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company or (iii) the Central Bank of the Netherlands, the Dutch Finance Company for Developing Countries or a statutory body or any institution wholly or mainly owned by the Government of the Netherlands.
23. The 15% reduced rate applies if the beneficial owner is a company which controls directly or indirectly at least 10% of the voting power in the dividend-paying company.
24. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) that for an uninterrupted period of at least 12 months prior to the payment of the dividends or if the dividend-paying company has existed for less than 12 months, during the lifetime of the company, holds directly at least 10% of the capital of the dividend-paying company, or if the beneficial owner is (in the case of Portugal) the Central Bank of Portugal, the State, a political or administrative subdivision or a local authority thereof.
25. The 0% rate applies if the beneficial owner is a company which holds directly at least 15% of the capital of the dividend-paying company.
26. The 10% reduced rate applies if the beneficial owner is a company which holds directly or indirectly at least 25% of the capital of the dividend-paying company.
27. The 10% reduced rate applies if the recipient is a company which controls directly or indirectly at least 25% of the voting power of the company paying or crediting the dividends.

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28. The 5% reduced rate applies if the beneficial owner is (i) a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company, provided that such dividends are exempt from tax in Turkey or (ii) if the dividends are derived by the Government Social Security Fund (*Sosyal Güvenlik Fonu*).
29. The 0% rate applies if the beneficial owner is (i) a company which owns directly or indirectly at least 10% of the capital of the dividend-paying company or (ii) a pension scheme or (iii) the Bank of England or a statutory body or any institution wholly or mainly owned by the Government of the UK.
30. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 70% of the share capital of the dividend-paying company. The 10% reduced rate applies if the beneficial owner is a company which holds directly at least 25% but less than 70% of the share capital of the dividend-paying company.
31. The 0% rate applies if the dividends are derived and beneficially owned by the Central Bank of Zambia or a statutory body or any entity wholly owned by the Government of Zambia.
32. The 15% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.

The rate for non-tax treaty countries should be used if the shareholder has not provided proof of tax residency in a tax treaty country. This means, in general, that the reduced rates cannot be used if the shares are held in nominee accounts. A shareholder from a tax treaty country who has been subject to the 25% withholding tax rate may apply for a refund of the excess taxes withheld.

# OMAN

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Muscat | PKF Oman | +968 2456 3195<br>muscat@pkfoman.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Sultanate of Oman |
| Capital: | Muscat |
| Main languages: | Arabic, English |
| Population: | 5.36 million (2022 estimate) |
| Monetary unit: | Omani Rial (OMR) |
| Internet domain: | .om |
| Int. dialing code: | +968 |

## KEY TAX POINTS

- A five-year tax holiday is available to manufacturing companies if certain conditions are met.
- Capital gains are generally taxed as ordinary corporate income, although profits/losses on the sale of securities listed on the Muscat Securities Market are not taxable/deductible.
- Branches in Oman of foreign companies are subject to tax on their profits. Allowance for allocated head office expenditure is on a restricted basis. Payment made by an Omani branch to a non-resident entity shall attract withholding tax even if the payment is made in the nature of head office global overheads.
- Withholding taxes apply at a rate of 10% on payment/credit to a non-resident entity with no permanent establishment in Oman receiving certain types of payments viz. royalties, management fees, research and development, use or right to use computer software, and provision of services.
- There is no personal income or wealth tax in Oman.
- On 9 March 2021, an economic stimulus plan was announced to support the Sultanate's effort to tackle the Covid-19 impact on the economy. The stimulus is based on 5 major pillars;
  (i) Incentives relating to taxes/fees;
  (ii) Incentives to support SME's;
  (iii) Incentive for the employment and labour market;
  (iv) Incentive for the improvement of business and investment opportunities; and
  (v) Incentives in relation with Banking.
- Value Added Tax (VAT) is implemented in Oman on 16 April 2021. The standard rate of VAT in Oman is 5% and consistent with the GCC Unified Agreement, and there are provisions for zero rating and exemptions in Oman VAT Law.

## A. TAXES PAYABLE

Oman has adopted a global tax system whereby a company in Oman is taxed on its worldwide income, subject to provisions in Oman tax law and double tax treaties to avoid international double taxation. The Executive Regulation (ER) to the Income Tax Law provides the detailed rules which apply to the tax treatment of certain income and expense items, thin capitalisation rules and various forms to be completed for tax purposes.

## COMPANY TAX

Under the Income Tax Law, the income tax rate applicable to any business establishment, Omani company or permanent establishment (i.e. foreign branch) would be 15% of taxable income for financial years starting from 1 January 2017 onwards.

However, small taxpayers (enterprises) meeting specific criteria would be taxed at 3% on declared taxable income subject to fulfilment of certain conditions.

## PETROLEUM COMPANIES

The tax rate for taxpayers engaged in petroleum exploration shall be 55% of the taxable income in respect of any income derived from the sale of petroleum.

## TAX EXEMPTIONS:

## SHIPPING ACTIVITIES

Income accruing to an Omani company/establishment from carrying on its activity in the field of shipping shall be exempt from tax. Furthermore, income from shipping/air transport activities accruing to any person shall be exempt from tax, provided similar treatment is accorded on a reciprocal basis in the foreign country in which the said person is incorporated or where its effective management and control are exercised.

## INVESTMENT FUNDS

Income accruing to an investment fund set up in Oman under Capital Market Law or to an investment fund set up outside of Oman to deal in Omani securities listed on the Muscat Securities Market (MSM) shall be exempt from tax.

## PRIORITY SECTOR ACTIVITIES

Income accruing to Omani companies/establishments from carrying on their main activity in the field of industry in accordance with the Law for Unified Industrial Organization of Gulf Co-operation Council Countries, except for project execution contracts, shall be exempted from tax.

The exemption provided above shall be for a non-renewable period of five years beginning from the date of commencement of production, based on an application made by the taxpayer which is required to be approved by the Ministry of Commerce & Industry and the Secretary General of Taxation.

## TAX YEAR

The tax year is the calendar year, although a special permit can be obtained from the Ministry of Finance for a different fiscal / accounting period.

## ANNUAL INCOME RETURNS

An annual return and annual tax settlement are due at the end of four months following the close of the accounting period. The same should be filed along with the audited financial statements prepared in accordance with International Financial Reporting Standards (IFRS).

## CAPITAL GAINS TAX

Capital gains are normally regarded as part of ordinary corporate income and the total income is taxed at the aforesaid applicable corporate income tax rates. However, capital gains realized from the sale of shares and securities listed on the Muscat Securities Market (MSM) are exempted from income tax. Similarly, capital losses on the sale of securities listed on the MSM are not allowed as a deductible expense.



## BRANCH PROFITS TAX

Branches of foreign companies are taxed in Oman at corporate income tax rates. Allowance for allocated head office expenditure is on a restricted basis.

## VALUE ADDED TAX

The Oman Government announced the implementation of Value Added Tax ('VAT') on 12 October 2020. The VAT Law was published in the Official Gazette of Oman on 18 October 2020 vide Royal Decree No. 121/2020. The date of implementation of VAT in Oman is 16 April 2021. The standard rate of VAT in Oman is 5% and consistent with the GCC Unified Agreement, and there are provisions for zero rating and exemptions in Oman VAT Law.

## OTHER TAXES

Municipal taxes and other taxes charged are as follows:

| Description | Rate |
|---|---|
| Sin Tax / Excise Tax | 50% to 100% |
| Hotel income | 5% |
| Annual rental of leased premises | 5% |
| Leisure and cinema income | 10% |
| Tax on homeowners using the drainage system | 10% |
| Electricity bills | 0.5% to 2% |
| Hotels and restaurant bills | 5% |

## VOCATIONAL TRAINING LEVY

The vocational training levy on employers in the private sector ranges from OMR 601 to OMR 2,001 per expatriate employee for two years as per the latest circular issued.

## SOCIAL SECURITY PREMIUM

Employers are required to pay a social security premium equal to 18.5% of the gross salaries of its Omani employees. Of this amount, 7% is recoverable from the Omani employees.

## CUSTOMS DUTIES

A Common Customs Union exists for the six Gulf Co-operation Council States ("GCC") namely, Saudi Arabia, Kuwait, Bahrain, Qatar, UAE and Oman. A uniform customs tariff of 5% is imposed on the importation of goods into a GCC State, payable at the first point of entry into the GCC. Goods can then move freely within the GCC subject to proper documentation being available. Customs duties are levied on certain categories of imported goods. The rates range from 5% to 100%.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is computed in accordance with IFRS applied on a consistent and regular basis. The accrual basis is generally to be used although, in special cases, the Director of Income Tax may approve cash basis of accounting. As a basic rule, all expenses which are incurred wholly for the purposes of business and are incurred to generate the gross income are allowed to be deducted provided they are reasonable considering the value of services received. Any expense or cost incurred to generate income which is exempted from income tax will not be allowed as a deductible expense. Remuneration to working partners and owners is allowed on a restricted basis. Certain charges have been specified as not deductible and certain charges have been restricted to specific amounts by the tax law.

## TAX DEPRECIATION - BUILDINGS AND CIVIL WORKS

(a) Depreciation shall be allowed for any accounting period on capital expenditure incurred in the acquisition of any building used for the purposes of the business during that period. The amount allowed to be deducted shall be determined in accordance with the following percentages:

  (1) 4% annually for depreciation of buildings constructed with selected materials.

  (2) 10% annually for depreciation of quays, jetties, pipelines, roads and railways.

  (3) 15% annually for depreciation of buildings constructed with other than the selected materials mentioned above, or prefabricated buildings.

  (4) 100% annually for depreciation of buildings used as hospitals or educational institutions. The taxpayer in this case may choose the rate in this Clause, or the rates in the foregoing Clauses (1) and (3).

(b) The percentages of depreciation mentioned in Clauses (1), (2) and (3) of the foregoing para. shall be doubled if buildings are used for industrial purposes. These purposes shall not include the use of buildings for the purposes of storage, office, accommodation for workers or for other commercial purposes.

(c) Depreciation shall be allowed for any accounting period at the rate of 15% annually on capital expenditure incurred on the acquisition of any ship or aircraft used for business purposes during that period.

## TAX DEPRECIATION - PLANT AND MACHINERY, FURNITURE I FIXTURE AND OTHER ASSETS

(a) Machinery and plant shall be allocated to pools with annual rates of depreciation specified for them as follows:

  (1) 33.33% annually for the first pool, comprising:

  Tractors, cranes and other heavy machinery and plant similar in nature and use, computers, vehicles and self-propelling machines, fixtures, fittings, and furniture. It also comprises computer software and intellectual property rights.

  (2) 10% annually for the second pool, comprising drilling rigs.

  (3) 15% annually for the third pool, comprising any other machinery and plant which are not included in (1) and (2) above.

(b) The amount to be deducted as depreciation in respect of a pool for the accounting period shall be calculated by applying the percentages specified in para. a) above on the depreciation base of that pool. For any accounting period, the depreciation base in the case of any pool shall be determined to be the excess of the amount resulting from applying Clause 1 of this para. after deducting the amount resulting from applying Clause 2 of this para. as follows:

  (1) The depreciation base of that pool for the accounting period immediately preceding that accounting period after deducting the depreciation allowed for this pool for the accounting period immediately preceding that accounting period. This depreciation base shall be increased by the total capital expenditures incurred in acquiring the machinery, plant or other assets falling under the same pool during that accounting period.

  (2) The disposal value of all capital assets falling in that pool that were disposed of during that accounting period.

## STOCK / INVENTORY

Omani tax regulations do not specifically establish which methods of inventory valuation must be used, nor how inventory flows are to be determined. At present, any of three methods - average, FIFO or LIFO - are deemed to represent the 'actual cost' required by tax rules. Reserves and provisions for inventory shortages and obsolescence are not allowed as a deductible expense for tax purposes but actual losses and write-offs are allowed in the year in which they occur provided they are supported with adequate documentation as specified in the Executive Regulation to the Income Tax Law.

## DIVIDENDS

Tax is not imposed on dividends received by a company through shares in the capital of the other Omani companies i.e. companies registered in Oman. Dividends received from foreign companies will be subject to tax at the tax rate applicable to business income.

## INTEREST DEDUCTIONS

Interest paid on the bank borrowing used for business purposes is deductible. Interest paid on loans from partners I members / related parties are allowed on a restricted basis as specified in the Executive Regulation.

## LOSSES

Losses are not allowed to be carried forward for more than five subsequent assessment years. However, companies which are engaged in industry can indefinitely carry forward their losses incurred during the non-renewable exempted period of five years, and deduct them in subsequent years until the losses are fully absorbed by set off against the profits of future years.

## C. FOREIGN TAX RELIEF

The Sultanate of Oman has entered into agreements for the avoidance of double taxation (DTA) and the prevention of avoiding income tax with France, India, Tunisia, United Kingdom, Mauritius, Italy, Pakistan, Algeria, Lebanon, China, Yemen, South Africa, Sudan, Seychelles, Iran, Canada, Turkey, Syria, Republic of South Korea, Singapore, Thailand, Uzbekistan, Belarus, Brunei, Netherlands, Moldova, Vietnam, Belgium, Croatia, Japan, Switzerland, Spain, Morocco and Sri Lanka. Some DTAs are not in force as they await ratification from the respective governments. Currently, most of the foreign airlines carrying on business through an establishment in Oman are exempted from income tax either through comprehensive DTAs or through limited DTAs. The foreign airlines which earn income through an establishment in Oman, and which do not have comprehensive DTAs or limited DTAs, would be exempted from tax provided reciprocal tax exemption is granted in the airline's home country. The countries whose airlines have signed agreements for tax relief are India, Kuwait, Jordan, the Netherlands, Tanzania, Sri Lanka, Iran, Singapore, Sweden and Switzerland.

Income earned overseas by an Omani company will be taxed in Oman. A corresponding tax credit in Oman will be given to the extent of Omani tax, i.e. 15% or foreign tax paid on that income whichever is lower in respect of DTA countries. In respect of non-DTA countries, a tax credit is unilaterally allowed by Oman for tax paid by Omani business entities outside of Oman subject to the overall limit of Omani tax on foreign income, subject to certain conditions.

## D. CORPORATE GROUPS

There are no provisions for group taxation or for offsetting losses of one company against another.

## E. RELATED PARTY TRANSACTIONS

Transactions with related parties are subject to detailed scrutiny to confirm that prices are at arm's length, and that expenses exclude an element of profit in case of transactions between a head office and its branch and 100% subsidiary companies.

### Country-by-Country Reporting (CbcR)

Oman has introduced Country-by-Country Reporting (CbCR) requirements through Tax Authority Decision No. 79/2020, fulfilling the Sultanate's commitments to implement four minimum standards under the OECD's Base Erosion and Profit Shifting (BEPS) framework. The CbCR rules are effective for fiscal years beginning on or after 1 January 2020. The CbCR rules apply to a Multinational Enterprise (MNE) Group having consolidated annual revenue of OMR 300 million and above in the preceding fiscal year. The entity responsible for notification and/or filing of the CbCR can either be an Ultimate Parent Entity (UPE), which is a tax resident in Oman, or a Surrogate Parent Entity (SPE).

## F. WITHHOLDING TAX

Withholding tax applies to payments (income to the recipient accruing in Oman) made by an Omani taxpayer or government body to a foreign person which does not have a permanent establishment in Oman or to a foreign company that has a permanent establishment in Oman but such payment does not form part of its taxable income in Oman, for:

(1) Consideration for the use, or right to use, of computer software;
(2) Royalties;
(3) Management fees;
(4) Research and development;
(5) Performance of services (certain specified categories of services are specifically excluded from withholding tax)

Royalties include:

1. Consideration for the use or the right to use of:
   a) Intellectual or proprietary right either for artistic, literary or scientific work, including computer software, cinematograph films, or films or tapes or discs or any other means used for radio or television broadcasting.
   b) Patents, trademarks, design, drawing, models and secret process or formula.
   c) Industrial, commercial or scientific equipment.
2. Consideration for information concerning industrial, commercial or scientific experience.
3. Consideration for granting rights of exploitation of mining or any other natural resources.

The domestic withholding tax rate on the above is 10%. Omani withholding tax may be reduced or eliminated if the foreign company is based (resident) in a country with which Oman has a DTA. Withholding tax must be paid within 14 days following the month of payment or credit, whichever is earlier and Income Tax Form 18 must be filed with the Tax Authority online. The obligation to deduct this tax shall rest with the company or the permanent establishment which pays the above amount.

## G. EXCHANGE CONTROL

There are no exchange controls in any form on inward or outward investment or on repatriation of capital or profits, either by nationals or expatriates.

## H. PERSONAL TAX

Currently, there is no personal income tax or wealth tax in Oman.

## I. TREATY WITHHOLDING TAX RATES

The following rates apply wherever DTTs are ratified by the government of both countries and treaties are in force:

| | Dividends[1] | | Interest[2] (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | -- | -- | -- | 10 |
| Individuals | -- | -- | -- | 10 |
| **Treaty countries** | | | | |
| Algeria | 10 | 5[3] | 5 | 10 |
| Belarus | 5 | 0/5[4] | 5 | 10 |
| Brunei | 5 | 0/5[5] | 10 | 10 |
| Canada | 15 | 5[6] | 10 | 10 |
| China | 5 | 5 | 10 | 10 |
| Croatia | 0 | 0 | 5 | 10 |
| France | 0 | 0 | 0 | 7 |
| India | 12.5 | 10[7] | 10 | 15 |
| Iran | 10 | 0/10[8] | 10 | 10 |
| Italy | 10 | 0/5[9] | 5 | 10 |
| Japan | 10 | 5[10] | 10 | 10 |
| Korea (South) | 10 | 5[11] | 5 | 8 |
| Lebanon | 10 | 5 | 10 | 10 |
| Mauritius | 0 | 0 | 0 | 0 |
| Moldova | 5 | 5 | 5 | 10 |
| Morocco | 10 | 5[12] | 10 | 10 |
| Netherlands | 10 | 0[13] | 0 | 8 |
| Pakistan | 12.5 | 5[14]/10[7] | 10 | 12.5 |
| Portugal | 15 | 5[16]/10[15] | 10 | 8 |
| Seychelles | 5 | 0[5]/5 | 5 | 10 |
| Singapore | 5 | 0[5]/5 | 7 | 8 |
| South Africa | 10 | 0[5]/5[12] | 0 | 8 |
| Spain | 10 | 017 | 5 | 8 |
| Sri Lanka | 10 | 7.5[21] | 10 | 10 |
| Switzerland | 15 | 5[11] | 5 | 8 |
| Syria | 7.5 | 5 | 10 | 18 |
| Thailand | 10 | 10 | 10/15 | 15 |
| Tunisia | 0 | 0 | 10 | 5 |
| Turkey | 15 | 10[18] | 10 | 10 |
| United Kingdom | 0/15 | 0/15[19] | 0 | 8 |
| Uzbekistan | 7 | 0[5]/7 | 7 | 10 |
| Vietnam | 15 | 5/10[20] | 10 | 10 |
| Yemen | 5 | 5 | 10 | 10 |

Notes:

1. Dividends paid to non-resident corporate entities are subject to a 10% withholding tax on their gross amount as of 27 February 2017. The executive regulations issued by way of Ministerial Decision 14 of 2019 clarify that the withholding tax applies only to dividends distributed by joint-stock companies and investment funds. Distributions by limited liability companies, for example, are not subject to withholding tax. Furthermore, dividends distributed as of 6 May 2019 (i.e. until 6 May 2022) will be exempt from withholding for a 3-year period, irrespective of the status (listed or not) or legal form of the payor.
2. Interest paid to non-resident companies without a permanent establishment in Oman is subject to a 10% withholding tax as of 27 February 2017. However, interest paid as of 6 May 2019 will be exempt from withholding tax for a 3-year period (i.e. until 6 May 2022), under a Royal Directive announced by the Capital Market Authority.
3. The 5% rate applies if the beneficial owner is a company that owns at least 15% of the capital of the dividend-paying company.
4. The 0% rate applies if dividends are paid to the Government of the other contracting State, the Central Bank, the State General Reserve Fund of Oman and any other statutory body.
5. The 0% rate applies to dividends paid by a company to the Government of the other contracting State.
6. The 5% rate applies if the beneficial owner is a company which controls directly or indirectly at least 10% of the capital in the dividend-paying company.
7. The 10% rate applies if the beneficial owner is a company which owns at least 10% of the shares of the dividend-paying company.
8. The 0% rate applies to dividends paid by an Omani company to Iran governmental institutions, governmental companies, the Central Bank or other banks wholly owned by the Iran government.
9. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 15% of the capital of the

dividend-paying company. The 0% rate applies to dividends beneficially owned by the Omani state general reserve fund (see item 5 of the Treaty's Protocol).

10. The 5% rate applies if the beneficial owner is a company that has owned directly or indirectly, for the period of 6 months ending on the date on which entitlement to the dividends is determined, at least 10% of the voting shares of the dividend-paying company.
11. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
12. The 5% rate applies if the beneficial owner is a company which holds at least 10% of the capital of the dividend-paying company.
13. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
14. Dividends beneficially owned by the Omani state general reserve fund are subject to 5% Pakistani withholding tax.
15. The 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
16. The 5% rate applies to dividends beneficially owned by the government of a contracting state, a political or administrative subdivision, a local authority or the Central Bank thereof as well as statutory bodies or institutions wholly owned by the government in the case of Oman.
17. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company.
18. The 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 15% of the capital of the dividend-paying company.
19. The 15% rate applies to dividends beneficially owned by REITS other than those owned by a contracting state, a central bank, a pension fund or a statutory body or institution wholly or mainly owned by the government of a contracting state, as may be agreed between the competent authorities of the contracting states.
20. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 60% of the capital of the dividend-paying company. The 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% but less than 60% of the capital of the dividend-paying company.
21. The 7.5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.

# PAKISTAN

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Karachi | Faheem Rauf | +92 21 3531 5175<br>faheemrauf@pkf.com.pk |
| Lahore | Nouman Razaq Khan | +92 42 3750 3381-82<br>nouman@pkf.com.pk |
| Sialkot | Zulfiqar Ahmed Nasir | +92 52 460 1454<br>zanasir@pkf.com.pk |
| Islamabad | Ejaz Hussain Rathore | +92 51 282 5775<br>ejaz@pkf.com.pk |
| Multan | Muhammad Talib | +92 61 451 0242<br>talib@pkf.com.pk |
| Peshawar | Zeeshan Ali | +92 91 52 79691<br>zeeshan@pkf.com.pk |

## BASIC FACTS

| | |
|---|---|
| Full name: | Islamic Republic of Pakistan |
| Capital: | Islamabad |
| Main languages: | English, Urdu and 18 regional languages |
| Population: | 229 million (2022 estimate) |
| Monetary unit: | Pakistani Rupee (PKR) |
| Internet domain: | .pk |
| Int. dialling code: | +92 |

## KEY TAX POINTS

- Income/Profits of corporate entities are taxed at 29% and companies falling under the category of small company are taxed at 21% for tax year 2022, which will be further reduced to 20% for tax year 2023 and onwards.
- The tax rates for branch office of non-resident company incorporated outside Pakistan are the same as applicable to resident companies. However, such branch office operating in Pakistan through a permanent establishment is also entitled to set off expenses incurred in or outside Pakistan for the purpose of business, including reasonable allocation of share of head office general and administrative expenses.
- Some sources of income are taxed on a presumptive tax basis, where the withholding tax suffered on such income constitutes full and final discharge of tax liability.

- In certain cases, withholding tax on services is considered to be a minimum tax. Some other classes of taxpayers also have to pay minimum tax in relation to their turnover.
- Where a resident taxpayer derives foreign-source income on which income tax has been paid in the foreign territory, a proportionate tax credit is allowable in respect of that income in Pakistan. Such reduction is available, both in terms of provisions of Avoidance of Double Taxation Treaty, as well as unilateral relief, where such treaty is not available.
- Payment for expenses and procurements are subject to withholding tax deduction on various prescribed deduction rates. Such withholding taxes deducted from suppliers, vendors, service providers and employees etc., are periodically required to be deposited in the Treasury.
- In certain cases, subject to eligibility and certain conditions, a Certificate of exemption from withholding tax can be obtained.
- In allowing expenses for the tax computation, some conditions, like payment through crossed cheque or through banking channels and compliance with withholding tax requirements do apply.
- All tax filings, tax payments, show-cause-notices, and assessment procedures are electronic and web based, and filing can be done from anywhere in the world through internet.
- All tax statements (returns) filed within due time are accepted under self-assessment, and the declared results are deemed to be an assessment. However, a certain percentage of the tax returns is selected and set apart for tax audit through computer balloting by the Federal Board of Revenue. Commissioners also have powers to select cases for audit.
- The Assessments completed on the basis of return can be amended on the basis of definite information, coming in possession of the tax officials, gathered through audit or otherwise. The assessment can also be amended, where it is considered to be erroneous and prejudicial to the interest of revenue.
- The tax authorities have the power in respect of a transaction between associates to distribute, apportion, or allocate income, deductions, or tax credits between such associates to reflect the income that would have been realised in an at arm's-length transaction.
- VAT (locally termed as 'sales tax') is a Federal tax, ordinarily levied at 17% on the value of goods, unless specifically exempt, or chargeable under reduced rate or zero rated. The tax is subject to input tax adjustments.
- Sales tax on Services, which is a provincial levy, is also charged by each Province, under its own laws. The entity having business or place of business in more than one province(s) is required to register and file separate tax returns for each such province. The tax rates range from 5% to 19.5% on the value of taxable services.
- Elaborate, multilevel appeal system is available, where a taxpayer feels aggrieved by any assessment or action of the tax authority.

## A. TAXES PAYABLE

### COMPANY/CORPORATE TAX

The tax rates are summarised as follows:

| | |
|---|---|
| **Small company** | 21% for tax year 2022, which will be further reduced to 20% for tax year 2023 and onwards |
| **Banking company** | 35% |
| **All other companies** | 29% |

### MINIMUM/FINAL TAX REGIME

Tax deducted at source from goods, services and execution of contracts is deemed to be minimum tax on the income of the taxpayers, i.e. if the normal tax liability calculated on net income basis at applicable rates of income tax is less than the withholding income tax deductible, the entire amount of tax deductible would be taken as the tax payable by the taxpayer.

The tax payable by certain taxpayers is further subjected to minimum tax based on the turnover for the year.

Some sources of Income, like dividends, are taxed under the Final Tax Regime, whereby the tax deduced at source is considered the final discharge of tax liability.

### INCOME FROM RENTAL PROPERTY

Income from property of individuals and the Association of Persons (AOP) is charged as a separate block of income, at various slabs based on gross rentals ranging from PKR 200,000 to amounts exceeding PKR 8,000,000 from 5% to 35% whereas the rental income of companies is subject to tax at the normal corporate tax rates.

However, individuals and AOPs can opt for taxing income from property under the Normal Tax Regime from tax year 2021.

### TAXATION OF A PERMANENT ESTABLISHMENT (PE) OF A NON-RESIDENT

The following principles shall apply in computing taxable income of a PE:

- It is a distinct and separate entity dealing independently with the non-resident of which it is a PE.
- In addition to business expenditure, executive and administrative expenditure, whether incurred in Pakistan or elsewhere, will be allowed as a deduction.
- Head office expenditure, including rent, salaries, travelling, and any other expenditure that may be prescribed, shall be allowed as a deduction in proportion to the turnover of the PE in the same proportion as the non-resident's total head office expenditure bears to its worldwide turnover.
- Royalties, compensation for services (including management services), and interest on loans (except in banking business) payable to or receivable from a PE's head office shall not be considered in computing taxable income of a PE.
- No advance tax is required to be deducted from payment to a PE of a non-resident in respect of goods imported and sold under the same condition as if tax under section 148 is duly deducted and paid.
- Payments received by a PE for business activities in Pakistan, as well as payments made by it for procurement of goods and services would be subject to certain withholding tax deductions.

## PERSON NOT APPEARING ON ACTIVE TAXPAYER LIST (ATL)

Finance Act 2019 has omitted the terminology of filer and non-filer from legislation. However, the concept still stands. Henceforth non-filers are identified as “person not appearing on active taxpayer list”.

Persons, who have not filed their tax returns for the immediately preceding year are removed from the ‘active taxpayers list’ (ATL), maintained and updated electronically. Special rules have been prescribed for a person not appearing on ATL in Tenth Schedule.

As a general rule, withholding agents are required to collect or deduct 100% more tax from persons not appearing on ATL.

## BRANCH PROFITS TAX

The tax rates applicable to the profits of a branch of a company incorporated outside of Pakistan are the same as those applicable to resident companies. Tax at the rate of 15% is levied on the transfer of profits to the head office, or such reduced rate, as provided in the Avoidance of Double Taxation Treaties between the country of origin and the Islamic Republic of Pakistan, with an exception for companies engaged in the oil and gas exploration and production business.

Payments to a branch in Pakistan of a non-resident may be entitled to a reduced or 0% withholding tax, on meeting certain conditions and the issuance of a certificate in this regard by the Commissioner Inland Revenue.

## MINIMUM TAX

Where the tax payable by a resident company is less than 1.25% of turnover, the company is required to pay a minimum tax equivalent to 1.25% of turnover, regardless of any available adjustments for carry-forward losses etc. Tax paid in excess of normal tax liability can be carried forward for adjustment against tax liability of a subsequent tax year. However, such tax can only be adjusted against the tax liability of the five tax years immediately following the tax year for which the amount was paid.

## ALTERNATE CORPORATE TAX

Companies are also subject to Alternate Corporate Tax (ACT):

- when the income of the company is not subject to tax for the year due to adjustment for carry forward business loss, or any other reason; or
- when tax payable is less than the ACT: in that case the company shall pay tax equal to ACT.

ACT is calculated at 17% on accounting profit declared by the company in its financial statements, before any tax adjustments. ACT is adjustable against normal tax, if any, payable in future years.

## SALES TAX / VALUE ADDED TAX

VAT (locally termed as ‘sales tax’) is ordinarily levied at 17% on the value of goods, unless specifically exempt, after allowing related input credits. Significant zero-rated goods are as follows:

- Supplies and repair and maintenance of certain ships and aircraft;
- Supplies to diplomatic missions and diplomats;
- Supplies of raw materials, components, and goods for export processing zones;
- Supplies of locally manufactured plant and machinery to export processing zones and supplies of certain specified machinery to the exploration and production sector;
- Supplies to exporters.

Significant exemptions are as follows:

- Live animals and live poultry;
- Live plants;
- Vegetables, pulses, edible fruits (excluding imported fruits), certain spices, sugar cane, edible oils, etc.;
- Milk preparations;
- Newsprints, newspapers, journals, periodicals, and books;
- Agricultural produce not subjected to any process.

Concessionary sales tax rate from 1% to 12% introduced for certain items for supply of electric vehicles, manufacture of dairy machinery including milk chillers, tabular heat exchanger and milk processing plant etc. and certain ingredients of poultry and cattle feed.

### Highest Retail Price

Presently, manufacturers of goods subject to tax on retail price basis are required to pay sales tax at the highest retail price where more than one retail price is fixed by the manufacturers for any particular brand or variety of such goods. The Federal Board of Revenue (FBR) is authorised to specify zones or areas only for the purposes of determining highest retail price for any brand or variety of goods.

## EXCISE DUTY

Federal excise duty (FED) is levied at the rate of 17% on certain types of manufacturing, import of goods, and rendering of services. FED on the services on which provincial sales tax is levied, has been abolished and is subject to levy of provincial sales tax.

## PROPERTY, WATER AND CONSERVANCY TAXES

The above taxes are levied and collected annually by the provincial government and cantonments.

## STAMP DUTY

Provincial stamp duty is payable on the sale or transfer of immovable property, based on the value of the property. Stamp duty is also payable on the execution of contracts and some other transactions.

## B. DETERMINATION OF TAXABLE INCOME

### DEPRECIATION

Normal depreciation is allowed at the following prescribed rates by applying the reducing-balance method.

| Assets | Depreciation (%) |
|---|---|
| Buildings | 10 |
| Machinery, Plant and Equipment (Including ships and vehicles) | 15 |
| Furniture | 15 |
| Computer hardware | 30 |
| Aircrafts and aero engines | 30 |
| Below ground installations in mineral oil concerns | 100 |
| Offshore platform | 20 |
| A ramp built to provide access to persons with disabilities not exceeding PKR 250,000 | 100 |

All depreciable assets put into service for the first time in Pakistan during a tax year, other than road transport vehicles not plying for hire, furniture (including fixtures), plant and machinery used previously in Pakistan, or plant and machinery for which a deduction has been allowed under another section of this ordinance for the entire cost of the asset, shall be entitled to an initial allowance at 25% of the cost of the asset, except for buildings. Book depreciation does not need to conform to tax depreciation. Unabsorbed tax depreciation not set off against the income of the year is carried forward and added to depreciation of the assets of the same business in the following year. Tax depreciation can be carried forward without limit until fully absorbed.

### STOCK/INVENTORY

Inventories are to be stated at the lower of cost or market. The first in first out (FIFO) and average methods are accepted. Conformity of methods used for book and tax reporting is desirable, and the method used should be consistently applied.

### CAPITAL GAINS ON IMMOVABLE PROPERTY

Capital gains on immovable property are chargeable on the basis of the holding period of such property and the amount of capital gains. The percentage of capital gain (Sale Proceeds – Allowable Cost) offered for taxation depends on the holding period, as per the following table:

| Holding period | Gain |
|---|---|
| Sold within 1 year | 100% |
| Sold after 1 year but not exceeding 2 years of purchase. | 75% |
| Sold after 2 year but not exceeding 3 years of purchase. | 50% |
| Sold after 3 year but not exceeding 4 years of purchase. | 25% |
| Sold after 4 years of purchase. | 0% |

Percentage of capital gains to be taxed as per the above table, is chargeable to capital gains tax at the following rates:

| Amount of gain (PKR) | Rate |
|---|---|
| Where the gain does not exceed 5 million | 2.5% |
| Where the gain exceeds 5 million but does not exceed 10 million | 5% |
| Where the gain exceeds 10 million but does not exceed 15 million | 7.5% |
| Where the gain exceeds 15 million | 10% |

### CAPITAL GAINS ON DISPOSAL OF SECURITIES

The rate of tax applicable for capital gains on the disposal of securities is as follows:

| S.No. | Period | Tax Year 2015 | Tax Year 2016 | Tax Year 2017 | Tax Years 2018, 2019 and 2020 and onwards | |
|---|---|---|---|---|---|---|
| | | | | | Securities acquired before 1 July 2016 | Securities acquired after 1 July 2016 |
| 1. | Where holding period of a security is less than 12 months | 12.5% | 15% | 15% | 15% | 15% |
| 2. | Where holding period of a security is 12 months or more but less than 24 months | 10% | 12.5% | 12.5% | 12.5% | |
| 3. | Where holding period of a security is 24 months or more but the security was acquired on or after 1 July 2013. | 0% | 7.5% | 7.5% | 7.5% | |
| 4. | Where the security was acquired before 1 July 2013 | 0% | 0% | 0% | 0% | 0% |
| 5. | Future commodity contracts entered into by members of Pakistan Mercantile Exchange | 0% | 0% | 5% | 5% | 5% |

## DIVIDENDS

The rate of tax on dividend income for tax year 2021 is proposed as follows:

| Dividend from | Rate |
|---|---|
| Independent Power Purchasers where such dividend is a pass-through item under an Implementation Agreement or Power Purchase Agreement or Energy Purchase Agreement and is required to be re-imbursed by Central Power Purchasing Agency (CPPA-G) or its predecessor or successor entity | 7.5% |
| Others | 15% |
| Company where no tax is payable by such company, due to exemption of income or carry forward of business losses under Part VIII of Chapter III or claim of tax credits under Part X of Chapter III | 25% |

## INTEREST INCOME

Interest earned by a company is taxed as its income from other sources. Interest earned by a non-resident company without a permanent establishment in Pakistan attracts withholding tax at the rate of 1%, except where a lower rate is provided in the related double tax treaty. The withholding tax on interest income is also the final tax on such income, except in the case of companies, where it is taxed on normal rates.

The rates of tax on profit on debt for the tax year 2021 are proposed to be revised as follows:

| Profit on debt | Rate |
|---|---|
| Where profit on debt does not exceed PKR 5,000,000 | 15% |
| Where profit on debt exceeds PKR 5,000,000 but does not exceed PKR 25,000,000 | 17.5% |
| Where profit on debt exceeds PKR 25,000,000 but does not exceed PKR 36,000,000 | 20% |

In cases where profit on debt exceeds PKR 36 million the tax on the entire profit on debt will be subject to the tax rate applicable to such person under the normal tax regime.

## LOSSES

Operating losses may be carried forward and set off against the profits of the succeeding six years of the same business in which the losses were incurred. Unabsorbed depreciation can be carried forward indefinitely. Unabsorbed depreciation can be carried forwarded without any limitation. Carried forward losses of an entity in the case of group relief cannot be utilised if the ownership of the holding company is reduced to less than 55% and 75% if one of the companies is a listed company or none of the companies is a listed company, respectively.

Business losses can be carried forward up to a period of six years in the case of the amalgamation of two companies, under the condition that the same business is continued for a minimum period of five years. The carrying back of losses is not permitted.

## INCENTIVES

### Tax credits and incentives

Any relief from Pakistani income tax that is provided in any other law and not provided for in the Income Tax Ordinance or a tax treaty is not valid.

### Tax exemptions

There are various types of tax exemptions provided for in the law, which include:

a) Exemption of income from Tax;

b) Exemption from specific provision;

c) Reduction in Tax Rate;

d) Reduction in Tax Liability.

### Small companies

Activities of small companies are encouraged with a reduced income tax rate of 22%. A small company has been defined as a company that:

- Is registered on or after 1 July 2005 under the Companies Ordinance, 1984;
- Has a paid-up capital plus undistributed reserves not exceeding PKR 25 million;
- Has an annual turnover not exceeding PKR 250 million; and,
- Is not formed by splitting up or the reconstitution of business already in existence.

### Charitable donations credit

Companies are allowed a tax credit equivalent to 20% of their taxable income in respect of donations to:

- Any board of education or university in Pakistan established by or under federal or provincial law;
- Any educational institution, hospital, or relief fund established or run in Pakistan by federal government, provincial government, or local government; and,
- Any approved non-profit organisation.

However, if a donation is given to an associate of the company, the tax credit is restricted to 10% of the taxable income.

### Tax Credit for Non-Profit Organisations

Non-Profit Organisations (NPOs) are granted a 100% Tax Credit under section 100C of the Income Tax Ordinance, 2001, subject to certain conditions and limitations. Section 100C stipulates the Persons eligible for Tax Credit as well as the Incomes on which such credit can be claimed.

**Income derived by a Zone Enterprise**

Income derived by a Zone Enterprise, as defined in the Special Economic Zones Act, 2012 is exempt for a period of ten years starting from the date the developer certifies that the zone enterprise has commenced commercial operations. Such exemption is also available to a Co-Developer as defined in Special Economic Zone Rules, 2013.

## C. FOREIGN TAX CREDIT

Where a resident taxpayer derives foreign-source income on which foreign income tax is paid within two years from the year in which it is derived, the taxpayer is allowed a tax credit equal to the lower of:

(i) The foreign income tax paid; or,

(ii) The Pakistan tax payable in respect of that income.

However, foreign tax paid is not refundable. Foreign produced commercials to non-resident persons shall be subject to tax at 20% which shall be the final discharge of tax liability of such non-resident person.

## D. CORPORATE GROUPS

A locally incorporated holding company and subsidiary of a 100% owned group may be taxed as one group by giving an irrevocable option for taxation as one fiscal unit. The relief is not available for losses prior to formation of the group. The group taxation is available if the companies are designated as entitled to avail group relief by the Securities and Exchange Commission of Pakistan.

The Group Relief where the loss of a subsidiary company is surrendered to a holding company for set off against its profit will be calculated as a percentage of shareholding held by the holding company. Any company that is the subsidiary of a holding company may surrender its loss for the year to its holding company or its subsidiary, or between other subsidiaries of the holding company, provided that the holding company directly holds 55% or more of the subsidiary's capital if one of the companies is a listed company. However, if none of the companies is a listed company, the holding requirement is 75% or more. The loss can be surrendered for a maximum of three years, and the required holding is for at least five years.

## E. TRANSFER PRICING

The tax authorities have the power in respect of a transaction between associates to distribute, apportion, or allocate income, deductions, or tax credits between such associates to reflect the income that would have been realised in an at arm's-length transaction.

## F. PERSONAL INCOME TAX

The rates of tax chargeable for individuals and AOPs for tax year 2021 (corresponding to the income year ending at any time between 1 July 2020 and 30 June 2021) is as follows:

**Individuals (except salaried) and Association of persons**

| Taxable Income | Rate of Tax |
|---|---|
| Up to PKR 400,000 | 0% |
| PKR 400,001 – 600,000 | 5% of amount exceeding PKR 400,000 |
| PKR 600,001 – 1,200,000 | PKR 10,000 + 10% of amount exceeding 600,000 |
| PKR 1,200,001 – 2,400,000 | PKR 70,000 + 15% of amount exceeding 1,200,000 |
| PKR 2,400,001 – 3,000,000 | PKR 250,000 + 20% of amount exceeding 2,400,000 |
| PKR 3,000,001 – 4,000,000 | PKR 370,000 + 25% of amount exceeding 3,000,000 |
| PKR 4,000,001 – 6,000,000 | PKR 620,000 + 30% of amount exceeding 4,000,000 |
| Above PKR 6,000,000 | PKR 1,220,000 + 35% of amount exceeding 6,000,000 |

**Individuals (salaried) – Where Salary Income Exceeds 75% of Total Income**

| Taxable Income | Rate of Tax |
|---|---|
| Up to PKR 600,000 | 0% |
| PKR 600,001 – 1,200,000 | 5% of amount exceeding 600,000 |
| PKR 1,200,001 – 1,800,000 | PKR 30,000 + 10% of amount exceeding 1,200,000 |
| PKR 1,800,001 – 2,500,000 | PKR 90,000 + 15% of amount exceeding 1,800,000 |
| PKR 2,500,001 – 3,500,000 | PKR 195,000 + 17.5% of amount exceeding 2,500,000 |
| PKR 3,500,001 – 5,000,000 | PKR 370,000 + 20% of amount exceeding 3,500,000 |
| PKR 5,000,001 – 8,000,000 | PKR 670,000 + 22.5% of amount exceeding 5,000,000 |
| PKR 8,000,001 – 12,000,000 | PKR 1,345,000 + 25% of amount exceeding 8,000,000 |
| PKR 12,000,001 – 30,000,000 | PKR 2,345,000 + 27.5% of amount exceeding 12,000,000 |
| PKR 30,000,001 – 50,000,000 | PKR 7,295,000 + 30% of amount exceeding 30,000,000 |
| PKR 50,000,001 – 75,000,000 | PKR 13,295,000 + 32.5% of amount exceeding 50,000,000 |
| Above PKR 75,000,000 | PKR 21,420,000 + 35% of amount exceeding PKR 75,000,000 |

## G. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 7.5/15/25[1] | 7.5/15/25[1] | 10[2] | 15 |
| Individuals | 7.5/15/25[1] | -- | 10[2] | 15 |
| **Treaty countries:** | | | | |
| Austria | 15 | 10 | 15 | 10 |
| Azerbaijan | 10 | 10 | 10 | 10 |
| Bahrain | 10 | 10 | 10 | 10 |
| Bangladesh | 15 | 15 | 15 | 15 |
| Belarus | 15 | 11 | 10 | 15 |
| Belgium | –[3] | 10/15 | 15 | 0/15/20 |
| Bosnia and Herzegovina | 10 | 10 | 20 | 15 |
| Brunei | 10 | 10 | 15 | 15 |
| Canada | –[3] | 15/20 | 0/25 | 0/15/20 |
| China | 10 | 10 | 10 | 12.5 |
| Czech Republic | 15 | 5 | 10 | 10 |
| Denmark | 15 | 15 | 15 | 12 |
| Egypt | 15/30 | 15 | 15 | 15 |
| Finland | 15/20 | 12 | 10/15 | 10 |
| France | 15 | 10 | 10 | 10 |
| Germany | 15 | 10 | 10/20 | 10 |
| Hong Kong | 10 | 10 | 10 | 10 |
| Hungary | 20 | 15 | 15 | 15 |
| Indonesia | 15 | 10 | 15 | 15 |
| Iran | 5 | 5 | 10 | 10 |
| Ireland | 10 | 5 | 10 | 10 |
| Italy | 25 | 15 | 30 | 30 |
| Japan | 10 | 5/7.5 | 10 | 10 |
| Jordan | 10 | 10 | 10 | 10 |
| Kazakhstan | 15 | 12.5 | 12.5 | 15 |
| Korea (South) | 12.5 | 10 | 12.5 | 10 |
| Kuwait | 10 | 10 | 10 | 10 |
| Kyrgyzstan | 10 | 10 | 10 | 10 |
| Lebanon | 10 | 10 | 10 | 7.5 |
| Libya | –[3] | –[3] | –[3] | –[3] |
| Malaysia | 20 | 15 | 15 | 15 |
| Malta | –[3] | 15 | 10 | 0/10 |
| Mauritius | 10 | 10 | 10 | 12.5 |
| Morocco | 10 | 10 | 10 | 10 |
| Nepal | 15 | 10 | 10/15 | 15 |
| Netherlands | 20 | 10 | 10/15/20 | 5/15 |
| Nigeria | 15 | 12.5 | 15 | 15 |
| Norway | 15 | 15 | 10 | 12 |
| Oman | 12.5 | 10 | 10 | 12.5 |
| Philippines | 25 | 15 | 15 | 15/25 |
| Poland | –[3] | 15 | –[3] | 15/20 |
| Portugal | 15 | 10 | 10 | 10 |
| Qatar | 10 | 5 | 10 | 10 |
| Romania | 10 | 10 | 10 | 12.5 |
| Saudi Arabia | 5/10 | 5/10 | 10 | 10 |
| Serbia | 10 | 10 | 10 | 10 |
| Singapore | 10/12.5/15 | 10/12.5/15 | 12.5 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| South Africa | 15 | 10 | 10 | 10 |
| Spain | 10 | 5/7.5 | 10 | 7.5 |
| Sri Lanka | 15 | 15 | 10 | 20 |
| Sweden | –[3] | 15 | 15 | 10 |
| Switzerland | 20 | 10 | 10 | 10 |
| Syria | 10 | 10 | 10 | 10/15/18 |
| Tajikistan | 10 | 5 | 10 | 10 |
| Thailand | 25 | 15 | 10/25 | 0/10/20 |
| Tunisia | 10 | 10 | 13 | 10 |
| Turkey | 15 | 10 | 10 | 10 |
| Turkmenistan | 10 | 10 | 10 | 10 |
| Ukraine | 15 | 10 | 10 | 10 |
| United Arab Emirates | 15 | 10 | 10 | 12 |
| United Kingdom | 15/20 | 10 | 15 | 12.5 |
| United States | –[3] | –[4] | –[3] | 0 |
| Uzbekistan | 10 | 10 | 10 | 15 |
| Vietnam | 15 | 15 | 15 | 15 |
| Yemen | 10 | 10 | 10 | 10 |

Notes:

1. Dividends (including remittance of profits to head office) are generally subject to a final withholding tax at the rate of 15%. The rate of 7.5% applies to dividends paid by Independent Power Purchasers where such dividend is a pass-through item under an Implementation Agreement or Power Purchase Agreement or Energy Purchase Agreement and is required to be re-imbursed by Central Power Purchasing Agency (CPPA-G) or its predecessor or successor entity. The 25% rate applies to dividends paid by a company with no tax, due to exemption of income, carried forward business losses or claimed tax credits.
2. Interest (profit on debt) paid to non-residents without a permanent establishment in Pakistan is subject to a 10% withholding tax rate on the gross amount (reduced from the normal rate of 20%). The higher withholding rate for persons who are not on the Active Taxpayer's List (ATL) does not apply.
3. No reduction under the treaty, the domestic rate applies.
4. Where a US corporation has no permanent establishment in Pakistan and is a public company that owns more than 50% of the voting power in a Pakistani company engaged in an industrial undertaking, the domestic rate is reduced by 1 anna in the rupee (1 rupee = 16 annas). Otherwise, the domestic rate applies, i.e. no reduction under the treaty available.

# PANAMA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Panama | Carmen Gonzalez | +507 269 5703<br>cgonzalez@pkfpanama.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Panama |
| Capital: | Panama City |
| Main languages: | Spanish, English |
| Population: | 4.44 million (2022 estimate) |
| Monetary unit: | Balboa (PAB) (at par with USD) |
| Internet domain: | .pa |
| Int. dialling code: | +507 |

## KEY TAX POINTS

- Corporate income tax is only chargeable on revenue arising from business activities and assets situated in Panama.
- An alternative minimum income tax system applies to all companies except small companies invoicing up to USD 1,500,000 per year.
- Tax is chargeable at 10% on the net profit arising on the sale of real estate property. A different tax calculation method applies on the sale of shares and securities.
- VAT is charged on the supply of goods and services at a standard rate of 7%, although some goods are subject to higher rates (elaborated upon in the tax sales section) while others are exempt.

- Withholding taxes apply to the payment of dividends by Panamanian companies to all recipients. Services and fees, interest, commissions, royalties or technical assistance fees, etc., paid or accrued to foreign recipients are subject to withholding tax only if the local payer will take it as a deductible expense.
- All individuals are subject to income tax on Panamanian source income. Progressive tax rates apply (elaborated upon in the personal tax section).
- The study and reporting of transfer prices is mandatory for individuals and companies according to their area of operations when conducting transactions with foreign related parties and areas under a special tax regime.

## A. TAXES PAYABLE

### COMPANY TAX

Panama's income tax law affects aggregate and annual revenue from business activities conducted in Panama or from assets situated in the country, when any of the causes of such revenue occur within the national territory. The tax rate for companies is 25% while companies in which the State has more than a 40% share will pay 30% income tax.

The fiscal year of companies normally corresponds to the calendar year but it is allowable to have fiscal years ending on other dates if a request is made to the Tax Department authorities. Corporate tax returns and payments are due by the end of the third month following the end of the fiscal year. An extension of one additional month may be granted if requested. Extensions to file a tax return, however, do not affect the time for payment of tax. Corporations are required to prepay their estimated tax liability in three instalments, based on the income tax of the previous fiscal year.

Companies established as an SEM company (Interoffice administrative services) are subject to 5% income tax as well as companies based in Panama Pacific ("Panamá Pacífico", see also hereafter under Incentives).

#### Legal Entities

As from tax year 2020, legal entities considered as micro, small, and medium-sized enterprises and entrepreneurs will pay income tax at the following rates:

| Total Income | Tax Rate |
|---|---|
| Up to USD 11,000.00 | 7.5% |
| From USD 11,000.01 to USD 36,000.00 | 10.0% |
| From USD36,000.01 to USD 90,000.00 | 12.5% |
| From USD 90,000.01 to USD 150,000.00 | 15% |
| From USD 150,000.01 to USD 350,000.00 | 20% |
| From USD 350,000.01 to USD 500,000.00 | 22.5% |

Such legal entities shall be exempt from the payment of complementary tax.

Micro, small and medium-sized enterprises are a person:

- That it is duly registered in the Business Registry of SMEs;
- That does not result, directly or indirectly, from the division of a company into several legal persons, or that is not affiliated, a subsidiary of or controlled by other legal persons;
- That receives annual gross income not exceeding USD 500,000.00;
- The shares or participation shares of which are nominative and its shareholders or partners are natural persons.

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### ALTERNATIVE MINIMUM INCOME TAX

A tax rate of 25% is applied to the net taxable income on whichever is higher between:

(1) The amount of the net taxable income (traditional calculation of deducting costs and expenses from gross taxable income); and,

(2) The net taxable income that arises after deducting 95.33% from gross taxable income.

If, after applying the second alternative, the company incurs losses due to the payment of the tax or, if the effective rate of the income tax exceeds 25%, it can request the Tax Department not to apply the alternative calculation. Small companies that invoice less than USD 1,500,000 gross taxable income in the fiscal year are exempt from applying the alternative calculation.

### CAPITAL GAINS TAX

On sales of real estate there are two taxes involved. One is a 2% transfer tax and the other is a 10% income tax on the net profit. The 2% transfer tax rate is applied on the higher of the sales price or the registered value of the property in the Public Registry plus a 5% surcharge for each complete calendar year for which the property is held.

The 10% income tax is calculated on the net profit of the transaction. Net profit is calculated by deducting the cost of the property plus any related expenses from the sales price. The buyer of the real estate will withhold 3% of the higher amount between the sale price or the cadastre value and remit it to the Tax Department. The seller will calculate a 10% tax on the profit and if this result is higher than the 3% withheld by the buyer, the seller can choose to consider the 3% as the definite tax. If the 10% on the profit is lower than the 3% withheld by the buyer, the seller can request a reimbursement for the difference.

Income from the sale of securities is taxable as follows: The buyer will withhold 5% of the sales price and remit it to the Tax Department. The seller will calculate a 10% tax on the profit and if this result is higher than the 5% withheld by the buyer, the seller can choose to consider the 5% as the definite tax. If the 10% of the profit is lower than the 5% withheld by the buyer, the seller can request a reimbursement for the difference. Income from the sale of government securities and those issued by companies registered with the National Securities Commission is not taxable.

Exception to withhold 5% will apply in the following cases:

- Alienation or transfer in favour of the state
- Between relatives of the first degree of consanguinity and between spouses
- By expropriation
- Sale or liquidation (judicial or extrajudicial) of securities pursuant to an obligation subject to a guaranteed trust
- Alienation for consideration that has not generated a capital gain
- Securities issued by the State, or those registered in the Securities Market Superintendence of Panama or another organised market.

## BRANCH PROFITS TAX

Profits of branches of non-resident companies are subject to a 10% withholding tax on after-tax profits. The withholding tax is final and must be remitted upon the filing of the annual tax return.

Dividends received by the branch, which have already been taxed upon distribution, are excluded from the taxable base for purposes of the 10% branch profits tax.

## SALES TAXES/VALUE ADDED TAX (VAT)

Many consumer services and goods are subject to a 7% value added tax. Alcoholic beverages and hotel room rentals have a 10% tax rate and cigarettes and tobacco products have a 15% tax rate. The following items are exempt from VAT:

- Food (except restaurants that serve alcoholic beverages which are taxed)
- Medicines and medical services
- House rentals with a contract period of more than six months. House rentals with contract periods of less than six months are subject to VAT.

Companies with purchases over USD 5,000,000 in the previous year become withholding agents and are required to retain 50% of VAT included in their vendors' bills. As from 2017 institutions that manage credit and debit cards will withhold 50% of VAT included in sales of goods or services paid with credit and with debit cards.

Companies established as an SEM company (Interoffice administrative services) do not apply VAT.

The tax authorities have published a list of companies acting as withholding agents.

## LOCAL TAXES

Panama's income tax law affects the entire national territory equally.

### OTHER TAXES

Other taxes are also applicable, which include among others:

### PREPAID DIVIDEND TAX

Local corporations must pay a 4% complementary tax on each fiscal year's net taxed profit on behalf of their shareholders if no dividends are declared. This 4% will be applied to dividend tax when dividends are declared. The rate for companies established in a Free Zone is 2%.

### FRANCHISE TAX

Foreign and domestic corporations registered in the Public Registry are subject to an annual tax of USD 300, regardless of whether they are doing business in Panama. There is a penalty of USD 50 for late payment and, after two years of non-payment of the franchise tax, there is a restoration fee of USD 300.

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### ANNUAL LICENCE TAX

All industrial or commercial business, except those exempted by specific laws, are required to have a license to operate. This tax is 2% of the company's net worth, including amounts owed to the foreign home office or foreign affiliated companies. The tax is payable annually up to a maximum of USD 60,000. For companies established in a Free Zone, this tax is 0.05% of the company's net worth, including amounts owed to the foreign home office or foreign affiliated companies. The tax is payable annually up to a maximum of USD 50,000.

### MUNICIPAL TAX

Lucrative activities in any municipality shall pay local tax upon gross income, calculated according to the companies' category and activity.

### SOCIAL SECURITY TAX

These are payments that are made monthly by employers and employees on the payroll of companies for the purpose of guaranteeing the functioning of the worker social security system and retirement benefits at the national level.

| | Employer | Employee |
|---|---|---|
| Social Security: | | |
| Salary | 12.25% | 9.75% |
| XIII month | 10.75% | 7.25% |
| Education tax | 1.5% | 1.25% |
| Professional Risk* | 0.98% - 5.67% | 0 |

* According to activity

### ANNUAL BANKING INSTITUTIONS TAX

Banking institutions are subject to an annual tax as follows:

| **Banks with General Licence:** | **Annual Tax** |
|---|---|
| Assets up to USD 100 million | USD 75,000.00 |
| Assets between USD 100 and USD 200 million | USD 125,000.00 |
| Assets between USD 200 and USD 300 million | USD 175,000.00 |
| Assets between USD 300 and USD 400 million | USD 250,000.00 |
| Assets between USD 400 and USD 500 million | USD 375,000.00 |
| Assets between USD 500 and USD 750 million | USD 450,000.00 |
| Assets between USD 750 and USD 1,000 million | USD 500,000.00 |
| Assets between USD 1,000 and USD 2,000 million | USD 700,000.00 |
| Assets above USD 2,000 million | USD 1,000,000.00 |
| During their first year of operations, new banks with general licence will pay 50% of the above annual tax | |
| **Banks with International Licence:** | USD 75,000.00 |
| Banks for development and microfinance | USD 30,000.00 |
| Exchange houses | USD 10,000.00 |

### SELECTIVE TAX ON THE CONSUMPTION OF GOODS AND SERVICES

The selective consumption tax on certain goods and services was put in place, such as on sugary drinks, wines, beers, liqueurs and tobacco products such as cigarettes, cigars, among others.

Soft drinks 7%, sugary drinks 5%, syrups and concentrates for the production of sugary drinks 10%.

## B. DETERMINATION OF TAXABLE INCOME

The net taxable income of a corporation or partnership is determined by subtracting all allowable deductions from gross taxable income. Generally, expenditures and/or losses are deductible provided they are incurred in gaining or producing taxable income, or preserving the source of income. Special rules apply in respect of certain expenditures.

### ALTERNATIVE METHOD OF CALCULATING A MINIMUM NET TAXABLE INCOME

The net taxable income under this method arises after deducting 95.33% from the gross taxable income. Under this formula, the net taxable income will be 4.67% of the gross taxable income. The larger of the two amounts will be the net taxable income for the fiscal year. The alternative method of calculating a minimum net taxable income is applicable to companies with gross taxable income of USD 1,500,000 and above.

### DEPRECIATION AND DEPLETION

Depreciation is normally calculated by the straight-line method over the estimated useful life of the asset. The regulations also permit the use of the sum-of-the-digits and declining-balance methods. Depletion of mines and other natural resources is based on units extracted or produced. Using any other method requires the approval of the Income Tax Department.

### STOCK / INVENTORY

The Income Tax regulations allow the use of the specific cost, FIFO, retail-inventory, or average-cost method according to the normal course of operations. The method used cannot be changed by the taxpayer for at least five years and will require a written notification to the Tax Department authorities.

### DIVIDENDS

The corporation declaring the dividend must withhold a 10% tax on all dividends declared from income earned within the Republic of Panama. However, dividends on bearer shares are subject to a 20% dividend tax. Dividends declared by branches or domestic subsidiaries of foreign corporations, on income earned within the Panamanian territory are subject to the 10% tax as well. However, dividends on bearer shares are subject to a 20% dividend tax. Companies requiring a commercial operating license must withhold a 5% tax on dividends declared from income obtained on exports or from foreign source.

Companies established in a Free Zone must withhold 5% tax on dividends, regardless of the source of income. Loans and advances to shareholders are subject to 10% dividend tax, except for bearer's shares which are subject to 20% withholding tax. Capital shares can be reduced only if the total retained earnings have been distributed and the dividend tax paid.

Companies established as an SEM company (Interoffice administrative services) are not subject to withholding tax on distributed dividends.

The dividend tax may vary subject to the application of a double tax treaty.

### INTEREST INCOME

The following types of interest earned are not subject to income tax:

- Savings and time deposits with banks;
- Panamanian government securities;
- Securities issued by companies registered with the National Securities;
- Commission, provided the securities were acquired through a securities exchange duly established to operate in Panama;

- Loans granted to the agricultural and agro-industrial sectors;
- Loans granted to the tourism sector.

## INTEREST DEDUCTIONS

Interest is normally deductible on an accrual basis but must be capitalized if it relates to financing of real estate construction. Once the construction is completed, interest is then deductible from income.

## LOSSES

Losses incurred in any given year can be taken as a valid deduction over the next five years at a carry forward rate of 20% of the loss per year, as long as this deduction does not reduce the current taxable income by more than 50%. Excess over this limitation for any given year will be lost.

## SOURCE OF INCOME

Foreign-sourced income is not subject to income tax. Only income earned in the territory of Panama is subject to Panama income tax. Income received by persons or companies domiciled outside of Panama will be considered from a Panamanian source if it arises from services or actions that benefit persons or companies located in Panama, including fees, interests and royalties. The income withholding tax is at the regular rates for individuals or corporations but only on 50% of the amount of income received by the recipient and it is deductible at the level of the company.

Companies are classified according to the following categories:

- Income Tax from Panamanian source
- Income tax not from Panamanian source. These are not required to be declared, and include:
  - o Companies that own a property
  - o Companies that do not operate in Panama
  - o Companies that do not have any income, or whose income is 100% not from Panamanian source.

## INCENTIVES

The following incentives are available to these qualifying industries and corporations:

a) Companies operating in the Colon Free Zone, or any other Free Zone in the country, are tax-exempt on profit derived from sales from Free Zone to foreign countries;

b) Companies operating in “Ciudad del Saber” (City of Knowledge) and “Panamá Pacífico” (Pacific Panama) are exempt from income tax, import duties and VAT. Dividend tax of 10% or 5% applies when dividends are declared;

c) For “small business” companies, income tax is calculated on a combination of the personal tax rate and corporate tax rate. Companies are considered small as long as:
   - They are not related or affiliated to other companies;
   - They are not a result of the fractionalisation of other corporations;
   - They have an annual gross income of less than USD 200,000; and
   - Their shareholders are individual persons.

d) Financial entities, including savings and loans associations or any other legal entity that previously registers with the Tax Authorities and whose commercial line of business is that of granting mortgage loans or engaging in construction and that meet the requirements and formalities provided for, may benefit from the tax regime called “Preferential Mortgage Loans”.
   - The referred preferential portion may not exceed 4% in housing loans, whose value registered at the time of financing is greater than forty thousand balboas (USD 40,000.00) and does not exceed eighty thousand balboas (USD 80,000.00).
   - The preferential portion in housing loans, whose value registered at the time of financing is greater than eighty thousand balboas (USD 80,000.00) and does not exceed one hundred and twenty thousand balboas (USD 120,000.00), shall be 2%. The Preferential Interest Law was amended by way of Executive Decree 554 of May 2019, where the benefit is extended to all properties with a registered value of less than USD 180,000.
   - Pursuant to Law 94 of 2019, the threshold for mortgage loans with preferential interest is increased from USD 120,000 to USD 180,000. Likewise, it is exempt from the payment of new real estate transfer tax that occurs within the first five years after the issuance of the occupancy permit, related to construction permits issued between July 2016 and July 2019 or whose occupancy permit was issued before June 2022.

   Pursuant to Law 82 of 2019, as amended by Law 122 of 2019, companies in the tourism sector will be granted a tax credit of 100% on the acquisition of bond certificates or shares in tourism companies. This credit may be used from the second year after the investment has been made, up to a maximum of 50% of the income tax due and the remaining 50% can be transferred to a third person.

## C. CORPORATE GROUPS

Group taxation is not permitted in Panama.

## D. RELATED PARTY TRANSACTIONS

Transactions between related parties are treated normally as long as an “arm’s-length” basis is used.

Transactions with related parties are shown individually in the income tax return. For purposes of paying the annual operations notice tax, the amount owed to related parties abroad is not reduced as obligations, causing an increase in this tax.

## TRANSFER PRICING

There is a transfer pricing system for the import and export with non-resident related parties of goods, services and rights. These prices are based on the following methods; comparative independent price method, resale price less profit method, production cost plus profit method, profit-split method, or the transaction net margin method.

The authorities require a TP study with the chosen method according to the agreements between companies and also the annual presentation of a declaration of transactions with related parties.

**The study and the transfer price report apply to all types of companies as follows:**

- Entities operating in a special area and that carry out transactions with related parties regardless of where they are located and regardless of whether these operations affect their tax base.
- Natural or legal persons established in Panama who carry out transactions with related parties operating in a special economic area, as long as said operations affect their tax base.
- Legal entities established in Panama as Headquarters of Multinational Companies (SEM), which carry out transactions with foreign related parties.

**Country-by-Country (CbC) reporting**

An ultimate parent entity of a multinational group must file a CbC report on an annual basis if it (i) has consolidated revenues that exceed EUR 750 million or its equivalent in balboas, at the exchange rate as of January 2015, during a tax year; and (ii) is a tax resident in Panama.

This obligation applies for fiscal years starting on or after 1 January 2018. The CbC report should be submitted within 12 months after the end of the reporting fiscal year. Resolution 201-9116 extended the due date from 31 December 2019 to 31 January 2020 for the filing of the CbC report corresponding to the 2018 tax period. However, this due date was further extended to 15 February 2020 by Resolution 201-1035 of 30 January 2020.

The CbC report must include the following information:

- identification of all entities of the multinational group, including their place of residency and country of incorporation in case they differ, and the activities they perform;
- information on income, profits before taxes, corporate income tax paid and accrued, integrated capital, retained earnings, number of employees and tangible assets, in respect of every jurisdiction in which the multinational group operates; and
- additional information or explanation deemed necessary or that allows a better understanding of the mandatory information provided in the CbC report.

**Penalties**

A Panamanian entity that is obliged to annually file the CbC report (Ultimate Parent Entity that is a tax resident in Panama) and does not comply with reporting this obligation, will be penalised

- with a fine of USD 100,000;
- an additional progressive fine of USD 5,000 will be imposed on a daily basis until the non-compliance is remedied;
- if the information provided by the entity obliged to submit the CbC report in Panama is inconsistent or incorrect, it will be penalised with a fine of USD 25,000;
- If the competent authority proves that the information provided in the CbC Report was maliciously altered, the Panamanian entity will be penalised with a fine of up to USD 500,000.

Failure to comply with the CbC report notification will result in penalties ranging from USD 1,000 to USD 5,000, as well as closure of business for 2 days. However, repeated failure to comply may result in fines of USD 5,000 to USD 10,000 and closure of the business for 10 days. If failure to comply persists, a closure of business for 15 days will apply.



## E. WITHHOLDING TAX

Services and fees paid or accrued to individuals and to resident corporations are not subject to income withholding tax, except payments on dividends distributed from retained earnings arising from Panamanian-source income. Services and fees, interest, commissions, royalties or technical assistance fees, etc., paid or accrued to foreign recipients are subject to withholding tax only if the local payer will take it as a deductible expense. The income withholding tax is at the regular rates for individuals or corporations but only on 50% of the amount of income received by the recipient. The withheld tax must be remitted to the authorities within 10 days following the retention or registration, whichever occurs first.

Companies established as an SEM company (Interoffice administrative services) must withhold a 2.5% tax on payments to third parties abroad.

The withholding tax may vary subject to the application of a double tax treaty.

## F. EXCHANGE CONTROL

The exchange rate in the Republic of Panama is always USD1 = B/.1.00 (BALBOA).

## G. PERSONAL TAX

The rates set out below are applicable to any individual’s net income earned:

| Net Income | Tax amount |
|---|---|
| Up to USD 11,000 | 0% |
| Over USD 11,000 up to USD 50,000 | 15% on the amount exceeding USD 11,000 up to USD 50,000 |
| Over USD 50,000 | USD 5,850 tax on the first USD 50,000, plus 25% on the amounts exceeding USD 50,000 |

As from tax year 2020, natural persons considered micro, small, and medium-sized entrepreneurs will pay income tax according to the following rates:

| Total Income | Tax Rate |
|---|---|
| Up to USD 11,000.00 | 0% |
| From USD 11,000.01 to USD 36,000.00 | 7.5% |
| From USD 36,000.01 to USD 90,000.00 | 10% |
| From USD 90,000.01 to USD 150,000.00 | 12.5% |
| From USD 150,000.01 to USD 350,000.00 | 17.5% |
| From USD 350,000.01 to USD 500,000.00 | 22.5% |

Micro, small and medium-sized enterprises are a person:

- That it is duly registered in the Business Registry of SMEs;
- That does not result, directly or indirectly, from the division of a company into several legal persons, or that is not affiliated, a subsidiary of or controlled by other legal persons;
- That receives annual gross income not exceeding USD 500,000.00;
- The shares or participation shares of which are nominative and its shareholders or partners are natural persons.

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Panamanian companies or individuals that will apply the withholding tax rates indicated in the treaties must first notify the Tax Department in writing.

| | Dividends[1] (%) | Interest[2] (%) | Royalties[3] (%) | Service Fees (%) |
|---|---|---|---|---|
| **Treaty countries** | | | | |
| Barbados | 5/7.5 | 5/7.5 | 7.5 | 7.5 |
| Czech Republic | 10 | 5/10 | 10 | 0 |
| France | 5/15 | 5 | 5 | 0 |
| Ireland | 5 | 5 | 5 | 0 |
| Israel | 5/15/20 | 15 | 15 | 0 |
| Italy | 5/10 | 5/10 | 10 | 10 |
| Korea (South) | 5/15 | 5 | 3/10 | 15 |
| Luxembourg | 5/15 | 5 | 5 | 5 |
| Mexico | 5/7.5 | 5/10 | 10 | 12.5 |
| Netherlands | 15 | 5 | 5 | 15 |
| Portugal | 10/15 | 10 | 10 | 10 |
| Qatar | 6 | 6 | 6 | 15 |
| Singapore | 4/5 | 5 | 5 | 15 |
| Spain | 5/10 | 5 | 5 | 7.5 |
| United Arab Emirates | 5 | 5 | 5 | 0 |
| United Kingdom | 15 | 5 | 5 | 0 |
| Vietnam | 5/7/12.5 | 10 | 10 | 7.5 |

Notes:

1. The lower rate applies to dividends paid to foreign corporations that own a particular percentage of share capital.
2. The lower rate applies to interest paid to foreign banks and the higher rate applies to others.
3. The lower rate applies to royalties paid for the use of commercial, industrial and scientific equipment. The higher rate applies to other royalties paid.

# PAPUA NEW GUINEA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Port Moresby | Thomas Taberia | +675 321 60 70<br>thomas.taberia@ktk.com.pg |

## BASIC FACTS

| | |
|---|---|
| Full name: | Independent State of Papua New Guinea |
| Capital: | Port Moresby |
| Main languages: | English |
| Population: | 9.26 million (2022 estimate) |

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| | |
|---|---|
| Monetary unit: | Papua New Guinean Kina (PGK) |
| Internet domain: | .pg |
| Int. dialling code: | +675 |

## KEY TAX POINTS

- Papua New Guinea (PNG) residents are subject to income tax on their worldwide income. Non-residents are subject to income tax only on PNG source income.
- There is no separate capital gains tax. Broadly, capital gains from the sale of property are taxed at the prevailing company tax rate while capital gains realised by a shareholder on the sale of shares held in a company are not subject to company tax.
- Goods and Services Tax (GST) is imposed at the rate of 10% on supply of goods and services in PNG, including imported goods and services unless subject to GST zero rating.
- A transfer pricing regime imposes record-keeping requirements and provides for income to be adjusted on an arm's-length basis.
- Dividends paid to resident individuals, resident trusts and non-resident persons are subject to a 15% withholding tax.
- Indirect taxes include import duty, stamp duty and betting tax.

## A. TAXES PAYABLE

## NATIONAL TAXES AND LEVIES

### COMPANY TAX

PNG resident companies are subject to tax on their worldwide income. Non-resident companies are required to pay tax in various forms on income derived from PNG sources. Generally, resident companies are those that are incorporated in PNG or managed and controlled in PNG.

The corporate income tax rate is 30% for residents and 48% for non-residents. The tax year in PNG is the calendar year. Companies are required to make provisional tax payments by 3 equal instalments based on the previous year's income by 30 April, 31 July and 31 October respectively. As a general rule, income tax returns are due for lodgement by 28 February of the following year. Tax returns lodged through a Tax Agent shall be submitted no later than 30th June of the following year.

Recently, PNG proposed the introduction of a market concentration levy which targets companies having 40% of market share in the commercial banking and telecommunications industries. The levy is expected to be due at the same instalment due dates as company provisional tax. However, this is yet to come into force.

### SMALL BUSINESS TAX

Small Business Tax (SBT) was introduced on 1 April 2021 and aimed at simplifying compliance for small business taxpayers and broadening the country's tax base as it captures the vast majority of taxpayers engaged in the informal sector. SBT applies to an individual whose annual turnover is less than PGK 250,000 and is subject to significant low concessional tax rates.

### CAPITAL GAINS TAX

In general, capital gains are not subject to tax. However, profits on sale of property acquired for the purpose of profit making by sale or from the carrying out of any profit-making undertaking or scheme are taxable.

There is no separate capital gains tax. However, this may change following the proposed introduction of a capital gains tax. Refer to the further developments section for more information.

### BRANCH PROFITS TAX

There is no separate branch profits tax in PNG. Trading profits of a PNG branch of a foreign company are calculated and taxed on the same basis as those of a PNG non-resident company.

PNG non-resident companies deriving income under prescribed contracts are subject to foreign contractor withholding tax at the rate of 15%.

### GOODS AND SERVICES TAX (GST)

Goods and Services Tax (GST) is imposed at the rate of 10% on supply of goods and services in PNG, including imported goods and services unless subject to GST zero rating. A person who carries on a taxable activity where the annual turnover exceeds PGK 250,000 is required to be registered for GST.

Generally, taxable supplies of goods and services in PNG are charged at 10% and fall under three categories as follows:

- Taxable supply: 10%;
- Zero rated supply:10%; and
- Exempt supply: 10% but cannot claim input tax.

### FRINGE BENEFITS TAX

For certain employer provided benefits such as housing and motor vehicle, the employee pays Salary or Wage Tax (SWT) based on tax prescribed values. The tax prescribed values on housing vary based on the area of housing location in PNG. Where the employer provides housing outside of PNG, the employee is subject to tax based on the actual cost of the housing to the employer. On the other hand, where fuel is provided with a motor vehicle, the tax prescribed value differs.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company is determined by ascertaining assessable income and then subtracting all allowable deductions. Business expenses are generally deductible for tax purposes, although there are some exceptions such as entertainment expenses which are non-deductible.

### DEPRECIATION

Depreciation is allowed as a tax deduction on tangible fixed assets used to produce assessable income.

Depreciation may be calculated by either the prime cost (straight-line) or diminishing value methods at the option of the taxpayer. The latter method allows a rate equal to 150% of the rate prescribed under the straight-line method. Depreciation is calculated under the diminishing value method unless the taxpayer exercises an option to use the straight-line method basis. The rates of depreciation are determined by the Commissioner General, based on the estimated effective physical life of each unit of fixed asset.

However, PNG has proposed classifying assets into five classes where depreciation rates will be applicable for each class. Refer to the further developments section for more information.

### STOCK / INVENTORY

In determining the income of a trading business the value of trading stock (inventory) at the close of the year of income is taken into account. The taxpayer has the option of selecting for each item of inventory one of the three alternative bases of valuation: cost price, market selling price or the price at which it can be replaced. Once the taxpayer has exercised the option to value an article of inventory according to one of the alternatives, the basis of valuation cannot be varied thereafter without the permission of the Commissioner General. Where the taxpayer does not make an election to value the inventory, the taxpayer is deemed to have elected to value each article at its cost price.

### EXCHANGE GAINS AND LOSSES

Realised foreign exchange gains arising from foreign currency debts incurred or borrowings made on or after 11 November 1986 are treated as assessable income for tax purposes. Realised business related foreign exchange losses on such debts or borrowings are tax deductible. Unrealised foreign exchange gains are not assessable and unrealised losses are not deductible.

### DIVIDENDS

Dividends paid by PNG resident companies to resident individuals, resident trusts or non-resident persons are subject to 15% Dividend Withholding Tax (DWT). Dividends paid by PNG resident companies to resident companies and authorised superannuation funds qualify for a dividend rebate and are exempt from DWT.

### INTEREST DEDUCTIONS

Interest is tax deductible to the extent that it is incurred on borrowings made to generate assessable income. In order to combat abusive transfers of profits, an “interest barrier” limiting the deductibility of interest payments as business expenses has been introduced. If in any year, the debt-to-equity ratio is greater than 3:1 for a resource project, the deduction allowed for interest in that year is limited to the amount which would have been payable if the debt-to-equity ratio had been 3:1. The permitted debt-to-equity ratio for all other companies is 2:1 (except for financial institutions).

### LOSSES

As a general rule, losses can be carried forward for seven years following the year in which the losses were incurred, subject to satisfying the continuity of ownership or same business tests.

In the case of a loss from primary production, losses can be carried forward indefinitely.

Losses incurred in deriving income from a source outside PNG are not deductible against PNG source income. Overseas losses may be carried forward for up to seven years to be offset only against overseas income.

### TAX INCENTIVES

Like many developing countries, PNG has a policy of encouraging investment from abroad and within areas that will provide long-term benefits to the country. There are a number of tax concessions and incentives in various industries ranging from manufacturing to primary production (includes agriculture and fishing operations) and tourism. The incentives include accelerated depreciation, additional depreciation and exemption from income tax on exported goods. A ten-year exemption from income tax is available where new businesses are established in specified rural development areas.

### INFRASTRUCTURE TAX CREDITS

Infrastructure tax credits are available to taxpayers engaged in resource, primary production and tourism industries where relevant expenditure have been incurred for the purposes of prescribed infrastructure developments (i.e., roads, schools, hospitals, etc) in PNG. The relevant expenditure is deemed as tax paid by the taxpayer and the tax credit varies from industry.

However, PNG has proposed amending the rules relating to infrastructure tax credits. Refer to the further developments section for more information.

### RESOURCE PROJECTS

There are specific tax rules on resource projects relating to mining, petroleum, and gas projects in PNG. Resource projects are ring fenced and are taxed separately. Expenditure relating to resource projects include allowable deductions, allowable exploration expenditure and allowable capital expenditure. Special legislative provisions guide the tax treatment of expenditures incurred for mining, petroleum, and gas projects. Resident and non-resident companies deriving income from a resource project are taxed at 30%.

Advance payment tax is required and payable in three instalments by mining, petroleum, and gas companies. Separately, additional profits tax is applicable on all resources projects and is imposed on a cash flow basis.

## TRUSTS

The types of trusts in PNG are trust estates, unit trusts, property unit trusts and landowner resources trusts. A trust estate is a corporation where the net income of the trust is taxed at 30% and payable by the trustee. The entitlements of beneficiaries are also subject to income tax.

Unit trusts or property unit trusts are inter vivos trusts where the interests of beneficiaries are described by reference to units of the trusts and satisfy certain requirements. A unit trust is deemed to be a company and is taxed at 30% while in a property unit trust, the trustee is liable to pay tax at 30%. Distributions of income to unit holders are exempt from income tax for these types of trusts.

A landowner resources trust is a trust property of which holds an interest in a landowner resources project in PNG or a right to receive benefits (including royalties) derived from such a project. Landowner resources projects are designated mining, gas, or petroleum projects, including other natural resources projects in PNG declared by the Minister. The trustee is taxed at 30% as a resource company while all distributions of income and capital to its beneficiaries are exempt from income tax. A landowner resources trust deriving assessable income from mining, gas, or petroleum operations would also be liable to additional profits tax.

## FURTHER DEVELOPMENTS

Recently, PNG proposed a new Rewritten Income Tax Act and is currently in its 9th Draft following external consultations. The new Act introduces capital gains tax and intends to apply to taxable assets at the rate of 15%. Specific provisions are expected to be legislated in the new Act where taxable assets are defined as PNG real property and shares in companies where more than 50% of value is derived from PNG real property.

As part of simplifying the current tax depreciation rates, the new Act has also proposed to classify depreciable assets into five classes where depreciation rates will be applicable for each class.

Further, the PNG government intends to ensure that the infrastructure tax credits are available to eligible taxpayers who are in a taxable position. The current rules relating to tax credits are expected to change and credits would be carried forward up to a maximum of seven years.

All the above were announced in the PNG National Budgets but are yet to come into force.

## C. FOREIGN TAX RELIEF

Even in the absence of a double tax treaty, foreign tax on income derived by a Papua New Guinean resident may be credited against his income or corporation tax liability. The tax relief must not exceed the PNG tax charged on the same profits. Alternatively, the foreign tax may be deducted from the income of the PNG resident.

## D. CORPORATE GROUPS

Companies are assessed on income tax on an individual basis. There is no provision to group income or offset tax losses of group companies except on amalgamation.

## E. RELATED PARTY TRANSACTIONS

Inter-company pricing between associated companies must be carried out on an arm's-length basis. Where transactions involving non-residents are deemed to be conducted not at arm's length, the Internal Revenue Commission may impose an arm's-length consideration for income tax purposes and determine the source of any income arising from such transactions.

## F. WITHHOLDING TAX

- Dividends, interest and technical fees are subject to a 15% withholding tax;
- Management fees are subject to a 17% withholding tax;
- Foreign contractor withholding tax is 15%;
- Royalties are subject to 30% final withholding tax when paid to an associate while royalties paid to a non-associate are subject to the lesser of 10% of assessable income or 48% of taxable income at the request of the recipient.

## G. EXCHANGE CONTROL

The Bank of PNG administers exchange control restrictions on transactions with non-residents. In most cases the authority to approve a transaction has been delegated to the trading banks which are "authorised dealers". The important issues to be aware of in relation to exchange control are:

- A taxation clearance certificate is required where certain cumulative remittances of foreign currency exceed PGK 500,000 in a calendar year. Where the remittance is to a tax haven, a taxation clearance will be required regardless of the amount of the remittance.
- In general, resident companies are not permitted to receive payments for goods or services in a foreign currency. Further, resident companies' payments for goods and services sold or performed in PNG are not permitted to be received outside of PNG.
- For exchange control purposes, a resident includes a foreign company operating actively in PNG on a branch basis. There is no difference between a branch and a PNG incorporated subsidiary from a foreign exchange control perspective, as technically both are residents for exchange control purposes.
- As a general rule, Bank of PNG approval is not required for remittance of funds to non-residents. However, Bank of PNG approval is still required to operate a foreign currency bank account wherever situated and including maintaining a bank account outside of PNG in PGK.

## H. PERSONAL TAX

Income tax is payable by PNG resident individuals on their worldwide income. Non-resident individuals are only required to pay tax on PNG sourced income. Generally, individuals are deemed non-residents if they have intent to reside in PNG for less than six months in any calendar year.

PNG operates a system of assessing tax payable on employment income on a fortnightly basis and remitting it to the Internal

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Revenue Commission on a monthly basis. The employment income is referred to as “salary or wages”. The corresponding tax on employment income is referred to as “salary or wages tax” or SWT.

Self-employed individuals and those with non-salary income are required to pay tax generally in a single instalment by 30 September of provisional tax calculated with reference to the income realised in the previous year. The balance of tax due on the personal income tax return is payable within 30 days from the date of issue of the notice of assessment. The tax rates of personal income are as follows (effective 1 January 2019):

**Rates for residents:**

| Taxable income (PGK) | Tax thereon (PGK) | Tax on excess (%) |
|---|---|---|
| Up to 12,500 | Nil | 22 |
| 20,000 | 1,650 | 30 |
| 33,000 | 5,550 | 35 |
| 70,000 | 18,500 | 40 |
| 250,000 | 90,500 | 42 |

**Rates for non-residents:**

| Taxable income (PGK) | Tax thereon (PGK) | Tax on excess (%) |
|---|---|---|
| 0 | Nil | 22 |
| 20,000 | 4,400 | 30 |
| 33,000 | 8,300 | 35 |
| 70,000 | 21,250 | 40 |
| 250,000 | 93,250 | 42 |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Australia | Canada | China | Fiji | Germany | Indonesia | Malaysia | New Zealand | Singapore | South Korea | United Kingdom |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Corporate tax rates for non-residents (%) | 48 | 48 | 48 | 48 | 48 | 48 | 30 | 48 | 30 | 48 | 43 |
| Foreign contractor WHT (%) | 15 | 15 | 15 | 15 | 15 | 15 | 15[1] | 15 | 15[1] | 15 | 15[1] |
| Dividends (%) | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 |
| Interest (%) | 10 | 10 | 10 | 10 | 10 | 10 | 15 | 10 | 10 | 10 | 10 |
| Technical fees (%) | n/a | n/a | n/a | 15 | 10 | 10 | 10 | n/a | 10 | 10 | 10 |
| Management fees (%) | 0[2] | 0[2] | 0[2] | 15 | 10 | 0[2] | 10 | 0[2] | 0 | 0[2] | 0[2] |
| Royalties (%) | 10 | 10 | 10 | 15 | 10 | 10 | 10 | 10 | 10 | 10 | 10 |

Notes:

1. By virtue of the non-discrimination clause in the double tax treaties with PNG, the Commissioner General will accept an income tax return based on actual profit basis and be assessed at the domestic corporate tax rate of 30% or some other corporate rate of tax lesser than the non-resident corporate rate of tax of 48%.
2. Management services, including services of a technical nature rendered from sources outside of PNG for a resident of PNG are subject to a 17% management fee withholding tax. For services provided by a resident of a country with which PNG has a tax treaty and where there is no specific technical services article, the payment will not be subject to withholding tax in PNG, provided the services were all performed outside of PNG. Recently, the Internal Revenue Commission (IRC) issued a notice on the management fees withholding tax rate for the application of double tax treaty rules in some countries. It appears the IRC had revoked their notice, however, the IRC’s website does not reflect the revocation of the notice. In determining if the double tax treaty rules apply, it is recommended that tax advice is sought prior to making payments of the liability (if any).

# PARAGUAY

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Alto Parana | Nicolas Airaldi | +59561501331<br>nicolas@pkf-aym.com.py |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Paraguay |
| Capital: | Asunción |
| Main languages: | Spanish, Guaraní |
| Population: | 7.3 million (2022 estimate) |
| Monetary unit: | Paraguayan Guaraní (PYG) |
| Internet domain: | .py |
| Int. dialling code: | +595 |

## KEY TAX POINTS

- The standard corporate income tax rate is 10%. Additionally, a tax is levied at the rate of 8% on dividends or profit distributions accrued or paid.
- Losses can be carried forward for 5 years but cannot be carried back. The amount of tax loss offset is up to 20% of the net income obtained in the relevant subsequent year.
- Dividends or profit distributions made to non-resident shareholders are subject to a 15% withholding tax.
- Interest payments made to non-residents, that are not related parties, are subject to a 15% withholding tax on 30% of the amount paid (effective rate of 4.5%).
- Royalties paid to non-residents are subject to a 15% withholding tax.
- The standard VAT rate is 10% while a 5% rate applies to the sale of pharmaceuticals, the basic family basket and agricultural, horticultural and fruit products as well as to property rentals.

## A. TAXES PAYABLE

## FEDERAL TAXES

## CORPORATION TAX

The Paraguayan tax system is mainly comprised of six basic taxes: the Value Added Tax (VAT), the Income Tax on Commercial, Industrial and Services Activities (IRE), the Non-Resident Tax (INR), the Dividend and profit tax (IDU) and the Selective Consumption Tax (ISC).

There is also a special tax for Small Taxpayers (SIMPLE AND RESIMPLE) that taxes income derived from commercial, industrial or non-personal services activities whose income accrued in the previous calendar year does not exceed the amount of PYG 2 billion (approximately USD 303,000) and PYG 80 million (approximately USD 12,000) respectively.

The Paraguayan tax system uses territorial or source criteria to tax income. This indicates that all income from assets or rights within the national territory are taxed. However, proceeds derived from capital placed abroad, as well as the exchange differences thereof, are considered to be from a Paraguayan source when the investor or beneficiary is based in Paraguay.

## CORPORATE INCOME TAX (IRE)

IRE taxes Paraguay-sourced industrial, commercial and service activities that are not of a personal nature, as well as the income generated by the goods, rights and obligations of the acts of disposition of these and all the patrimonial increases in favour of the taxpayer.

The general rate is 10%.

Tax losses can be offset against net income from subsequent years up to a maximum of five years, from the subsequent tax year in which the loss occurred. Compensation for losses can be made on an annual basis up to the amount that represents 20% of the net income of future fiscal years.

Taxpayers subject to this tax are: sole proprietorships and companies with or without legal personality, associations, corporations and other private entities of any nature, public companies, autonomous entities, decentralised entities and mixed economy companies, domiciled persons or entities incorporated abroad and their branches, agencies or establishments in the country that carry out taxed activities in the country and cooperatives, within the scope established by Law No. 438/94.

The tax is settled by affidavit, on an annual basis.

## TAX ON DIVIDENDS AND PROFITS (IDU)

This tax is levied on income from profits, dividends or returns, generated by sole proprietorships, companies and other entities with legal status, incorporated in the country, as well as by permanent establishments of entities incorporated abroad.

Profits, dividends or returns are all understood to be profit distributions, in cash or in kind, except the delivery of shares or quotas part by capitalisation of profits, charged to equity made to the partners and shareholders by the company or the entity. The distribution to the owner, consortium, partner or shareholder of the excess of the legal reserve, of the optional reserves or of the capital by reduction of the capital that was integrated by capitalisation of undistributed profits or reserves.

Taxpayers subject to this tax are: individuals, legal entities and other entities resident in the country or abroad, who receive dividends, profits or income, as owners, consortia, partners or shareholders of sole proprietorships, Corporations, Limited Liability Companies, Limited Partnerships, Capital and Industry Companies, Consortiums set up to carry out a public work and other companies or private entities of a similar nature.

The applicable rates are the following:

- 8%, when the recipient is a natural or legal person or entity resident in the country;
- 15%, when the recipient is a natural or legal person or an entity not resident in the country, including those obtained by the parent company abroad.

The IDU is a final tax when:

- the shareholder or partner is a natural person resident in the country;
- the shareholder is a person or entity not resident in the country.

## INCOME TAX ON NON-RESIDENTS (IRN)

This tax is levied on income derived from the benefits obtained by individuals, legal entities and other entities not resident in the Republic, included within personal and business income.

Individuals, legal entities, domiciled or constituted abroad, who do not have a permanent domicile in the country and who do not meet the status of residents are subject to this tax.

The applicable tax rate is 15%, constituting a single and final payment and the payment is made according to the following criteria:

- IRE taxpayers, including the State and the Municipalities, act as withholding or collection agents at the time of making available, paying or remitting the income subject to this tax;
- Natural persons who provide independent personal services: at the time of payment of the services subject to the tax, as long as these services are of a similar nature and are directly related to obtaining the income taxed by the IRP;
- For international freight services, the payment of the tax is made before the removal of the goods from the customs premises.
- The companies incorporated in the country issuing the titles are responsible for the payment of this tax for the transfers of their shares or shares to individuals, legal entities or non-resident entities. The trigger of the obligation will be the date of the operation or the contract.

## SIMPLE AND RESIMPLE SPECIAL REGIMES

### SIMPLE

This is a simplified regime for medium-sized companies that carry out activities taxed by the IRE, whose accrued income in the previous year does not exceed PYG 2 billion (approximately USD 303,000).

The negative results derived from the expenses of the activities affected by the present regime are not subject to compensation or carry-over to subsequent fiscal years.

The general rate is 10% calculated on the actual or presumed basis, whichever is less, of:

- The positive difference between the total income and expenses directly related to the taxed activity. The operations must be properly documented, must represent a real expenditure and be at market price.
- 30% of gross annual turnover.

Taxpayers of this tax are also subject to VAT.

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### RE SIMPLE

This is a simplified regime for small companies that carry out activities taxed by the IRE, whose income earned in the previous year does not exceed PYG 80 million.

The negative results derived from the expenses of the activities affected by the present regime are not subject to compensation or carry-over to subsequent fiscal years.

Sole proprietorships that adhere to this regime are not subject to VAT.

The tax is paid based on a fixed amount according to annual billing.

## BRANCH PROFITS TAX

Branches are taxed at the same rate of 10% as Paraguayan domestic corporations. Profits transferred or credited to the head office are subject to a 15% withholding tax when remitted to the foreign head office. Furthermore, the payment of dividends is subject to a 5% tax rate, which has to be paid at the time of remittance and is charged to the local entity.

## CAPITAL GAINS TAX

Gains on all assets, tangible and intangible, are taxable as part of profits and subject to income tax at a rate of 10%. Foreign currency exchange gains are also taxable at the same tax rate.

## VALUE ADDED TAX (VAT)

VAT (*impuesto al valor agregado, IVA*) is levied on taxable supplies of goods and services as well as on imports of taxable goods and services into Paraguay. Exports are zero rated. Some specified transactions are exempt without credit for previously paid VAT. In computing tax liability, input VAT may be credited against output VAT, so that in practice only the value added to the taxpayer's supplies is taxed. VAT applies to all stages of the distribution process. VAT taxes the asset disposal or sale of services, the provision of services (excluding personal information rendered in a dependent relationship) and the importation of goods.

Are subject to payment of VAT individuals, sole proprietorships domiciled in the country, cooperatives with the scope set forth in Law No. 438/94, and companies engaged in commercial, industrial or service activities. The tax is calculated on the sales price of the goods or the services. The standard VAT rate is 10% while a 5% rate applies to the sale of pharmaceuticals, the basic family basket and agricultural, horticultural and fruit products as well as to property rentals.

Exports of goods and services of international freight for the transport of goods are not subject to VAT. In these cases the local exporter has the right to recover the tax credit associated with the exported products, which depends on the completion of certain formalities with the Tax Administration. Paraguayan law establishes a system of withholding tax on local suppliers by exporters and certain taxpayers appointed by the Tax Administration.

## SELECTIVE CONSUMPTION TAX

Excise tax is payable at the time of the import or the first sale (by local manufacturers) of certain products such as soft drinks and alcoholic beverages, cigarettes, toiletries, fuels, among others, constituting a cost to the importer or local manufacturer . The tax is paid monthly, with the exception of fuels which is on a weekly basis. The settlement and payment are carried out before removal of goods from customs, i.e. before the warrant and order release of goods for departure.

## MUNICIPAL TAXES

### Municipal Patent for Industries

Over the asset value applies a fee plus a fixed rate of 0.05% on the excess of the minimum amount according to the scale provided by law. Industrial companies have a discount of 20% on the resulting patent. The new industrial plants and those that expand their facilities have a discount of 25% on the resulting patent for 3 years.

### Commercial Patent

Over active value applies a fixed fee plus a rate of 0.05% on the excess of the minimum amount according to the scale provided by the Act.

### Vehicles Patent

A tax is applied over the value for duty consisting of a fixed fee plus a rate of 0.6 to 1 % on the excess of the minimum amount according to the scale provided in the Act. The law provides reductions for certain types of vehicles as taxis and remise cargo vans, buses and hearses.

### Building

A tax over the value of the work sheet is applied, according to the intended scale in the Law between 0.2 and 4 %.

## SOCIAL SECURITY REGIME

Are mandatorily subject to a social security scheme, salaried workers, regardless of their age and the amount of compensation they receive. The percentage of current worker- employer contribution is 25.5% monthly, corresponding to 9% and 16.5% for workers and employers respectively. The basis for calculation is the current employee remuneration which is the total remuneration received by the worker in money, species or royalties, including extraordinary, additional or piecework work, commissions, perks, severance pay, awards, fees, interests and any other accessory remunerations with a normal character in the company or workplace, except for bonuses.

## B. DETERMINATION OF TAXABLE INCOME

The taxable amount for purposes of calculating the tax on annual income is determined by deducting from the taxable gross income (difference between total income from commercial, industrial or service operations and the cost thereof), the expenses necessary to obtain and maintain the production source.

## DEPRECIATION

Depreciation of property constituting the fixed assets is calculated annually based on the estimated life of each type of asset. When an activity involving depletion of the production source is made, the tax law allows depreciation proportional to such exhaustion. Intangible assets such as trademarks, patents and others are amortised using an annual percentage of 25%.

## STOCK / INVENTORY

The cost of inventory includes all cases arising from its acquisition and processing, as well as other costs incurred to put it on deposit or application to the production process.

The valuation methods supported by the local tax rules are:

a) Acquisition Cost;

b) Conversion Cost;

c) Any other valuation method prescribed in the International Financial Reporting Standards (IFRS), prior authorisation of the Tax Administration.

## INTEREST DEDUCTION

Interest paid, which will be taxed in the hands of the receiver (creditor), will be allowable as a deduction for tax purposes. Interest paid to an overseas head office, other branch or agency by a Paraguay branch, agency or permanent establishment (on the capital, loans or any other investment made by the overseas head office, other branch or agency) will be allowable as a deduction for Paraguay tax purposes as long as the interest is subject to tax in the hands of the recipient and any Paraguay withholding tax has been accounted for.

There are no thin capitalisation rules in Paraguay.

## LOSSES

Tax losses from previous years may be carried forward for up to 5 fiscal years. The amount of tax loss offset is up to 20% of the net income obtained in the relevant subsequent year.

## FOREIGN SOURCE INCOME

The Paraguayan corporate income tax system is based on the territoriality principle, whereby tax is only due on business income generated by companies operating in Paraguay. Foreign-sourced income is not taxable. However, interest, commissions, and capital gains are considered Paraguayan-sourced income and subject to corporate income tax when the investor is resident in Paraguay.

## TAX INCENTIVES

### ACT 60/90

Act No.60/90 was passed in order to promote and increase capital investments (domestic and / or foreign), by granting fiscal benefits to those who make investments in line with the economic and social policy of the Government and aim to:

a) To increase the production of goods and services;

b) Creating permanent jobs;

c) To incorporate technologies to increase production efficiency and enable greater and better use of raw materials, labour and domestic energy resources;

d) The investment in capital and reinvested earning.

**Benefits and tax exemptions**

Investment projects that are approved can enjoy, depending on the characteristics of each investment project, the following payment exemptions:

- Value Added Tax on the purchase of imported capital goods (as well as capital goods produced in Paraguay) used in the facility for industrial or agricultural production;
- All taxes levied on the creation, or registrations of companies and enterprises;
- Tariffs and internal taxes on imports of capital goods, raw materials and inputs for use in investment projects for the production of capital goods;
- Taxes and other levies on remittances and payments abroad in respect of interest, commissions and capital of such when the investment is financed from abroad and is at least USD 5,000,000 in a lapse of 10 years;
- All taxes which affect dividends and profits from projects approved, for a term of 10 years counted from the start of the project when the investment is at least USD 5,000,000 and the tax on such dividends or utilities were not fiscal credit of the investor in the country from which the investment provides.

**Scope of Benefits**

The exemptions provided in the Law apply, among others, to investments in: financing, capital goods, specialised technical assistance, mining, hotel and rental of capital goods ( leasing), providing services in air cargo and passengers, river transport, land freight transport in general, public passenger transport, health, radio, television, press, rural and urban fixed telephony, mobile telephony, scientific research, silos, storage, and data transmission services .

**Validity of Benefits**

- 10 years when investment resources are from capital repatriation or when investments are filed in preferred areas of development or.
- 7 years when investments come from incorporation of capital goods of national origin.

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## FREE ZONE PROCEDURE

Paraguay has established free zones (FZs) in different areas of its territory. These areas can be used to carry on qualifying transactions. The incentives can be summarised as follows:

- taxpayers conducting qualifying activities and exporting abroad may opt to be taxed at a 0.5% rate on their total export turnover;
- taxpayers may sell finished products and services within the FZ, subject to a 0.5% tax, as long as the related sales turnover in the relevant tax period does not exceed 10% of the taxpayer's total gross income, otherwise, the latter may be subject to income tax at an effective rate of 3% on the ratio of the sales within the FZ and net income after deduction of related expenses; and
- the import of goods into the FZ is exempt from customs taxes and duties. The export of goods and services is also exempt.

## MAQUILADORA REGIME

The Maquila Regime is regulated by Law 1064/97 under which a local company/subsidiary/branch ('Maquiladora') signs a contract with a foreign entity to produce goods and/or to provide services for export only, operating for account and risk of the foreign entity, who can supply all the raw materials and other inputs to the Maquiladora from any local or foreign supplier.

Any person or company, national or foreign, domiciled in Paraguay may be licensed for a Maquila export program. Such companies may be incorporated under any form: corporations, limited liability companies, foreign branches, or individual limited liability enterprises, without any ownership restrictions, having total or partial foreign, national or joint venture participation. There are no restrictions as to minimum capital or minimum/maximum production.

The Maquiladora must file an application for a Maquila Program to the Maquila Council with details of the estimated undertaking. Once the program is approved, it can be modified as necessary, and the following benefits are granted:

- Suspension of all applicable taxes and duties on raw materials and other inputs required for the performance of the Maquila Program that can enter on Paraguayan territory;
- Tax exemptions including but not limited to income tax, value added tax, customs duties, port and airport taxes and duties and any type of tax, rate or charge applied to loans financing Maquiladora undertakings.
- No taxes applicable to production, except a 1% tax on value added on Paraguayan territory.
- Either the Maquiladora or the Head Office may issue export invoices.

- Maquiladoras can perform production by themselves or can subcontract to other local companies, and tax benefits might extend to subcontractors under certain conditions.

Requirements include a guarantee (insurance policy, warrant or bank guaranty) for customs duties for a value equal to the suspended taxes.

## C. FOREIGN TAX RELIEF

As foreign-source income is not subject to corporate income tax in Paraguay (see above under 'Foreign Source Income), no credit is granted for foreign taxes.

## D. CORPORATE GROUPS

There are no provisions in Paraguayan law for the filing of consolidated tax returns.

## E. RELATED PARTY TRANSACTIONS

Law 6380/19 has introduced transfer pricing (TP) rules effective as from 1 January 2021.

The Law introduces the obligation to issue a TP report for companies subject to IRE and carrying out transactions with non-resident related parties or with resident related parties (in the latter case, when the relevant transaction is exempt from IRE for one of the parties to the transaction, e.g. maquiladora companies).

Two or more companies are deemed to be related parties when a company (or group of companies) participates, directly or indirectly, in the management, control or capital of the other company. For this purpose, it is considered that a company participates in the management, control or capital of another company when it holds more than 50% of the voting rights in the other company.

### Technical study

Taxpayers who carry out operations with related parties residing in the country or abroad, must issue a technical study that shows that the amount of their income and deductions were made in accordance with the prices or consideration that independent parties would have used in comparable operations.

Will be obliged to present a technical study:

- Taxpayers whose gross income in the previous fiscal year has exceeded 10 billion (approximately USD 1.6 million) or,
- Taxpayers who carry out operations with related parties domiciled in no or low tax jurisdictions, including with users of free zones or maquiladora companies.

There are no CFC (Controlled Foreign Company) provisions in Paraguayan law.

## F. WITHHOLDING TAX

- Dividends or profit distributions made to non-resident shareholders are subject to a 15% withholding tax.
- Interest payments made to non-residents, that are not related parties, are subject to a 15% withholding tax on 30% of the amount paid (effective rate of 4.5%).
- Royalties paid to non-residents are subject to a 15% withholding tax.

## G. EXCHANGE CONTROL

The Paraguay Central Bank does not control the foreign-exchange market. A free-market rate of exchange prevails.

## H. PERSONAL TAX

With respect to income derived from the provision of personal services, IRP is levied at the following progressive rates:

| Amount (annual minimum salaries) (PYG) | Rate (%) |
|---|---|
| Up to 50,000,000 | 8 |
| From 50,000,001 to 150,000,000 | 9 |
| Over 150,000,000 | 10 |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Treaty countries:** | | | | |
| Chile | 10 | 10 | 10/15[1] | 15 |
| Taiwan | 5 | 5 | 10 | 10 |
| United Arab Emirates | 15 | 15 | 6/15[2] | 15 |
| Uruguay | 15 | 15 | 15 | 15 |

Notes:

1. The 10% rate applies to interest derived from loans granted by banks and insurance companies governed by the laws of both States. The 15% rate applies in all other cases.
2. The 6%rate applies to interest from banks loans or insurance companies, regulated by each country's regulation. The 15% rate applies in all other cases.

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# PERU

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Lima | Emilio Vila | +51 144 26 116<br>emiliovila@pkfperu.com |
| Lima | Renato Vila | +51 144 26 116<br>rvila@pkfperu.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Peru |
| Capital: | Lima |
| Main languages: | Spanish, Quechua and Aymara |
| Population: | 33.84 million (2022 estimate) |
| Monetary unit: | Sol (PEN) |
| Internet domain: | .pe |
| Int. dialling code: | +51 |

## KEY TAX POINTS

- Corporate Income Tax (CIT) is payable at a rate of 29.5% applicable from 2017 onwards.
- Value Added Tax is imposed on the sale of goods, the supply and use of services in the country and the import of goods made at different stages of the economic cycle. The general tax rate is 18%.
- Royalties and similar income are subject to withholding income taxes at source.
- Peruvian citizens residing in Peru are taxed on their worldwide income, regardless of where the income is generated or where it has been paid or the currency received for it. In the case of non-resident citizens, they are taxed only on their Peruvian-source income.

## A. TAXES PAYABLE

## NATIONAL TAXES AND LEVIES

### COMPANY TAX

Resident companies are taxed on its worldwide income. Any profits, including capital gains, are included in the taxable income of a corporation and taxed at the regular corporate rate. Resident companies are those incorporated or established in Peru.

Corporate Income Tax (CIT) is payable at a total rate of 29.5%. An additional 5% applies for distribution of dividends.

The tax year for a company is its accounting year, which ends on 31st December. Companies are required to make monthly advance payments of CIT based on one of the following methods:

- 1.5% of monthly net revenue; or,
- the monthly net revenue times a ratio between the income tax and the net revenue, both from the preceding year.

Companies must file their Annual Income Tax Return and pay any balance due up to the end of March or the first days of April each year.

Mining companies are, in addition to their specific corporate rates of tax, subject to a royalty calculated on the gross sales relating to the transfer of mineral resources. The royalty is calculated in terms of a specific formula and, depending upon the operating margin, is in a range from 1% to 12%.

### CAPITAL GAINS TAX (CGT)

Strictly speaking, CGT is not a tax in its own right but rather forms an integral part of Peruvian Income Tax legislation. As a general rule, capital gains are defined as any income obtained from capital assets disposal.

Capital assets are those not intended to be traded within any business or company. Subject to any exclusions and exemptions, a taxable gain is calculated by taking the difference between the proceeds received on disposal of the asset and the base cost and then multiplying this amount by the tax rate (which varies depending on the nature of the taxpayer).

### BRANCH PROFITS TAX

Peruvian branches of foreign companies are subject to tax on Peruvian-source income only at the regular corporate rate.

### VALUE ADDED TAX (VAT)

Peruvian VAT is imposed on the sale of goods, the supply and use of services in the country and the import of goods made at different stages of the economic cycle. The general tax rate is 18%. It is a monthly basis tax operating under the system of debit / credit, offsetting the tax generated from sales with the tax paid on purchases.

Exports are zero-rated and very few exemptions exist.

There are two particular systems for recovering the tax credit generated by Peruvian VAT:

- Early Recovery: Companies at a pre-operative stage longer than two years with Large projects may apply for early recovery of VAT, which allows them to obtain a VAT credit refund prior to starting operations. An investment agreement with the Ministry of this sector is required and a minimum investment of USD 5 million is required;

- Definitive Recovery: This applies mainly to the mining, oil and gas industries. Thus, the system applies to holders of mining claims which are not in the production phase and enter into an Exploration Investment Agreement with the State, while those who have entered into Contracts of Services or License under the Hydrocarbons Law may request this benefit during the exploration stage.

## FRINGE BENEFITS TAX

Employees are taxed on the value of the fringe benefits they receive as determined in accordance with Peruvian Income Tax Law. The tax levied is in accordance with the tax rates applicable to natural persons.

## LOCAL TAXES:

## REAL ESTATE TAX

It is an annual tax levied on the value of urban and rural properties. Lands, buildings and fixed and permanent facilities are deemed properties for Real Estate Tax purposes. The taxpayer status is determined as of 1 January each year and the payment will be made at the District Municipality where the property is located.

The rate is progressive and cumulative as detailed below (measured in UIT tax units, see note):

| Real Estate Tax - Progressive Cumulative Scale | Rate |
|---|---|
| From 0 UIT to 15 UIT - (up to PEN 69,000) | 0.2% |
| From 15 UIT to 60 UIT - (up to PEN 276,000) | 0.6% |
| Above 60 UIT - (above PEN 276,000) | 1.0% |

NOTE: UIT = Annual Tax Unit. 2022 UIT = PEN 4,600

## REAL ESTATE TRANSFER TAX (ALCABALA)

This is a tax levied on the transfer of title to real estate located in urban or rural areas, on gratuitous or onerous title, as the case may be, including sales with reservation of the right to ownership. Taxable base is the transfer value of the property and is paid by the buyer, who shall pay the tax at the District Municipality where the property is located.

| Real Estate Transfer Tax (Alcabala) - Progressive Scale | Rate |
|---|---|
| From 0 UIT to 10 UIT - (up to PEN 46,000)[1] | 0% |
| Above 10 UIT | 3% |

NOTE: 1. Exempted portion.

## OTHER TAXES

## TEMPORAL NET ASSETS TAX (ITAN)

Temporal Net Assets Tax (known by its Spanish acronym as ITAN) is levied at a rate of 0.4% on the company's net assets with a value exceeding PEN 1,000,000.00, as assessed at 31 December of the previous year. The amount paid for the ITAN by the taxpayer is a credit to be offset against corporate income tax. If not totally offset, the remaining ITAN may be refunded by the Peruvian Tax Administration (SUNAT).

In the case of subsidiaries or branches of foreign companies, they can offset the ITAN obligation with the Income Tax amount paid in Peru, so as to use the whole income tax paid as a tax relief in its country of origin.

Companies which are in pre-operative stages or have begun operations as from 1 January of the year for which the ITAN must be paid are exempted from ITAN.

## TAX ON FINANCIAL TRANSACTIONS (ITF)

The Tax on Financial Transactions (known by its Spanish acronym 'ITF') levies transactions (deposits and withdrawals) made through the Peruvian financial system and is deductible as an expense for income tax purposes. Its rate is 0.005%.

The ITF is a complementary measure of the so-called "bankarisation" or banking usage which requires companies to pay any amounts exceeding USD 1,000 or PEN 3,500.00 through so-called "means of payment", which include account deposits, money orders, money transfers, payment orders, debit cards or credit cards issued in the country and "not negotiable" checks. Otherwise, cost or expense not performed using such methods shall not be recognised for tax purposes.

## EXCISE TAX (ISC)

Excise Tax is levied on specific goods such as cigarettes, beer, liquor, soft drinks, fuel, vehicles, gambling/betting services and other luxury items. It is levied on the sale in the country of such goods at producer level and/or import of them. It is applied using three systems:

(a) Specific, which applies a fixed amount in Soles per unit of measure;

(b) To the value, which is applied based on a percentage on the sale price;

(c) To the sale price, which involves applying a percentage of the suggested retail price.

## CUSTOMS DUTIES

The import of goods into Peru is subject to payment of Customs Duties with ad valorem rates. Additionally, Value Added Tax, the Excise Tax, Antidumping rights, Compensation and others depending on the type of goods imported, are applied, as detailed below:

| | 2021 |
|---|---|
| Customs tariffs[1] | 0%, 4%, 6%, 11% |
| Value Added Tax[2] | 18% |

NOTES:

Rates are applied on CIF value and according to the imported goods.

VAT is applied on CIF Value plus Customs tariffs. Depending upon the type of goods, excise tax is also applied.

Customs duties are subject to a refund system or drawback, which entitles the producers/exporters to apply for a refund of all or part of customs duties affecting imports of raw materials or inputs used or consumed during the production process of exported goods, provided that the CIF value of imports of such goods does not exceed 50% of the FOB value of the export product.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company is determined by deducting expenditures and costs incurred in the production of income and other permitted expenses and allowances from the company's income.

### ALLOWANCES: PLANT, MACHINERY AND EQUIPMENT USED IN MANUFACTURE

Depreciation is calculated using the straight-line method or any other system provided they do not exceed the maximum rate of depreciation and the cost of acquisition of fixed assets. The following are some of the rates allowed by Peruvian Income Tax Law:

| Asset Type | Conditions for Annual Allowance | Annual Allowance |
|---|---|---|
| Commercial Buildings and Constructions or improvements | Construction of buildings or improvements used wholly or mainly for carrying on process of producing income in the course of trade. | Straight-line at 5% of cost (previously 3%) |
| New commercial buildings (other than residential accommodation) (Note 1) | This is a special depreciation regime for construction projects and buildings erected since 1 January 2014 and wholly or mainly used for the purpose of producing income in the course of trade. | Straight-line at 20% of cost |
| Cattle and fishing nets | Cattle either used for the purpose of producing income in the course of trade or reproduction. | Maximum 25% of cost |
| Equipment for Data processing | Hardware and any other equipment for data processing wholly or mainly used for the purpose of producing income in the course of trade. | Maximum 25% of cost |
| Machinery and equipment used for mining, oil and gas activities and construction, except furniture and fixed equipment | Machinery and equipment used at all exploration / exploitation stages in the mining and oil industries, wholly or mainly used for the purpose of producing income in the course of trade. | Maximum 20% of cost |
| Machinery and equipment purchased from 1 January 1991 | Machinery and equipment wholly or mainly used for the purpose of producing income in the course of trade and purchased from 1 January 1991. | Maximum 10% of cost |
| Land transport vehicles (except railroads) and any kind of industrial oven | Land transport vehicles and any kind of ovens wholly or mainly used for the purpose of producing income in the course of trade. | Maximum 20% of cost |
| Other fixed assets (Note 2) | Other assets wholly or mainly used for the purpose of producing income in the course of trade. | Maximum 10% of cost |

NOTES:

1. Pursuant to the provisions of Law 29342.
2. Limited-time intangibles (software, copyrights, patents, etc.) should be amortised over just one tax year, or under the straight-line system over a ten-year term.

### STOCK / INVENTORY

All trading stock on hand at the end of the tax year must be added to income while all trading stock on hand at the beginning of the year ranks as a deduction. Inventories should be carried at cost and will be determined specifically or using the "first in, first out" method (FIFO), average cost method or the basic inventory. The "last in, first out" method (LIFO) of valuing trading stock is not permitted.

### RESEARCH AND DEVELOPMENT EXPENDITURE (R&D)

Generally, tax is applied to taxable income, which is the accounting profit in the tax period after adjustments provided for by the Peruvian Income Tax Law. Exemptions are usually insignificant. Expenses are deductible to the extent incurred in producing taxable income, subject to certain restrictions and limitations. Expenses given to projects of scientific and technological research and technological innovation are deductible for purposes of income tax, linked or not to the line of business of the company, provided that the projects are classified by the National Council for Science, Technology and Technological Innovation (CONCYTEC). Starting in 2016, the 30309 Law came into effect, with the purpose of promoting scientific research, technological development and innovation. The law provides tax benefits related to deductions for projects starting in 2016 which are not already included in the deduction established by the law on Income Tax.

## INTELLECTUAL PROPERTY

As stated above, deduction of limited-time intangibles (software, copyrights, patents, etc.) should be amortized over just one tax year or by the straight-line system for a ten-year term.

## INTEREST AND FINANCE CHARGES

Interest paid and financial charges incurred in the production of income are deductible expenses for Income Tax purposes. Interest paid to non-residents (or related entities) is generally subject to withholding tax at a rate of 30%. For interest paid by Peruvian resident financial institutions for the use of credit lines in Peru, or unaffiliated foreign lenders, the withholding tax rate is 4.99%, subject to the following conditions:

- The proceeds of the loan are brought into Peru as foreign currency through local banks or are used to finance the import of goods;
- The proceeds of the loan are used for business purposes in Peru;
- The interest rate does not exceed the prime rate plus three percentage points. In the case of loans obtained in the American money market of the United States of America and in the European money market, the prevailing LIBOR rate plus 4 points is considered a prime rate. The three or four percentage points are designed to cover expenses, commissions and any other additional charges related to the loan.

If the first two aforementioned conditions are met and the interest rate exceeds the prime rate plus three points or the LIBOR plus four points, the excess interest is subject to withholding tax at the regular rate of 30%.

## TAX LOSSES

Tax losses may be carried forward subject to the following two systems:

(a) Offset in full for a four-year term limit subsequent to the year in which it was generated;

(b) Offset indefinitely during the subsequent years, only up to 50% of annual net income. No carry back is allowed.

## INTEREST RECEIVED

Interest received (or accrued) is included in gross income of any corporation.

## C. FOREIGN TAX RELIEF

Peruvian resident individuals and corporations are subject to tax in Peru on their worldwide income. However, this general principle may be overridden by the provisions of a double tax treaty.

## CREDIT FOR INCOME TAX PAID ABROAD

Taxes paid abroad on income from foreign taxable sources are deductible from Peruvian income tax, provided that these do not exceed the amount obtained by applying the average rate on income earned abroad, or the tax effectively paid abroad. The amount of credit that for any reason is not used in the taxable year cannot serve as compensation in other taxable years and will not be entitled to any reimbursement.

## D. CORPORATE GROUPS

Group taxation is not applicable. There are no provisions for filing consolidated returns and relieving losses within a group.

## E. RELATED PARTY TRANSACTIONS



Thin capitalisation: Pursuant to the Peruvian Income Tax Law, interests paid by entities domiciled in Peru, to related entities or related companies over the “3” factor resulting from applying the “debt/equity” ratio on the taxpayer’s net equity at the end of the previous year, shall not be deductible in determining the Income Tax.

Transfer Pricing: Peruvian Income Tax Law includes transfer pricing rules based on the arm’s length principle according to the guidelines of the Organization for Economic Cooperation and Development (OECD). However, these rules do not apply solely to transactions between related parties but to transactions with offshore entities whose domicile are located in territories with low or no taxation (tax havens) and are applicable for purposes of Income Tax. The law provides the following transfer pricing methods:

- Comparable Uncontrolled Price Method;
- Resale Price Method;
- Increased Cost Method;
- Utility Partition Method;
- Residual Method of Utility Partition;
- Transactional Net Margin Method; or
- Other, if none of the above apply.

Peruvian Tax Administration requires special declarations in which the taxpayer must prove the reasonableness of its transfer pricing policies.

## F. WITHHOLDING TAXES

Royalties and similar income are subject to withholding income taxes at source.

- A withholding tax applies to interest paid in the production of income at a rate of 30%.
- Interest paid by banks or financial institutions for the use of credit lines in Peru, or loans obtained from unaffiliated foreign lenders are subject to a 4.99% withholding tax, subject to the following conditions:
  - o The proceeds of the loan are brought into Peru as foreign currency through local banks or are used to finance the import of goods;
  - o The proceeds of the loan are used for business purposes in Peru.

Dividends or other forms of distribution of profits, including remittances of profits from Peruvian networks or subsidiaries of foreign companies, are subject to 5% of the withholding of income tax from the year 2017 onwards. It should be noted that for the years 2015/16 the applicable withholding rate was 6.8%.

Royalties are subject to a 30% withholding income tax.

- Technical assistance services for commercial purposes in Peru are subject to withholding income tax of 15% provided that the purchase consideration for the service does not exceed 140 UIT at effect at the time of conclusion. If the service exceeds the amount described, a report from an audit firm will be submitted to SUNAT, which will certify that the assistance was provided effectively. The report in question must be issued by an audit firm domiciled in Peru, that has current registration in the Register of Audit Firms in an Institute of Public Accountants or other audit firms entitled under the provisions of the country in which they are established to provide such services.

In case of not having this report, the applicable rate will be 30%.

- Digital services economically used in Peru are subject to a 30% withholding income tax. In the event that they are rendered together with technical assistance, The amount for each of them shall be distinguished on an individual basis. If it is not possible, the transaction will be treated as appropriate to the essential or predominant operation.
- Property Leasing is subject to a 30% Withholding Income Tax, to be applied on income received by non-resident legal entities. A 5% Withholding Income Tax applies on income received by non-resident individuals.
- Capital gains from the disposal, redemption or ransom of transferable securities issued by companies incorporated in Peru are subject to a 30% Withholding Income Tax except where the transaction is performed through a entralized mechanism of negotiation in Peru (stock market), in which case the rate is 5%.

In order to consider the disposal of securities to be made in Peru, they should be registered at the Public Registry of Transferable Securities and negotiated at the domestic stock market.

In case of some activities performed partly in Peru and partly overseas by non-domiciled individuals, including income generated by their subsidiaries or permanent establishment, the following schemes of withholding income tax apply:

| Activity | % Gross Income Qualifying as Net Income from Peruvian Source | Effective Rate (%) |
|---|---|---|
| Air transport | 1 | 0.3 |
| Lease of vessels | 80 | 8.0 |
| Lease of aircrafts | 60 | 6.0 |
| Supply of shipping containers | 15 | 4.5 |
| Transport containers demurrage | 80 | 24.0 |
| Insurance | 7 | 2.1 |
| International news agencies | 10 | 3.0 |
| Maritime transport | 2 | 0.6 |
| Motion picture distribution | 20 | 6.0 |
| Transfer of television broadcasting rights | 20 | 6.0 |
| Telecommunications services | 5 | 1.5 |

## G. EXCHANGE CONTROL

Foreign-exchange controls have been eliminated. Consequently, transactions are carried out in a free market at prices set by supply and demand.

## H. PERSONAL TAX

Pursuant to Peruvian Income Tax Law, Peruvian citizens residing in Peru are taxed on their worldwide income, regardless of where the income is generated or where it has been paid or the currency of receipt. In the case of non-resident citizens, they are taxed only on their Peruvian-source income.

In case of foreign citizens, they are deemed to be residents if they have been physically present in Peru for more than 183 days within a 12-month period.

For both cases, resident status shall be determined at the beginning of each tax year. Changes regarding such condition that may occur during the fiscal year shall become effective from the start of the next fiscal year.

For domiciled individuals, tax on income from work either independently or as employees (wages, salaries, etc.) shall be determined by applying a progressive cumulative rate based on the amount of income received during the tax year, according to the following detail:

**Progressive Cumulative Scale**

| Income | Rate |
|---|---|
| Up to 5 UIT | 8% |
| over 5 UIT and up to 20 UIT | 14% |
| over 20 UIT and up to 35 UIT | 17% |
| over 35 UIT and up to 45 UIT | 20% |
| Above 45 UIT | 30% |

## DEEMED EMPLOYEES

Labor brokers and personal service providers are regarded as employees. A labor broker is a natural person who, for reward, provides a client with other persons to render a service for the client or procures such other persons for the client and remunerates such person.

A personal service provider is a company or trust where any service rendered on behalf of the entity to its client is rendered personally by any person who is a connected person in relation to such entity and certain provisions are met.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| ***Treaty countries:*** | | | |
| Andean Community[2] | 5 | 4.99/30[9] | 30 |
| Brazil | 10/15[3] | 15 | 15 |
| Canada | 10/15[4] | 10/15 | 15 |
| Chile | 10/15[5] | 15 | 10/15 |
| Japan[10] | 10 | 0/10 | 15 |
| Korea (South) | 10 | 0/15 | 10/15 |
| Mexico | 10/15[6] | 0/10/15 | 15 |
| Portugal | 10/15[7] | 0/10/15[1] | 10/15 |
| Switzerland | 10/15[8] | 10/15 | 10/15 |

Notes:

1. The 10% rate applies with respect to loans granted by banks.
2. The Andean Community Treaty (Bolivia, Colombia, Ecuador, Peru) levies income under the source principle. The domestic withholding rate applies. There is no reduction under the Treaty.
3. The reduced 10% rate applies if the beneficial owner is a company which holds directly or indirectly at least 20% of the voting rights of the dividend-paying company.
4. The reduced 10% rate applies if the beneficial owner is a company that controls directly or indirectly at least 10% of the voting power of the dividend-paying company.
5. The reduced 10% rate applies if the beneficial owner is a company that controls directly or indirectly at least 25% of the shares with voting rights in the dividend-paying company.
6. The standard rate under the treaty is 15%. However, under the application of a most favoured nation clause the rate is reduced to 10% (under the Korea-Peru treaty the general rate for dividends is 10%).
7. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) that controls directly at least 10% of the voting power in the Peruvian dividend-paying company.
8. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital and of the voting power of the dividend-paying company.
9. The 30% rate applies to loans that do not comply with the requirements to be subject to the reduced 4.99% rate and it also applies to loans between associated companies.
10. Effective date: 1 January 2022.



# PHILIPPINES

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Makati | Rosario S Bernaldo | +63 2 8892 4487 |
| | | cherry.bernaldo@rsbernaldo.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of the Philippines |
| Capital: | Manila |
| Main languages: | Filipino, English |
| Population: | 112.32 million (2022 estimate) |
| Monetary unit: | Philippine Peso (PHP) |
| Internet domain: | .ph |
| Int. dialling code: | +63 |

## KEY TAX POINTS

- The tax year runs for the calendar year although approval of the Commissioner of Internal Revenue can be obtained for the adoption of a fiscal year.
- Company tax is payable by domestic companies on all income derived from sources within and outside the Philippines. Foreign corporations, whether resident or non-resident, are taxable only on income derived from sources within the Philippines.

- Effective 1 July 2020, domestic corporations are generally taxed at 25% on taxable income. Domestic corporations may be taxed at 20% if the net taxable income does not exceed PHP 5,000,000 and total assets do not exceed PHP 100,000,000, excluding the land on which the particular business entity's office, plant and equipment are situated.
- Resident foreign corporations are taxed at 25% based on net taxable income, effective 1 July 2020.
- Regional operating headquarters (ROHQ) are currently taxed at 10% and will be taxed at 25% on taxable income effective 1 January 2022.
- Non-resident foreign corporations are taxed at 25% of the gross income from all sources within the Philippines, effective 1 January 2021.
- A 12% Value Added Tax (VAT) on the gross selling price or gross value in money of the goods is imposed on all importations, sales, barters, exchanges or leases of goods or properties and sales of services.
- Tax credits are available for taxes and duties paid on purchases of raw materials of products for export, domestic capital equipment, and domestic breeding stock and genetic materials. A number of Special Economic Zones, some of which are operated as separate customs territories also exist.
- Compensation income of residents is subject to tax at progressive rates of up to 35%.
- Individuals deriving income from business or the practice of a profession whose annual gross receipts/revenue is PHP 3 million and below have the option to be taxed at 8% on gross income in lieu of income tax and other percentage tax. If such income exceeds PHP 3 million the tax is levied at progressive rates of up to 35%.

## A. TAXES PAYABLE

### COMPANY TAX

Company tax is payable by domestic companies on all income derived from sources within and outside of the Philippines. Foreign corporations, whether resident or non-resident, are taxable only on income derived from sources within the Philippines. However, non-resident foreign corporations are, in certain circumstances, subject to a final withholding tax on passive (investment) income at rates generally higher than the applicable tax rates applying to domestic and resident foreign corporations.

Resident companies are those that are created or organised under the laws of the Philippines or foreign companies duly licensed to engage in trade or business in the Philippines. As a general rule, the corporate income tax rate both for domestic and resident foreign corporations is 25% based on net taxable income. Domestic corporations with net taxable income not exceeding PHP P5,000,000 and total assets not exceeding PHP 100,000,000, excluding the land on which the particular business entity's office, plant and equipment are situated, are taxed at 20% on net income. Excluded from the income tax are dividends received from domestic corporations, interest on Philippine currency bank deposits and yields or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements, and other passive income previously subject to final taxes.

Interest income derived from the expanded foreign currency deposit is subject to a final tax of 15%. All other interest earned by domestic and resident foreign corporations is subject to a 20% final withholding tax except for long-term time deposits of five years or more that is exempt from final withholding tax rates, those with a term of four years to less than five years are taxed at 5%, and those between three and four years are subject to 12% tax. Regional operating headquarters (ROHQ) are taxed at 10% on taxable income but effective 1 January 2022, they will be taxed at 25% on taxable income.

Export enterprises and domestic market enterprises with a minimum investment capital of PHP 500,000,000 and domestic market enterprises under the Strategic Investment Priority Plan engaged in activities that are classified as 'critical', are taxed at the rate of 5% on gross income in lieu of national and local taxes.

The tax year runs for the calendar year although approval of the Commissioner of Internal Revenue can be obtained for the adoption of a fiscal year. Tax is payable in four quarterly instalments, with every corporation filing quarterly income tax returns for the first three quarters and tax being payable 60 days following the end of each quarter. A final return covering the full year is required to be lodged 105 days after year-end at which time the balance of tax, after deducting the prior three instalments and creditable withholding tax, is payable. Any excess is refundable or can be claimed as a tax credit against future tax payments.

P

### MINIMUM CORPORATE INCOME TAX

Minimum corporate income tax (MCIT) is imposed from the beginning of the fourth taxable year immediately following the commencement of the business operation of the corporation. Generally, the MCIT rate is 2%. However, effective 1 July 2020 until 30 June 2023, the MCIT rate is reduced to 1%.

Any excess of the minimum corporate income tax over the normal income tax may be carried forward and credited against the normal income tax for the three taxable years immediately succeeding. The computation and the payment of MCIT shall likewise apply at the time of filing of the quarterly corporate income tax.

The term 'gross income' for the purpose of applying the minimum corporate income tax shall mean the gross sales less sales returns, discounts and allowances and cost of goods sold. The Secretary of Finance, however, may suspend the imposition of the minimum corporate income tax on any corporation which suffers losses on account of prolonged labour dispute, force majeure or legitimate business reverses.

### CAPITAL GAINS TAX – ON SHARE OF STOCK

The net capital gains from the sale of shares of stock of a domestic corporation not listed and traded through the Philippine Stock Exchange are taxed on a per-transaction-basis at the rate of 15%. If the transferor or assignee is an individual, the net gain shall likewise be subject to 15%. The value of the shares of stock is computed based on book value of the shares according to the latest audited financial statements.

On the other hand, the sale of shares of stock of a domestic corporation through the Philippine Stock Exchange or through the initial public offering is subject to a percentage tax on the transaction at the rate of 6/10 of 1% of the selling price. Any gain or loss from said transaction is not considered for income tax purposes.

## CAPITAL GAINS TAX – ON SALE OF REAL PROPERTY

The sale of land, building and other real properties classified as capital asset is subject to 6% final capital gains tax based on the gross selling price, current fair market value or zonal value at the time of sale, whichever is higher.

## IMPROPERLY ACCUMULATED EARNINGS TAX

Effective 1 July 2020, the improperly accumulated earnings tax (IAET) shall no longer be imposed on corporations.

## BRANCH PROFITS TAX

A branch is classified as a resident foreign corporation. As such, it is subject to income tax at the rate of 25% on its net income derived within the Philippines. Any branch profit to be remitted to the Head Office is additionally taxed at the rate of 15%, which may be lowered based on applicable tax treaties. For purposes of branch profit remittance, income items which are not effectively connected with the conduct of its trade or business in the Philippines are not considered branch profits.

Such income items include interest, dividends, rents, royalties, including remuneration for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits, income and capital gains received during each taxable year from all sources within the Philippines. To be 'effectively connected', it is not necessary that the income be derived from the actual operation of the branch's trade or business. It is sufficient that the income arises from the business activity in which the branch is engaged. However, the 15% branch profit tax does not apply to profits remitted by a branch that qualifies to be taxed at 5% on gross income in lieu of all national and local taxes.

## VALUE ADDED TAX (VAT)

A 12% value added tax (VAT) of the gross selling price or gross value in money of the goods is imposed to all importation, sale, barter, exchange or lease of goods or properties and sale of services. 'Gross selling price' means the total amount of money or its equivalent that the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price.

## FRINGE BENEFITS TAX

Fringe benefits furnished or granted in cash or in kind by an employer to an individual employee (except rank and file employees) are taxed at the rate of 35% based on the grossed-up monetary value of the fringe benefits.

## LOCAL TAXES

There are no local taxes other than local authority rates and local (business) taxes and permit fees. Special economic zone enterprises are not subject to local taxes.

## OTHER TAXES

Other taxes include the following:

## PERCENTAGE TAXES

Percentage taxes are imposed on carriers (domestic or international), franchises, banks, financial intermediaries, finance companies, life insurance companies, agents of foreign insurance companies, overseas communications, amusement, winnings, and stock transactions.

Moreover, transactions of non-VAT registered persons that are covered by the VAT exemption are subject to a 3% percentage tax.



## INITIAL PUBLIC OFFERING (IPO) TAX

Effective 11 September 2020, the tax on sale, barter or exchange of shares of stock listed and traded through initial public offering has been repealed.

## EXCISE TAXES

Excise taxes are imposed on alcohol and tobacco products, petroleum and mineral products, automobiles, sweetened beverages, cosmetic products and certain non-essential goods.

## DOCUMENTARY STAMP DUTY

Documentary stamp tax is imposed on certain documents including shares certificates, bank cheques, bonds, sales documents of real properties and mortgages. Effective 1 January 2018, rates for most of the documents subject to documentary stamp tax were increased twofold.

## REAL PROPERTY TAX

Real property tax is imposed on owners of real property and is calculated on the assessed value of the property.

## B. DETERMINATION OF TAXABLE INCOME

A company's taxable profit is calculated by deducting ordinary and necessary expenses paid or incurred during the tax year in carrying on business. Typical expenses include salaries, travelling expenses and rentals, all of which need to be substantiated to be deductible. Additionally, taxes that relate to the business other than income, estate, gift and energy taxes and taxes charged to local benefits of a kind likely to increase the value of property are deductible. In calculating taxable income, special rules and exemptions apply in the circumstances outlined below.

## DEPRECIATION

Any recognised depreciation method may be used if it is 'reasonable'. The annual depreciation allowance is determined on the basis of depreciable property, estimated useful life and salvage value. For extraction industries, a distinction is made between petroleum and other mining activities. Distinctions are also made between different categories of expense (e.g. tangible or intangible, exploration or drilling etc.), and different methods apply (e.g. expenditure, cost depletion etc.).

## STOCK / INVENTORY

For taxpayers engaged in a trade or business, the valuation of inventories must meet the following conditions:

- It must conform as nearly as possible to the best accounting practice in the trade or business; and,
- It must clearly reflect the income.

As such, although it cannot be uniform for all taxpayers, the system used must come within the scope of the best accounting practice in the particular trade or business. In order to clearly reflect income, the inventory practice of a taxpayer should be consistent from year to year as greater weight is given to consistency than to any particular method or basis of valuation. As long as the method is substantially in accord with these regulations, it is likely to be accepted.

The basis of valuation which is most commonly used by business concerns and which meets the requirements of the tax laws is the cost price or the lower of cost or market price.

Regardless of the basis of valuation, inventories are subject to investigation by the Commissioner of Internal Revenue and the taxpayer must satisfy the Commissioner of the correctness of the price adopted.

## CAPITAL GAINS AND LOSSES

See discussions above. Ordinary assets include:

(a) Stock in trade of the taxpayers, or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the end of the taxable year;

(b) Property held by the taxpayer primarily for sale to customers in the ordinary course of trade or business;

(c) Property used in trade or business of a character which is subject to allowance for depreciation;

(d) Real property used in trade or business.

All properties held by the taxpayer, whether or not connected with trade or business, not included in the enumeration of ordinary assets are capital assets. Capital gains arise from the disposal of ‘capital assets’.

## DIVIDENDS

Dividends received by a Philippine corporation or by a resident foreign corporation from a Philippine corporation are not subject to income tax. However, resident individuals receiving dividends are subject to a 10% final income tax. No credit is granted for underlying corporate profits out of which the dividends are declared. However, a domestic corporation that owns a majority of the voting stock of a foreign corporation from which it receives dividends is deemed to have paid the underlying foreign taxes.

Foreign-sourced dividends received by a domestic corporation may be exempt from tax if the dividends received are re-invested in the business operation of the domestic corporation in the Philippines within the next taxable year and if the domestic corporation directly holds 20% of the outstanding shares of the foreign corporation and has held the shareholdings for at least 2 years at the time of the dividend distribution.

## INTEREST DEDUCTIONS

Interest is deductible on a cash or accrual basis depending upon the taxpayer’s method of accounting but shall be reduced by 20% of the interest income subjected to final tax. The interest expense reduction rate will be adjusted if the interest income tax will be adjusted in future. Where interest is paid to a foreign lender, it will remain deductible as long as it is incurred in connection with the trade or business of the taxpayer.



## LOSSES

Losses may be offset against all income and capital gains in the same tax year. Losses must be sustained by the taxpayer during the taxable year and must be incurred in relation to the trade and business and evidenced by completed transaction. Operating loss for any taxable year immediately preceding the current taxable year which had not been previously offset as deduction from gross income may be carried over as a deduction from gross income for the next three consecutive years immediately following the year of such loss. This is known as the Net Operating Loss Carryover (NOLCO) or the excess of allowable deduction over gross income in a taxable year. However, there are certain limitations to be followed:

(a) Any net loss incurred in a taxable year during which the taxpayer is exempt from income tax shall not be allowed as deduction;

(b) Allowed only if no substantial change in the ownership in that:
  - Not less than 75% in nominal value of the outstanding issued shares, if the business is in the name of the corporation, is held by or on behalf of the same persons; or,
  - Not less than 75% of the paid in capital of the corporation, if the business is in the name of the corporation, is held by or on behalf of the same persons.

NOLCO from taxable years 2020 and 2021 can be carried over as a deduction from gross income for the next five (5) consecutive taxable years following the year of such loss.

For mines other than oils and gas wells, a net operating loss without the benefit of incentives provided for under Executive Order No. 226, as amended, otherwise known as the Omnibus Investment Code of 1987, incurred in any of the first ten years of operation may be carried over as a deduction from gross income for the next five years immediately following the year of loss.

## FOREIGN SOURCE INCOME

A Philippine (domestic) corporation is taxed on worldwide income. Foreign income is taxed when earned or received, depending on the accounting method used by the taxpayer. Resident foreign corporations are taxed in the Philippines only on Philippine source income.

## TAX INCENTIVES

Tax incentives available to enterprises with registered projects or activities include income tax holidays, 5% tax on gross income, enhanced deductions, duty exemption on importation of capital equipment, raw materials, spare parts or accessories and VAT exemption on importation and VAT zero-rating on local purchases. Enhanced deductions include the following:

- Depreciation allowance of the assets acquired for the entity's production of goods and services – additional 10% for buildings and additional 20% for machineries and equipment;
- 50% additional deduction on the labour expense incurred in the taxable year;
- 100% additional deduction on R&D expense incurred in the taxable year;
- 100% additional deduction on training expenses incurred in the taxable year;
- 50% additional deduction on domestic input expenses incurred in the taxable year;
- 50% additional deduction on power expenses incurred in the taxable year;
- Deduction for re-investment allowance to manufacturing industry – When a manufacturing registered business enterprise re-invests its undistributed profit or surplus in any of the projects or activities listed in the Strategic Investment Priority Plan, the amount re-invested to a maximum of 50% shall be allowed as a deduction from its taxable income within a period of 5 years from the time of such re-investment;
- Enhanced Net Operating Loss Carry-Over (NOLCO) – The net operating loss of the registered project or activity during the first 3 years from the start of commercial operations, which had not been previously offset as deduction from gross income, may be carried over as deduction from gross income within the next 5 consecutive taxable years immediately following the year of the loss.

## TAX CREDITS

Tax credits are available for taxes and duties paid on purchases of raw materials of products for export, domestic capital equipment, and domestic breeding stock and genetic materials. A number of Special Economic Zones, some of which are operated as separate customs territories also exist. (Refer also to 'Tax Incentives' above.)

## OPTIONAL STANDARD DEDUCTION (OSD)

In lieu of the itemised deduction of ordinary and necessary expenses paid or incurred to calculate the net taxable profit, domestic and foreign corporations are allowed an OSD in the amount not exceeding 40% of gross income. Companies intending to avail of the OSD are required to indicate such intention upon filing the first quarter income tax return.

The computation and the payment using the OSD shall likewise apply at the time of filing of the quarterly corporate income tax. There are taxpayers (corporations, partnerships) not entitled to avail of the OSD, listed below:

a) Those exempt under the Tax Code, as amended, and other special laws, with no other taxable income;

b) Those with income subject to special/preferential rates; and,

c) Those with income subject to regular income tax rate, and also with income subject to special/preferential tax rates.

## C. FOREIGN TAX RELIEF

Relief from double taxation is provided by way of double tax treaties and/or by means of foreign tax credits. The treaties generally define when a taxpayer will be deemed for income tax purposes to be doing business in the Philippines.

## D. CORPORATE GROUPS

Group taxation is not permitted. The grouping of corporations has no tax implications as the tax laws treat each corporation in isolation.



## E. RELATED PARTY TRANSACTIONS

Philippine corporations can claim a deduction for royalties, management services and interest charges paid to foreign affiliates provided the amount represents an arm's length price and the appropriate withholding taxes are withheld and remitted. Some interest deductions can be affected by related party transactions involving non-residents. See Section B above.

## F. WITHHOLDING TAX

### Non-resident foreign corporations

Interest on foreign loans, royalties and dividends paid to non-resident foreign corporations are subject to withholding tax at source at the time of their accrual in the taxpayer's books. The only exemption to this rule is when, at the time of the accrual of the income, there is a governmental restriction which prevents the actual remittances of the income due to the non-resident.

### Dividends

Dividends received by non-resident foreign corporations from domestic corporations are subject to a final tax of 25%. However, tax is withheld at the reduced rate of 15% in certain circumstances.

### Interest

Interest received by non-resident foreign corporations is subject to the following final withholding tax:

a) 20% on interest paid or accrued from foreign loans contracted on or after 1 August 1986;

b) 30% on other interest.

However, said tax rate may be reduced subject to the application of double tax treaties.

### Royalties

Royalties received by non-resident foreign corporations are subject to a final withholding tax of 25%. However, said tax rate may be reduced under applicable double tax treaties.

### Technical assistance and service fees

Technical assistance and service fees received by non-resident foreign corporations are subject to a final withholding tax of 25%.

### Rental and leasing income

Rental and leasing income received by non-resident foreign corporations is subject to the following final withholding tax:

- 25% of the gross amount on film rentals from sources within the Philippines;
- 4.5% of the gross amount on charter fees or rentals in respect of foreign vessels;
- 7.5% of the gross amount on rentals and other fees in respect of aircraft, machinery and other equipment.

### Non-resident aliens

The following income received by non-resident aliens (not engaged in trade or business in the Philippines) are subject to a final withholding tax of 25% on the gross amount of:

a) Dividends, interest and royalties;
b) Technical assistance and service fees (no tax is withheld in certain circumstances);
c) Rental and leasing income;
d) Capital gains (special rules apply to residents of double tax treaty states).

### Final withholding tax

The following income received by Philippine citizens and resident aliens are subject to a final withholding tax of 20% on the gross amount of:

a) Interest;
b) Royalties, except royalties on books, literary works and musical compositions which are subject to 10%;
c) Technical assistance and service fees.

## G. EXCHANGE CONTROL

The *Bangko Sentral ng Pilipinas* (BSP) administers the exchange control laws of the Philippines including establishing minimum and maximum rates for the foreign exchange dealings of banks. However, banks may set their own rates for trading foreign exchange with the public. The value of the peso generally floats freely, although intervention by the BSP does occur when deemed necessary.

## H. PERSONAL TAX

Income is divided into the following three categories which are taxed separately, as summarised below.

### Compensation Employment Income

This income is taxed at progressive rates on gross income after deduction of personal and additional exemptions but without deductions for expenses. Remuneration for services performed by an employee for his employer are considered compensation subject to income tax, except for facilities and privileges, called as 'de minimis benefits'. Thirteenth month pay and other benefits not exceeding PHP 90,000 (previously PHP 82,000) are also exempt from income tax.

### Passive Income

This income (i.e. dividends, certain interest, royalties, etc.) is subject to final withholding tax only.

### Business Income and Professional Income

This income is taxed at progressive rates on net business income, or income from the practice of a profession, after deduction of certain specified expenses. However, if the annual gross receipts/revenue from business or the practice of a profession does not exceed PHP 3 million, the taxpayer may opt to be taxed at 8% based on gross income in lieu of income tax and percentage tax.

## TAXABLE INCOME

### Resident Citizens

Resident citizens of the Philippines are taxed on all their net income derived from sources within and outside of the Philippines.

### Alien Individuals

An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines. Resident aliens are taxed in the same manner as resident citizens on income sourced within the Philippines. Tax is generally withheld in sufficient amounts from salary and wages to satisfy the final tax liability. If not, then the balance must be paid when filing the return, which is required on or before 15 April of the year following the year of income. In some cases, income tax liability may be paid in two equal instalments.

### Resident Individuals

Income of residents is subject to the following rates:

a. Tax Schedule effective 1 January 2018 until 31 December 2022:

| Taxable Income per Year (PHP) | Income Tax Rate (% and PHP) |
|---|---|
| Up to 250,000 | 0% |
| 250,001 to 400,000 | 20% of the excess over 250,000 |
| 400,001 to 800,000 | 30,000 + 25% of the excess over 400,000 |

| Taxable Income per Year (PHP) | Income Tax Rate (% and PHP) |
|---|---|
| 800,001 to 2,000,000 | 130,000 + 30% of the excess over 800,000 |
| 2,000,001 to 8,000,000 | 490,000 + 32% of the excess over 2,000,000 |
| Over 8,000,000 | 2,410,000 + 35% of the excess over 8,000,000 |

b. Tax Schedule effective from 1 January 2023 onwards:

| Taxable Income per Year (PHP) | Income Tax Rate (% and PHP) |
|---|---|
| Up to 250,000 | 0% |
| 250,001 to 400,000 | 15% of the excess over 250,000 |
| 400,001 to 800,000 | 22,500 + 20% of the excess over 400,000 |
| 800,001 to 2,000,000 | 102,500 + 25% of the excess over 800,000 |
| 2,000,001 to 8,000,000 | 402,500 + 30% of the excess over 2,000,000 |
| Over 8,000,000 | 2,202,500 + 35% of the excess over 8,000,000 |

The above rates also apply to individuals who derive income from business (including capital gains from the sale transfer or exchange of shares in a foreign corporation) or from the practice of a profession whose gross receipts/revenue exceeds PHP 3 million.

**Optional Standard Deduction (OSD)**

Except for individuals earning compensation income, resident citizens, non-resident citizens, and resident aliens shall be allowed to claim OSD in lieu of the itemised deductions of ordinary and necessary expenses paid or incurred during the year. The OSD allowed shall be a maximum of 40% of gross sales or gross receipts without deduction of the cost of sales or cost of services. The computation and the payment using the OSD shall likewise apply at the time of filing of the quarterly income tax return.

Like the corporation, there are individual taxpayers not entitled to avail of the OSD, listed below:

a) Those exempt under the Tax Code, as amended, and other special laws, with no other taxable income;

b) Those with income subject to special/preferential rates; and,

c) Those with income subject to regular income tax rate, and also with income subject to special/preferential tax rates.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The rates are as follows:

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-treaty countries** | | | |
| Companies | 15/30[18] | 10/20/30[18] | 30[18] |
| Individuals | 20/25 | 20/25 | 10/20/25 |
| **Treaty countries:** | | | |
| Australia | 15/25[1] | 10/15 | 15/25 |
| Austria | 10/25[2] | 10/15 | 10/15 |
| Bahrain | 10/15[3] | 10 | 10/15 |
| Bangladesh | 10/15[6] | 15 | 15 |
| Belgium | 10/15[3] | 10 | 15 |
| Brazil | 15/25[4] | 10/15 | 15/25 |
| Canada | 15/25[5] | 10/15 | 25 |
| China | 10/15[3] | 10 | 10 /15 |
| Czech Republic | 10/15[3] | 10 | 10/15 |
| Denmark | 10/15[6] | 10 | 15 |
| Finland | 15 | 10/15 | 15/25 |
| France | 10/15[7] | 10/15 | 15 |
| Germany | 5/10/15[8] | 10 | 10 |
| Hungary | 15/20[9] | 15 | 15 |
| India | 15/20[10] | 10/15 | --/15[22] |
| Indonesia | 15/20[9] | 0/15 | 15/20[23] |
| Israel | 10/15[3] | 10 | 15 |
| Italy | 15 | 10/15 | 15/25 |
| Japan | 10/15[2] | 10 | 10/15 |
| Korea | 10/15[6] | 10/15 | 10/15 |
| Kuwait | 10/15[3] | 10 | 20 |
| Malaysia | 15/25[11] | 15 | 15/25 |

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| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Mexico | 5/10/15[19] | 12.5 | 15 |
| Netherlands | 10/15[12] | 10/15 | 10/15 |
| New Zealand | 15 | 10 | 15 |
| Nigeria | 12.5/15[13] | 15 | 20 |
| Norway | 15/25[5] | 15 | 7.5/25 |
| Pakistan | 15/25[14] | 10/15 | 15/25 |
| Poland | 10/15[6] | 10 | 15 |
| Qatar | 10/15[3] | 10 | 15 |
| Romania | 10/15 | 10/15 | 10 /15/25 |
| Russia | 15 | 15 | 15 |
| Singapore | 15/25[15] | 10/15 | 15/25 |
| Spain | 10/15[7] | 10/15 | 10/15/20 |
| Sri Lanka | 15/25[20] | 15 | 15/25[21] |
| Sweden | 10/15[6] | 10 | 15 |
| Switzerland | 10/15[3] | 10 | 15 |
| Thailand | 10/15[16] | 10/15 | 15 |
| Turkey | 10/15[6] | 10 | 10/15 |
| United Arab Emirates | 10/15[3] | 10 | 10 |
| United Kingdom | 15/25[5] | 10/15 | 15/25 |
| United States | 20/25[17] | 10/15 | 15/25 |
| Vietnam | 10/15[6] | 15 | 15 |

Notes:

1. The 15% rate applies if double tax relief by way of a rebate or credit is given to the beneficial owner of the dividends (being a company) in accordance with article 24 of the treaty.
2. The 10% rate applies if the beneficial owner is a company which holds directly at least 10% either of the voting shares of the dividend-paying company or of the total shares issued by that company during the period of 6 months immediately preceding the date of payments of the dividends.
3. The 10% rate applies if the beneficial owner is a company (excluding partnerships) which holds directly at least 10% of the capital of the paying company.
4. The 15% rate applies if the recipient is a company including a partnership.
5. The 15% rate applies to dividends paid to a company which controls at least 10% of the voting power of the company paying the dividend.
6. The 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
7. The 10% rate applies if the recipient is a company (excluding partnership) which holds directly at least 10% of the voting shares of the dividend-paying company.
8. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 70% of the capital of the dividend-paying company. The 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
9. The 15% rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company.
10. The 15% rate applies if the beneficial owner is a company which owns at least 10% of the shares of the dividend-paying company.
11. The 15% rate applies if the recipient is a company.
12. The 10% rate applies if the recipient is a company the capital of which is wholly or partly divided into shares and which holds directly at least 10% of the capital of the dividend-paying company.
13. The 12.5% rate applies if the beneficial owner is a company (excluding partnerships) which holds directly at least 25% of the capital of the dividend-paying company.
14. The 15% rate applies if the beneficial owner is a company (excluding partnerships) which holds directly at least 25% of the capital of the paying company during the part of the paying company's taxable year which precedes the date of payment of the dividends and during the whole of its prior taxable year, if any.
15. The 15% rate applies if the recipient is a company (including partnership) and during the part of the paying company's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 15% of the outstanding shares of the voting stock of the paying company was owned by the recipient company.
16. The 10% rate applies if the beneficial owner is a company (excluding partnerships) which holds directly at least 25% of the capital of the dividend-paying company. In other cases the 15% rate applies.
17. The 20% rate applies when the recipient is a corporation and if during the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10% of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation.
18. Dividends are subject to a 30% withholding tax. However, a 15% rate applies if the non-resident company's domicile country grants a deemed-paid tax credit of at least 15% (as from 1 January 2009) or provides a tax exemption for the dividends. Interest is subject to a 30% withholding tax. Interest on foreign loans (payable in foreign currency to OBUs and FCDUs) is subject to a 10% withholding tax while any other form of interest on foreign loans is subject to a 20% withholding tax. Royalties are subject to a 30% withholding tax and may include payments for technical assistance.
19. The 5% rate applies if the beneficial owner is a company (other than partnership) which holds directly at least 70% of the capital of the company paying the dividends. If the beneficial owner is a company (other than partnership) which holds directly at least 10% of the capital of the company paying the dividends, the dividends tax rate is 10%. In other cases the rate is 15%.

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20. The 15% rate applies if the beneficial owner is a company (excluding partnership). In other cases, the rate is 25%.
21. The 15% rate applies where the royalties are paid by an enterprise registered with, and engaged in preferred areas of activities. In other cases, the rate is 25%.
22. The 15% rate applies, in the case of the Philippines, if the royalties are paid by an enterprise which is registered with the Philippine Board of Investment. Otherwise, the domestic rate applies.
23. The reduced 15% rate applies to royalties paid by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activities.

# POLAND

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Warsaw/Wroclaw/Poznań<br>Opole/Lodz/Katowice/ Gdansk/ Lublin | Agnieszka Chamera | +48 22 560 76 50<br>agnieszka.chamera@pkfpolska.pl |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Poland |
| Capital: | Warsaw |
| Main languages: | Polish |
| Population: | 37.58 million (2022 estimate) |
| Monetary unit: | Polish Zloty (PLN) |
| Internet domain: | .pl |
| Int. dialling code: | +48 |

## KEY TAX POINTS

- Polish resident companies are subject to corporate income tax on all sources of their worldwide income. Non-residents are taxed only on income derived from Poland.
- Real property tax and tax on the means of transport (lorries, tractors and trailers) are charged as local taxes.
- Civil law activity tax (CLAT) applies to contracts of sale, lease or hire, loan agreements, and foundation deeds of a partnership.
- Foreign tax paid may be credited against Polish tax due, up to the amount of domestic tax.
- A ‘tax capital group’ may be established by joint stock companies, simple joint stock companies and limited liability companies, where there is 75% ownership.
- Transfer pricing provisions apply to transactions carried out between related parties.
- Withholding tax is deducted among others from dividends, interest, royalties, and intangible services. However, under the EU Parent-Subsidiary Directive, dividend distributions by resident subsidiaries to their non-resident EU parent or EEA parent are exempt subject to certain conditions.
- Individuals resident in Poland are taxed on their worldwide income. Non-residents are taxed only on the income derived from work performed in Poland.
- Tax on revenue from buildings – taxpayers who are owners of fixed assets that are buildings located in Poland – new tax rules enacted from January 2019.
- Split payment mechanism – payment for purchased goods or services is automatically divided into net sale and VAT accounts.

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## A. TAXES PAYABLE

## COMPANY TAX

Polish resident companies are subject to corporate income tax (CIT) on all sources of their worldwide income, while non-residents are subject to corporate income tax only on income derived from the territory of Poland. A company is deemed resident in Poland if it is incorporated or managed in Poland. There are two separate sources of revenue and loss: from capital transactions and from other business activity. Taxpayers are obliged to recognise revenues and costs related to each source separately. It is not possible to set-off income derived from one source against a loss borne from the other source. Income from both sources is taxed at 19% CIT. Apart from share/capital transactions, the capital source includes royalties, license fees, and similar rights.

As from 2021 more entrepreneurs benefit from the reduced CIT rate of 9% instead of the basic 19% rate as a result of raising the revenue threshold from EUR 1.2 million to EUR 2 million. The 9% CIT rate will be paid by entrepreneurs commencing business activity (in the first year of operations) or having the status of a small taxpayer (i.e. revenue from the previous tax year below EUR 2 million).

This regime affects taxpayers that are start-ups as well. The preferential tax rate cannot be used by tax capital groups.

In general, the tax year is the calendar year, but legal persons are entitled to choose a fiscal year different from the calendar year.

Taxpayers are obliged to submit their tax declaration, together with the balance sheet, with the fiscal office within three months from the end of their tax year. Taxpayers are obliged to pay CIT instalments for each month by the 20th day of the following month. Taxpayers can also make monthly instalments based on specific rules subject to certain conditions. Companies that started business activities and small taxpayers are entitled to make advance settlements on a quarterly basis (instead of a monthly basis).

There are no local or provincial income taxes in Poland.

## CAPITAL GAINS TAX

Capital gains from the disposal of fixed business assets are aggregated with income from other sources and are subject to corporate income tax at the standard CIT rate (19% in 2022).

## BRANCH PROFITS TAX

The tax rate of income derived by a foreign corporation from a branch located in Poland is the same as for Polish entities (19% in 2022).

## ESTONIAN CIT

On 1 January 2021, a new company tax took effect, i.e. Estonian CIT. Mainly due to the low popularity of this form of taxation, as of January 2022, the conditions allowing the application of the Estonian CIT were amended (some of the reservations have been removed from the CIT Act).

The main idea of this form of taxation is to pay tax when profits from companies are distributed (e.g. through the payment of dividends). As a result the due tax may be deferred until the profit from the company is paid out.

After the amendments, interested companies must meet the following conditions:

- shareholders may only be physical persons;
- the taxpayer conducts business in the form of a limited liability company, joint-stock company, simple joint-stock company, limited partnership, or limited joint-stock partnership;
- employment of at least 3 people (besides partners or shareholders); small taxpayers (with revenue of up to EUR 2 million) may employ one person;
- the company does not hold participations in other companies;
- less than 50% of the revenue is derived from so-called passive income (for example, dividends, interest, exercise of rights from financial instruments);
- the taxpayer keeps accounting records and prepares financial statements pursuant to the Accounting Act in a manner ensuring the correct determination of the net profit (loss), the tax base and the amount of tax due.

Taxpayers will be able to opt for Estonian CIT for 4 years and extend it for another 4-year period, if they still meet the criteria.

## TAX STRATEGY DISCLOSURE

As from 1 January 2021, certain corporate income taxpayers will be burdened with yet another obligation, i.e. drawing up and publishing the tax strategy adopted in their entity.

**Who is affected by the new obligation?**

The following entities will be obliged to prepare and publish information on the implemented tax strategy for the tax year:

- tax capital groups - regardless of the amount of revenue (the tax strategy would apply to both the group and each of its companies),
- corporate income taxpayers whose revenue in the tax year exceeded EUR 50 million.

Importantly, said group of corporate income taxpayers has been joined by limited partnerships and some general partnerships since 1 January 2021, which is why they are also obliged to prepare and publish a tax strategy in the event of having revenue in excess of EUR 50 million.

**Scope of disclosure of information about the strategy**

The tax strategy should contain, in particular:

- information on the processes and procedures used by the taxpayer for managing the performance of obligations under tax law ensuring their proper performance and voluntary forms of cooperation with the authorities of the National Revenue Administration;
- information on the fulfilment of tax obligations by the taxpayer in Poland, along with information on the volume of information provided to the Head of the National Revenue Administration on tax schemes taking into account the taxes they relate to;
- information on restructuring activities planned or undertaken by the taxpayer that may affect the amount of tax liabilities or related entities. In this regard, as is clear from the justification of the draft, the taxpayer should indicate information about the merger of companies, transformation of the company into another company, contribution to the company in the form of the company's enterprise or its organised part (including the division of the company) and exchange of shares
- information on applications submitted by the taxpayer for a general tax interpretation, interpretation of tax law, binding rate information and binding excise information;
- information on making tax settlements at the level of the taxpayer in countries applying harmful tax competition.

The information provided, which is to constitute the tax strategy, should not contain information covered by a trade, industrial, professional or production process secret.

**Strategy publication deadline**

Information on the implemented tax strategy should be prepared in Polish (translation is allowed) and posted on the taxpayer's website by the end of the 12th month following the end of the tax year. Taxpayers subject to this obligation will be required to prepare, publish and inform the tax office about the tax strategy for 2021 by 31 December 2022 (assuming that the tax year is equal to the calendar year).

**Penalties**

The legislator introduced the possibility of imposing a fine of up to PLN 250,000 on the taxpayer for failure to comply with the obligations related to the preparation and publication of information on the tax strategy.

## ANTI-TAX AVOIDANCE CLAUSE

The purpose of this clause is to prevent fictitious transactions that taxpayers carry out to achieve tax advantages. Practically speaking, this means transactions which are hardly justifiable from an economic or business point of view. The Tax Ordinance Act which includes this regulation also defines what a tax advantage means, namely avoidance, deferral or reduction of a tax liability, creation or overstatement of a tax loss, creation or overstatement of a tax overpayment or a reclaimed amount.

## HOLDING COMAPNIES

As of January 2022, holding company regulations have been introduced into the Polish legal order. The new regime applies to Polish holding companies with domestic or foreign subsidiaries. Regulations constitute an alternative to the institution of "tax capital groups" and exemptions provided in the CIT Act (among others, exemptions from dividends and WHT).

The CIT Act establishes new definitions:

- domestic subsidiary – a joint stock company or a limited liability company that is a Polish tax resident;
- a holding company – a joint stock company or a limited liability company being a Polish tax resident and meeting certain conditions, such as:
  - owns at least 10% of the shares (stock) in the subsidiary;
  - does not belong to a tax capital group;
  - does not benefit from certain tax exemptions under the CIT Act;
  - conducts actual business activities;
  - its shareholder is not an entity located in a so-called tax haven;
- a subsidiary – a company that meets certain conditions, among others:
  - does not own more than 5% of the shares (stock) in another company;
  - does not belong to a tax capital group;
  - does not benefit from SEZ exemptions and realisation of a new investment;
- foreign subsidiary – a company that meets certain conditions, including but not limited to:
  - has legal personality;
  - is subject to taxation in a country other than Poland on its total income and does not benefit from exemptions;
  - is not located in a so-called tax haven.

**Exemption for dividends**

The holding company is exempted from 95% of the dividend amount received from the subsidiary. The remaining part of the dividend (i.e. 5% of the dividend amount) is subject to tax in accordance with general rules for dividend taxation at a tax rate of 19%. A method of avoiding double taxation may be applied to the non-exempt portion of the dividend paid by the foreign subsidiary.

**Exemption for capital gains**

A holding company is also exempted from taxing income from the disposal of shares (stocks) of a subsidiary to an unrelated party (appropriate declaration has to be submitted with the tax office).

## TRADE TAX

This tax applies to supermarkets or large-format stores. Pursuant to the regulations, the tax is paid by the seller who achieved retail sales revenues in a given month in excess of PLN 17 million. The tax rates are as follows:

- 0.8 percent from surplus income over PLN 17 million to PLN 170 million per month;
- 1.4 percent from the surplus of sales revenues over PLN 170 million per month.

The trade tax does not apply to internet sales.



## VALUE ADDED TAX (VAT)

As a result of Poland's accession to the European Union, the Polish VAT Act has changed in line with the regulations of the 112th Directive and other EU Directives related to VAT. Under the Polish VAT regulations, VAT applies to the following transactions:

- Supply of goods and services made in Poland for consideration;
- Export of goods outside the EU;
- Import of goods from outside the EU;
- Intra-Community acquisition of goods effected for consideration in Poland, including the movement of goods between different Member States within the same business;
- Intra-Community supply of goods including the movement of goods between different Member States within the same business.

VAT payers who have no registered seat in Poland nor a fixed place of business nor a place of residence are obliged to appoint a fiscal representative. This obligation does not apply to EU residents. The current tax point is the date of delivery or performance of the goods and services, respectively. However, there are some exceptions to this rule. VAT is charged at the standard tax rate of 23% on the supply of most goods and services or at the reduced rates of 8%, 5% and 0%:

- 8% supplies include, amongst others, hotel services and passenger transport supply, construction and assembly services, restoration and conservation of building included in social housing programs;
- 5% rate applies to certain foods, e.g. meat, fish, dairy products, vegetables, fruit, bread, etc.;
- 0% supplies include, amongst others, exports and intra-Community supplies of goods and international transport services.

In addition, there are a number of exemptions from VAT in place including education and health care services.

As a rule, active VAT taxpayers are required to submit monthly VAT declarations. However, small taxpayers are entitled to submit quarterly declarations (net sales from previous year below EUR 1.2 million). They must be registered as active VAT payers for a period of at least 12 months. VAT taxpayers are also obliged to file monthly reports comprising VAT registers (JPK VAT reports).

Small taxpayers may submit quarterly tax declarations, having notified the head of a revenue office in writing by the 25th day of the second month of the quarter.

**White list of VAT-registered taxpayers**

As of 1 September 2019 a white list of VAT-registered taxpayers was published on the Ministry of Finance governmental page. The introduction of this database allow entities to verify their business partner's status without being charged. Using the white list helps to exercise due diligence and minimises the risk of unintentional involvement in tax fraud.

There is a possibility to verify the following among others:

- registration of the counterparty as an active VAT taxpayer;
- whether the contractor has been entered into the list of entities which have been deleted by the head of the tax office from the VAT register or which have not been registered by the head of the tax office;
- persons signing agreements within the scope of their authorisation to conclude transactions on behalf of the counterparty.

As of 1 January 2020 taxpayers making transfers in excess of PLN 15,000 to a bank account other than specified on the list are not entitled to recognise such an expense as a CIT deductible cost. In addition, taxpayers will bear joint liability with the supplier for their tax arrears related to VAT at the amount equal to the VAT proportionally attributable to the supply of goods/services by making payment of receivables to an account other than disclosed in the database. It is mandatory to notify the competent tax office within 7 days from the day of the transfer on the account number to which the payment has been made in order to avoid sanctions.

**Split payment**

As of 1 July 2018 a split payment mechanism has come into force, aiming at a more effective VAT collection. The essence of this mechanism is that the payment for the purchased goods or services is automatically split between the net sales value and VAT. The payment for a given good or service performed by the buyer is sent to the supplier's bank account at the net amount. However, the value of VAT is collected separately on a special VAT account. Taxpayers are entitled to use the VAT bank account's balance to pay VAT and - after submitting the relevant application to the tax office - also to pay CIT, PIT, excise tax, customs duties and ZUS (social security) contributions.

In B2B transactions over PLN 15,000 or its equivalent the mandatory split payment mechanism is applied as of 1 November 2019, involving the supply of goods and services that were previously subject to the reverse charge mechanism as well as joint and several liability, i.e. among others:

- fuels;
- steel and steel products, scrap and waste, precious metals and non-precious metals;
- electronics, specifically: tablets, processors, computers, hard drives, smartphones, game consoles, TV sets, radio receivers, cameras, digital cameras;
- building and construction services;
- parts and accessories for motor vehicles and motorcycles;
- coal and coal products;
- electrical machinery and equipment, parts and accessories thereof;
- wastes and secondary raw materials.

This mechanism applies only to entities that are VAT payers. It will therefore not be possible in case of transactions concluded between a VAT payer and an entrepreneur.

The mandatory split payment mechanism is applicable both to Polish taxpayers and entities domiciled outside Poland but obligated to settle VAT on goods subject to that mechanism.

**Slim VAT**

On 1 January 2021, a package of VAT changes known as SLIM VAT was introduced. The most significant changes relate to the correction of output tax in minus. In the case of correcting invoices in minus, the taxpayer will reduce the taxable base and VAT, when it will be evident from the documentation held by the taxpayer that he has agreed the terms of this transaction with his contractor, the terms of this agreement have been met and the taxpayer has issued a correcting invoice. An analogous input tax adjustment is also made under these conditions, except that it is irrelevant whether a correcting invoice was issued.

With regard to in plus corrections, the hitherto applied practice was confirmed according to which the moment of the reason for the correction determines the moment it is included in the settlement.

The period for exercising the right to deduct VAT by taxpayers filing VAT returns on a monthly basis has been extended by one month, so now such taxpayers may exercise their right to deduct VAT on an ongoing basis in the month in which the right to deduct arose and in the three following months.

The right to deduct input VAT on purchases of accommodation and catering services is, in principle, excluded. However, as of 1 January 2021 taxpayers purchasing accommodation services in their own name, but for the benefit of third parties, are entitled to deduct the VAT thereon.

Provisions have also been added to allow taxpayers to apply for VAT purposes the conversion rates appropriate for the settlement of a given transaction on the grounds of income tax regulations.

There has also been an extension of the period of applying the 0% rate to advance payments concerning export of goods from two to six months.

From 1 January 2022, new rules for using the TAX FREE procedure will be introduced. They will consist in the introduction of electronic circulation of TAX FREE documents and electronic confirmation of export.

### VAT groups

As of July 2022, the VAT Act introduces the possibility of creating so-called VAT groups.

The purpose of the regulations is to enable entities that are financially, economically and organisationally related to each other to make joint settlements for VAT purposes. The solution provided in the VAT Act is voluntary in nature (allowing companies to make an independent decision to introduce the solution). The VAT group simplifies settlements between its members, i.e. deliveries of goods and services by members of the group are not VAT taxable transactions. For intra-group turnover the use of a split payment mechanism will be excluded.

The above provides tax neutrality within the VAT group, i.e.:

- smaller number of JPK_VAT (SAF-T);
- no analysis of VAT deduction within the VAT group;
- no internal invoices within the VAT group (issuance of e.g. accounting note will be sufficient).

Main conditions of formation:

- VAT group will be able to be formed by entities that are related financially, economically and organisationally;
- all three types of relationships must be present during the entire period of the VAT group's existence;
- an entity may only be a member of one VAT group;
- VAT group cannot be a member of another VAT group;
- VAT group may not be extended or reduced in size by any of its members during its existence.

The VAT group regulations are expected to come into force from July 2022.

### VAT option for financial services

As of January 2022, the VAT Act introduces an option to tax financial services (which until now benefited from the VAT exemption). Taxpayers operating in the area of financial services will have the choice whether to take advantage of the exemption or to choose the option to tax the provided services. The decision on the choice of the taxation option will be binding for taxpayers for at least 2 years.

Financial services provided to retail customers (natural persons who are not taxpayers) will continue to be mandatorily exempt from tax.

### Structured invoices in the National System of e-Invoices (KSeF)

KSeF is an ITC system through which it will be possible to issue and receive structured invoices.

As from January 2022, the use of KSeF is voluntary. The KSeF system will serve to store invoices, mark them with an identifying number (which will be assigned by the system) and verify compliance of the invoice with the template. The system will be run by the head of the National Fiscal Administration, who will also be the administrator of the data contained in it. The structured invoice will function as one of the permitted forms of documenting sales, alongside paper invoices and electronic invoices.

According to the announcements of the Ministry of Finance, in future it is planned to implement a universal electronic system of invoicing in Poland.

## STANDARD AUDIT FILE

As of 1 July 2018 all enterprises are obliged to transmit data in a unified form, the so-called Standard Audit File (SAF_T/JPK_VAT) along with VAT returns monthly or at the request of the tax authorities. The main purpose of the SAF is to eliminate barriers in electronic data reporting, reducing the administrative burden and costs of audits for both tax authorities and taxpayers, and speeding up tax audits.

The data submitted using the SAF will have to be presented in accordance with a specific scheme (logical structure) which allows the tax authorities to conduct compatibility checks. As of 1 October 2020, taxpayers are no longer required to submit a VAT declaration separately. This means that for periods starting from 1 October 2020, it is not possible to submit VAT-7 and VAT-7K declarations in a different format than through JPK_VAT. The new JPK_VAT includes: an information set about purchases and sales, which results from the VAT records for a given period, items from the current VAT return and additional data needed to analyse the correctness of the settlement.

## TAX MICRO-ACCOUNT

From 1 January 2020, every taxable person making PIT, CIT and VAT payments is obliged to use only an individual bank account and in future it will be possible to use this account to pay other taxes (so-called tax micro-account). An individual account number is assigned automatically, simply by generating a number on the website of the Ministry of Finance.

## FRINGE BENEFITS TAX (FBT)

Benefits in kind are included in taxable income of employees.

## LOCAL TAXES

Real property tax and transport tax are charged as local taxes in Poland. Real property tax is paid by owners of real estate. The tax base depends on the type of asset concerned:

- buildings - the usable area;
- structures - value of the structure;
- land - the area.

The tax rates are established by the Commune Council. A tax on 'methods of transport' is imposed on lorries, tractors and trailers. The tax rates are also established by the Commune Council.

## OTHER TAXES

### CIVIL LAW ACTIVITY TAX (CLAT)

Some of the civil acts are subject to civil law activity tax. Examples of transactions subject to CLAT are:

- contracts of sale, exchange (if not subject to VAT) - 2% or 1% of market value of the asset or property rights;
- loan agreements – 0.5% of loan value;
- foundation deeds of a partnership or company – 0.5% of share capital value of the company or 0.5% of value of contributions to a partnership.

CLAT rates range from 0.1% to 2%. The following are not subject to tax:

(1) Acts in civil law if, in respect of performing such an act, at least one party is:

 (a) Liable to goods and services tax;

 (b) Exempt from goods and services tax, except for:

  o Contracts of sale and exchange whose object is immovable property or part thereof, or the right of perpetual usufruct, cooperative member's ownership right to a living accommodation, right to a single-family house in a housing cooperative or right to a parking lot in a multi-lot car park or a share in such rights;

  o Contracts of sale for shares in commercial partnerships or companies;

(2) Partnership or company deeds or amendments relating to:

 (a) Company mergers;

 (b) Transformation of a company into a different company;

 (c) Contribution to a company, in exchange for its shares, in some circumstances.

Loans granted by a shareholder to a company are also exempt from this tax.

### STAMP DUTY

Subject to Stamp Duty are public administration actions (application forms, certificates, permissions).

### BANK TAX - TAXATION OF ASSETS OF SELECTED FINANCIAL INSTITUTIONS

From 1 February 2016 a new tax on certain financial institutions has been put in place in Poland. According to the new tax bill, domestic banks, branches of foreign banks, branches of credit institutions, cooperative credit unions, national insurance and reinsurance, branches and main branches of foreign insurance and reinsurance companies are subject to this tax, as well as lending institutions. The tax rate is 0.0366% monthly (0.44% annually).

The taxable base is the total value of the assets of the taxpayer, resulting from the trial balance within the meaning of the Accounting Act, exceeding PLN 4 billion (for domestic banks, branches of foreign banks, branches of credit institutions, cooperative savings and credit unions) or exceeding PLN 2 billion (for national insurance, national reinsurance undertakings, branches of foreign insurance companies and foreign reinsurance main branches of foreign insurance companies and foreign reinsurance) or exceeding PLN 200 million (for consumer loan lending institutions). As for banking institutions, the taxable base may be reduced by the amounts listed in the bill, including the value of equity and Polish Treasury bonds. For associating banks and cooperative banks, the taxable base may be reduced by the amount of funds collected on all accounts of affiliated cooperative banks, led by the taxpayer. In the case of assets acquired by the taxpayer from the Polish National Bank (representing collateral for a loan refinanced by the bank) all of the assets are deductible from the tax base. For other taxpayers, the tax base is reduced by the value of assets in the form of Treasury securities within the meaning of article 95 paragraph 1 of the Act on public finance.

Some entities may reduce the tax base by the value of assets accumulated as part of contracts for the conduct of the Employee Capital Plans.

Taxpayers are required, without call from the competent tax authority to submit tax returns, calculate and pay tax on account of the competent tax office for monthly periods by the 25th day of the month following the month to which the tax relates.

### TAX ON INCOME FROM BUILDINGS

As of January 2019, tax on revenue from buildings was introduced on all buildings, regardless of classification, i.e. shopping malls, commercial real estate, office buildings, hotels, multi-storey car parks, halls, warehouses, etc., located on the territory of Poland, provided they generate revenues from rent, lease or other similar contracts. Tax shall apply to buildings which have an initial value over PLN 10 million, owned or jointly owned by the taxpayer, subject to the condition that their total usable floor area let for use exceeds 5% of the total usable floor area of the building.

Tax will be due irrespective of the level of actual income derived by the taxpayer. The tax rate is 0.035% of the tax base for each month and is payable by the 20th day of the month following that in which it was calculated. The taxable basis is the total revenue from a building corresponding to the initial value of fixed assets determined on the first day of each month as a result of records kept, minus an amount of PLN 10 million (approximately EUR 2.33 million). If a building is co-owned by a taxable person, when calculating its initial value, the value resulting from the taxable person's records is adopted.

The amount of tax paid on revenue from buildings can be set off against CIT if CIT is higher. Paid and non-deducted tax on CIT advance payments can be deducted from the income tax for a given fiscal year.

### TAX ON PASSED-THROUGH INCOME

As of January 2022, a new tax has been introduced into the Polish legal order (so-called tax on passed-through income). The tax rate has been set at the same level as the basic corporate tax rate, i.e. 19%.

Pass-through income is understood as costs incurred directly or indirectly for the benefit of a related entity (subject to certain conditions). The conditions relate to the costs and the income tax actually paid by this related entity.

The expenses marked in the CIT Act as the "income passing-through" are, in particular, categories of costs which, in a simplified form, are mainly expenses for intangible services or fees for using intangible values and rights. The sum of such expenses incurred

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in a tax year (including those incurred for the benefit of unrelated entities) constitutes at least 3% of the sum of tax expenses incurred in that year in any form.

In particular, the following costs (incurred directly or indirectly to a related party) shall be regarded as passed on revenue:

- consulting services, market research, advertising services, management and control, data processing, insurance, guarantees and warranties, and services of a similar nature;
- all kinds of fees and charges for using or the right to use copyrights, licences, industrial property rights and know-how;
- the transfer of risk of a debtor's insolvency under loans other than those granted by banks and cooperative savings and credit unions, including under liabilities arising from derivative financial instruments and benefits of a similar nature;
- costs of debt financing related to obtaining funds and using such funds, in particular interest, fees, commissions, bonuses, interest part of lease instalments, penalties and charges for delay in payment of liabilities as well as costs of securing liabilities, including costs of derivative financial instruments;
- fees and remuneration for the transfer of functions, assets or risks.

Provisions are not included in costs incurred for the benefit of the affiliated entity, which is subject to taxation on its entire income in the EU Member State or in the State of the European Economic Area and which conducts significant economic activity in this state.

Taxpayers are obliged to calculate this tax for the tax year in their annual return.

## MINIMUM INCOME TAX

As of January 2022, the Polish legislator introduced the so-called "minimum income tax". The tax will be paid by companies, tax capital groups and establishments of foreign entrepreneurs, that in the tax year:

- suffer a loss from a source of income other than from capital gains, or
- have a share of income from a source other than capital gains of not less than 1%.

The legislator has provided for certain exemptions from the minimum income tax. The new regulations will not cover:

- entities starting operations in the year of commencement and in the following two tax years;
- financial enterprises;
- entities which obtained revenues lower by at least 30% in comparison with the revenues obtained in the tax year immediately preceding the tax year;
- entities whose shareholders or members are exclusively natural persons and do not have shares/units in other entities;
- entities in which the majority of operating revenues in a given tax year was obtained in connection with:
  - operation of ships or aircraft in international transport;
  - extraction of minerals whose prices depend directly or indirectly on world market quotations;
- entities forming part of a group of at least two companies, where one company holds for the whole tax year directly a 75% share in the capital of the other companies forming part of the group, if:
  - the tax year of the companies covers the same period; and
  - calculated for the tax year the share of the total income of the companies in their total income is greater than 1%.

The rate of the new tax is to be 10%, and the tax base is the sum of:

1. amount equivalent to 4% of the value of income (other than from capital gains);
2. 10% of excess payments to related parties from the capital group. The tax base is to be the sum of: 4% of the value of revenues (other than capital gains), 10% of excess payments to related parties from the capital group, i.e. costs of debt financing and costs of purchasing certain rights or intangible services from related parties.

The tax will be reduced by the amount of CIT due for the same year. There is also a mechanism of deducting the minimum tax paid from CIT in the given annual return and for the subsequent 3 tax years.

## SOCIAL SECURITY CONTRIBUTIONS

Resident individuals and employees within the territory of Poland are subject to mandatory old age and disability insurance. Rates of social security contributions are as follows:

| | Employer | Employee |
|---|---|---|
| Old age pension | 9.76% | 9.76% |
| Disability insurance | 6.50% | 1.50% |
| Sickness benefits | -- | 2.45% |
| Accident insurance | 1.67% | -- |
| Health insurance | -- | 9.00% |

Contributions to old age and disability pensions are funded by the employer and employee. Contributions by employees are based on their gross income for income tax purposes. The ceiling of income on the basis of which contributions for the old age pension and disability insurance are calculated in 2022 is PLN 177,660 There is no ceiling for health and maternity insurance.

The employer withholds the employees' contributions. Employees' contributions are deductible for income tax purposes and employers' contributions are deductible for corporate income tax purposes. The contribution for accident insurance is paid by the employer. The contribution for sickness benefit is paid by the employee.

In addition:

- 9% of gross pay (less contributions for old age and disability insurance) for mandatory health insurance contribution (covering medical expenses) is payable by employees;
- 1% of gross pay is paid by the employer to the Labour fund;

- 1.45% of gross pay is paid by the employer to the Solidarity fund;
- 0.10% of gross pay is paid by the employer to the Guaranteed Welfare Benefits Fund.

As of January 2022, a number of regulatory changes went into effect regarding the social security contribution provisions. Regulatory changes include:

no tax deduction for paid health insurance (personal income tax);

- calculation of the health insurance amount (for individuals conducting economic activity). The amount depends on the choice of taxation form:
  - tax scale (so-called general rules of taxation): 9% of earned income (income – costs – social security contributions
  - so-called flat tax: 4.9% of earned income (income – costs – social security contributions);
  - tax on recorded revenue without deductible costs (the rate depends on the income threshold: 60%/100%/180% of the average monthly salary in the enterprise sector in the fourth quarter of the previous year).
- mandatory health insurance was also extended to board members who perform their functions under appointment (and receive remuneration). The amount of health insurance was set at 9% of earned income.

Additionally, new payment deadlines for social security contributions have been established, i.e.:

- the 15th day of the month is a new deadline for payers of contributions who are legal entities, i.e. joint stock companies, limited liability companies and cooperatives;
- the 20th day of the month is the deadline for entities that are not legal persons, i.e. natural persons who run sole proprietorships and partnerships. Until now people who paid contributions exclusively for themselves were obliged to settle accounts no later than on the 10th day of the month.

## B. DETERMINATION OF TAXABLE INCOME

Corporate entities are subject to corporate income tax on the net profit shown on their respective yearly Balance Sheet, calculated in accordance with the statutory accounting and bookkeeping rules, after GI adjustment for deductions and additions provided under the tax law. Generally, expenses incurred for the production of income are allowed as deductions.

### DEPRECIATION

Current rates range from 1.5% to 30% depending on the type of asset. As a general rule, the straight-line method must be applied although the reducing method is possible under some conditions.

### INVENTORY

Stock in trade, or inventory, is valued at its historic cost price or market value. The cost of inventory may be calculated at a standard cost, at a weighted average cost, or on the LIFO or FIFO basis, as long as the method selected is used consistently.

### CAPITAL GAINS AND LOSSES

Capital gains and losses are subject to CIT tax at a rate of 19% for 2022.

### DIVIDENDS

Dividends received from resident companies are taxed separately at a rate of 19% unless the participation exemption applies (see Section ‘F’ below). The tax is withheld by the distributing company. Dividends may be distributed only from net profits of the company. Sums allocated for distribution among shareholders cannot be deducted from the taxable base.



### THIN CAPITALISATION

As a result of the transposition of the ATAD (Anti-Tax Avoidance Directive) into domestic legislation, effective 1 January 2018, taxpayers are entitled to deduct from their taxable base interest expenses up to 30% of their EBITDA (a definition is included in the CIT Act) or up to an amount of PLN 3 million. As of 1 January 2022, the new regulations stipulate expressly that taxpayers may recognise as a deductible cost the costs of debt financing only up to the limit set by the threshold of 30% of their EBITDA or may benefit from the so-called safe harbour at the amount of PLN 3 million.

The limit does not apply to financial institutions, which are domestic banks, credit institutions, co-operative savings and credit unions, domestic and foreign insurance and reinsurance companies and open investment funds established on the basis of the Investment Fund. The thin capitalisation rules are applicable not only to loans received from related parties, but also to financing from third parties.

### LOSSES

Losses must be considered within individual sources of revenue. CIT provides for a division of sources into “capital gains” and “other sources’.

Regarding losses incurred until 31 December 2018, taxpayers can offset a loss within the source for five subsequent tax years, provided that the amount deducted in any one year cannot exceed 50% of the loss incurred. Regarding losses incurred after 31 December 2018, taxpayers may choose whether they want to use the settlement of the loss according to the above method, or if they prefer to reduce the income obtained from each source of revenue by the value of the loss not exceeding PLN 5,000,000 on a one-off basis, in one of the following five consecutive tax years. The non-deducted amount is subject to settlement in the remaining years of this five-year period. However, the amount of deduction in any of these years may not exceed 50% of the loss.

The loss settlement rules do not apply to losses from paid disposal of virtual currencies.

### FOREIGN SOURCED INCOME

Resident companies are subject to tax on their worldwide income, including foreign-sourced income and gains. However, double tax treaties may apply to reduce or extinguish the tax liability imposed under domestic tax law.

## EXIT TAX

As of 2019 an exit tax has been introduced, imposed both on Polish-resident companies and individuals changing their tax residence if the change results in income considered to be derived from unrealised gains. In particular:

- Transfer of assets (including an undertaking or part of an undertaking) provided that the asset is owned by the same entity;
- Transfer of tax residence (including cross-border company conversion);
- Transfer of a permanent establishment.

Exit tax is applicable on the transfer of the asset outside of the territory of Poland, as a result of which Poland may lose the whole or part of its taxing right to income from selling that asset, whereas the transferred asset shall continue to be owned by the same taxpayer.

The general exit tax rate is 19% while also a lower 3% rate is in place. The reduced rate applies to individuals when the tax value of an asset is not determined. For individuals there is also an exemption introduced if the total value of assets transferred does not exceed PLN 4,000,000.

The exit tax does not apply to temporary asset transfers (for a period not exceeding 12 months) under specific circumstances.

## INCENTIVES

### Special Economic Zones/Polish Investment Zone

Polish law provides for corporate income tax incentives, such as special economic zones (SEZs). SEZ will apply until the end of 2026. In principle, companies operating within special economic zones may enjoy tax holidays, which involve a tax exemption from corporate income tax within certain time limits. Investments in SEZs may be made subject to a permit issued by the authorities. Currently, the entire Polish territory is treated as a SEZ (so-called Polish Investment Zone).

The tax exemption can be granted to businesses carrying out investment projects that include:

- Setting-up of a new enterprise;
- Production capacity increase of existing enterprise;
- Introduction of new products or fundamental change in the overall production process.

Undertaking business activities within a Polish Investment Zone requires a special permit issued by the Minister of Economy – a decision on support. An administrative decision (permit) will be given for 10 to 15 years depending on the extent of public aid intensity in certain regions of Poland varying also according to specific investment criteria. In case a new permit would be issued for a company in an already existing SEZ it will be granted for 15 years.

In order to obtain the decision on support the company has to fulfil two types of criteria:

- Quantitative criteria, which represent the minimum value of eligible expenses and depend on the location of a new investment and size of the enterprise;
- Qualitative criteria, which depend on the type of investment (different criteria for industrial and service investments).

### Research & Development activities

The CIT Act also puts in place an additional deduction for qualifying expenses from the tax base (up to 100%) incurred for R&D activities. The entities with special R&D status are entitled to deduct from revenue up to 200% of R&D costs, while other companies can deduct up to 100% of costs spent for R&D. The CIT Act allows taxpayers obtaining revenue, other than revenue from capital gains, to deduct the costs involved in obtaining the revenues incurred for the purpose of research and development activities (referred to as “eligible costs”) from the taxable base.

The eligible costs include, inter alia, materials and raw materials directly related to research and development operations, acquisition of specialised equipment, costs of expert opinions, consultancy services, labour costs, etc.

The deduction amount may not exceed the amount of income obtained by the taxpayer from revenues during the tax year.

### Innovation Box

The IP Box – as R&D’s extension – is a mechanism introducing a preferential 5% tax rate applicable to income derived from intellectual property rights such as: patents, protection rights for utility model, rights from registration of industrial designs and topographies of integrated circuits, extensions of patent protection for medicinal products and plant protection products, rights for medical products or authorised veterinary products or plants and animal varieties, protected rights to computer programs (software).

The tax base subject to the preferential tax rate is calculated using a proper formula – based on the OECD recommendations (nexus approach) – included in the CIT Act. This formula rewards taxpayers who create or develop qualifying IP rights, on their own or with the help of unrelated entities. The more R&D activity the taxpayer undertakes by himself (or in cooperation with an unrelated party), the higher the amount of the relief the taxpayer is entitled to claim under the Innovation Box regime.

As of January 2022, taxpayers are allowed to apply to their tax calculation - connected with R&D activities - two reliefs simultaneously (i.e. IP Box and R&D relief).

### Relief for innovative employees

Entities conducting R&D activities and being payers of PIT have the right to deduct qualified costs connected with R&D activities (not deducted in an earlier year due to loss or insufficient income) from advance income tax payments from salaries of employees engaged in R&D activities.

The deduction applies to persons receiving remuneration under employment contracts or civil law contracts, as well as copyrights, and is limited to persons directly involved in performing R&D activities.

### Prototype relief

The relief grants an additional deduction from the tax base in the annual return of 30% of the costs incurred by taxpayers engaged in R&D activities for:

- trial production of a new product;

- introduction of a new product on the market, including obtaining certificates and permits.

The amount of the deduction cannot exceed 10% of the income earned from sources of income other than capital gains in a tax year.

### Relief for robotisation

The relief grants a deduction of 50% of the deductible costs incurred for robotisation. The amount of the deduction cannot exceed the amount of income earned by the taxpayer in the taxable year from income other than capital gains income.

The costs incurred for robotisation are considered to be the costs of acquiring brand new robots, machines and peripheral equipment, along with the cost of acquiring software and training for employees.

The deduction will be available from 2022 to 2026 for depreciation deductions.

### Relief for expansion

The relief grants the possibility of deducting up to PLN 1 million of costs incurred for the expenses related to expansion.

Eligible costs are those incurred for:

- participation in fairs;
- promotional and informational activities;
- adjustment of packaging.

### Consolidation relief

Under the consolidation relief, a taxpayer who is an entrepreneur may deduct from the taxable base certain expenses related to the acquisition of shares. The deduction cannot exceed the amount of the income earned by the taxpayer in the tax year (income other than from capital gains). Deduction is also limited up to PLN 250,000 in a tax year. Expenses are included in the annual tax return.

To qualify for the consolidation relief, certain conditions must be met regarding the status of the entities whose shares are acquired:

- company whose shares (stock) are acquired has its seat or management board in Poland or in another country with which Poland has a signed double tax treaty;
- main object of activity of the company whose shares are acquired is the same as the object of activity of the taxpayer or the activity of such company can be reasonably regarded as supporting activity;
- activity was conducted by the company and by the taxpayer for at least 24 months before the day the taxpayer acquired shares in it;
- during the two years before the date of acquisition the company and the taxpayer were not related entities;
- taxpayer in one transaction acquires shares of the company at an amount constituting an absolute majority of the voting rights.

The regulations also specify which expenses the taxpayer may include in the deduction, i.e. expenses for:

- legal services for the acquisition of shares and their valuation;
- notarial, court and stamp fees;
- taxes and other public and legal fees paid in Poland and abroad;

Excluded from expenses are the price paid for the shares acquired and debt financing costs incurred in connection with the transaction.

### IPO (Initial Public Offering) relief

The deduction is intended for Polish tax residents who intend to issue shares as part of an initial public offering (i.e. to take a company public by listing its shares on a stock exchange).

The relief grants a deduction from the taxable base (previously reduced by R&D, prototype, expansion and consolidation reliefs):

- expenses for preparing the prospectus to the amount of 150% of the costs,
- advisory, legal and financial services, for which a 50% deduction will be allowed, with a maximum limit of 50,000 PLN net.

### Relief for CSR

The tax relief is intended for all entrepreneurs who incur expenses related to corporate social responsibility.

It grants a deduction from the taxable base at an additional 50% of costs incurred for sports, cultural activities, higher education and science.



## HIDDEN DIVIDEND PROVISIONS

In January 2023, the so-called “hidden dividend” provisions are scheduled to go into effect. Under these provisions, taxpayers may be required to exclude from tax expenses certain payments made to a partner or related party to the extent they constitute a hidden dividend.

The occurrence of a hidden dividend presupposes that at least one of the following conditions is met:

1. the amount of the expense or the timing of the expense is in any way contingent on the taxpayer making a profit or the amount of that profit, or
2. a rational taxpayer would not incur such costs or would be able to incur lower costs in the case of providing a comparable service by an unrelated entity, where transfer pricing rules apply accordingly in determining the amount of such costs, or
3. the costs include remuneration for the right to use assets that were owned or co-owned by a partner or an entity associated with a partner before the taxpayer was created.

At the same time, the restrictions under afore-mentioned subsections (2) and (3) will not apply in case the sum of the costs incurred by the taxpayer in the tax year, constituting a hidden dividend under these provisions, is less than the amount of the gross profit, within the meaning of the accounting regulations, obtained in the tax year in which these costs are included in the financial result of the taxpayer.

## C. FOREIGN TAX RELIEF

Foreign-sourced income received by a resident company is included in its taxable base unless otherwise provided by a double tax treaty. Taxes paid abroad may be credited against the tax due. However, the amount of tax credit may not exceed the amount of domestic tax that would have been due on the income derived abroad, had it been derived in Poland.

## D. CORPORATE GROUPS

In accordance with the Corporate Income Tax Act, a “tax capital group” may be established and accordingly corporate tax is then due on the income of the group as a whole. Such a group can be established only by joint stock companies, simple joint stock companies and limited liability companies. The parent company must own at least 75% of the equity of each of the dependent companies. There are also other conditions which must be met to establish the ‘tax capital group’, such as:

- An average capital of all companies not lower than PLN 250,000;
- Capital group agreement period - minimum three years;
- Registration of the agreement with the tax office;
- No outstanding tax liabilities to state budget;
- All of the companies included in the group must be registered in Poland.

## E. RELATED PARTY TRANSACTIONS

**New conditions of documenting transactions:** On 1 January 2019 significant changes were introduced in Poland regarding the requirement to prepare transfer pricing documentation for controlled transactions with affiliated entities. The new transfer pricing rules have been set out in a new chapter 1a of the Corporate Income Tax (CIT) Act with effect from 1 January 2019 and they are applicable for transactions commencing after 31 December 2018.

According to the regulations, the requirement to prepare documentation does not depend on the income or costs of the taxpayer in a given financial year.

Taxpayers obliged to prepare such documentation are those whose conduct transactions with related entities whose value, reduced by VAT, exceeds the following documentary thresholds in the fiscal year:

- PLN 10,000,000 – in the case of a commodity transaction;
- PLN 10,000,000 – in the case of a financial transaction;
- PLN 2,000,000 – in the case of a service transaction;
- PLN 2,000,000 – in the case of other transactions.

Documentation has to include a description of business restructuring operations carried out by the taxpayer in a given tax year.

The obligation to prepare local transfer pricing documentation generally does not apply to controlled transactions concluded only by related entities having their place of residence, registered office or central management in the territory of the Republic of Poland, if each of these related entities jointly meet the following conditions in a fiscal year:

- not benefiting from a tax exemption;
- not benefiting from certain exemptions from tax;
- not suffering a tax loss;

As of January 2022, the list of transactions exempt from the documentation obligation has been expanded. The new regulations provide for, among others, an exemption from preparing local transfer pricing documentation for controlled transactions:

- covered by a tax or investment agreement;
- so-called pure re-invoicing;
- covered under the safe harbour provisions for low value-added services and a loan, credit or bond issuance.

Pursuant to the new regulations the threshold level for equity ties is still 25%. Companies without legal personality and their partners as well as a taxpayer and its foreign plant are also considered related entities.

**Extending the content of documentation:** The documentation includes the data indicated below.

**Local File:**

1. Information about a related entity includes:
    a) a description or scheme of the organisational structure of the related entity;
    b) a description of the management structure of a related entity;
    c) a description of the core activity of the related entity, including:
        - the subject of the business activity;
        - indication of geographical markets in which the related entity operates;
        - description of the industry and the market environment in which the entity operates, with an indication of the impact of economic and regulatory conditions and an indication of key competitors;
        - description of the economic strategy;
        - information on transfers of economically significant functions, assets or risks affecting the related entity, carried out in the financial year or the year preceding the financial year.
2. The description of transactions, including functions, risks and assets, should include:
    a) the subject and type of transaction, including the indication of relationships with other transactions;
    b) information about related entities involved in a controlled transaction;
    c) functional analysis of the parties to the transaction, including significant changes compared to the previous financial year;
    d) the method of calculation of transfer pricing, along with the adopted assumptions;

e) the value of transactions in the financial year, broken down into counterparties, resulting from:
   - invoices or contracts received or issued, or other documents, if invoices are not issued; and
   - payments received or forwarded;

f) agreements, intra-group agreements or other documents regarding transactions;

g) agreements or tax interpretations regarding transfer pricing concluded with or issued by tax administrations of countries other than the Republic of Poland, in particular prior to pricing agreements;

h) transfer pricing analysis including:
   - analysis of data of unrelated entities, transactions concluded with unrelated parties or between unrelated parties recognised as comparable to the conditions established in controlled transactions, referred to as “comparative analysis”; or
   - analysis demonstrating compliance of the conditions under which the controlled transaction was concluded with conditions that would be set by unrelated entities, referred to as “compliance analysis” - where comparative analysis is not appropriate in the light of a given transfer pricing method or it is not possible to maintain due diligence.

3. The description of financial data includes:
   a) approved financial statements for the financial year, if a related entity was obliged to prepare it on the basis of accounting regulations;
   b) description allowing the assignment of financial data concerning a controlled transaction to the items of the financial statements referred to in point a, or other information contained therein.
4. In case of transactions with an entity with tax residence in a tax haven or if the beneficial owner of payment has tax residence in a tax haven also information regarding the justification of economic purpose of the transaction, including:
   a) circumstances resulting in the obligation to prepare local transfer pricing documentation;
   b) a description of expected:
      - tax benefits, such as: failure to incur a tax liability, postponement or reduction in the amount of a tax liability, the creation or overstatement of a tax loss and the creation or overstatement of an overpayment or right to a tax refund;
      - other, quantifiable or non-quantifiable, economic benefits, such as increased pre-tax profitability of the business, increased labour productivity, enhanced competitive advantage, increased market share, increased recognition of the business, brand or product, and development of the functional characteristics of the business or product;
   c) other economic reasons for the transaction.

Unlike the previous legal state, a comparative analysis is a mandatory element of Local File documentation.

The new provisions regulate safe harbours, the use of which results in the price being regarded as the market price. The CIT Act regulates safe harbours for the following transactions:

- loans, credits and bonds;
- low value-added services.

The new provisions also regulate the possibility of transfer pricing adjustment after the end of the tax year.

**Master File:** Related entities who are consolidated using the full or proportional method, are required to attach to the local transfer pricing documentation also group transfer pricing documentation prepared for the financial year, if they belong to a group of related entities:

a) for whom consolidated financial statements are prepared;
b) whose consolidated income exceeded PLN 200 million or its equivalent in the previous financial year.

Group documentation should include information about a group of related entities to which the taxpayer belongs and includes the following elements:

a) description of the group;
b) description of significant intangible assets of this group;
c) description of significant financial transactions of this group;
d) financial and tax information of this group.

**Country-by-country reporting:** The largest Polish groups of companies (with consolidated income exceeding EUR 750 million) are obliged to draw up statements of income, tax paid, and places of business. Based on the published form, taxpayers have to provide a list of entities in the group, countries where they have their seats, their main business activity, tax paid and profit earned, the number of employees and fixed assets. Analogous statements are drawn up by groups of companies in other countries, while tax authorities will exchange this information pursuant to the OECD guidelines in this respect.

**Additional disclosure obligations (TP-R):** According to the new regulation, a taxpayer who prepared documentation is required to file an annual transfer pricing disclosure (Form TP-R). Form TP-R summarises a taxpayer’s transactions with related parties. Before filling out the form, it will be necessary not only to gather basic data on intragroup transactions, but also to analyse the taxpayer’s activity based on transfer pricing regulations. Reporting will cover information on controlled transactions, methods and transfer prices.

**Deadlines:** As of January 2022, the deadline for holding local transfer pricing documentation by related entities obliged to prepare it, has been extended and set at the end of the 10th month after the end of the fiscal year. From the beginning of 2022, the deadline for filing transfer pricing documentation to the head of the tax office was also extended and set at the end of the 11th month after the end of the tax year.

As of January 2022, the obligation to submit a separate statement on the preparation of local transfer pricing documentation to tax offices was cancelled. The statement is now an integral part of the transfer pricing documentation.

In the case of group documentation, the deadline for its inclusion in the local documentation expires at the end of the twelfth month after the end of the fiscal year.

After the abovementioned deadlines, taxpayers are obliged, at the authorities' request, to submit tax documentation (local or group) within 14 days of the date of being served with the request.

Effective 1 January 2021, the application of the arm's-length pricing and transfer pricing verification provisions was extended to transactions other than controlled transactions:

a) with an entity with tax residence in a tax haven;

b) if the beneficial owner has tax residence in a tax haven.

The documentation threshold for transactions with an entity having tax residence in a tax haven is PLN 100,000. For transactions where the beneficial owner has tax residence in a tax haven, the documentation threshold is PLN 500,000.

## CFC RULES

Polish taxpayers are subject to Polish tax on income earned by their CFCs even if the income is not distributed by the non-Polish company. The tax rate for such income is 19%.

A foreign entity could mean:

- legal person;
- limited company in organisation;
- organisational unit without legal personality other than company without legal personality;
- company without legal personality;
- foundation, trust or other fiduciary entity;
- tax capital group;
- separated (legally or organisationally) part of foreign entity,

which does not have its registered office or the management within Poland, in which the Polish taxpayer holds, individually or jointly with its affiliates or other taxpayers having their place of residence or seat or management in Poland, directly or indirectly, a share in the capital, a right to vote in the supervisory or decision-making bodies or a right to participate in profits.

Subsidiaries subject to CFC rules are those where:

- the Polish parent company holds at least a 50% share in income, voting rights or capital, directly or indirectly, solely or jointly with related entities or other taxpayers having their place of residence or seat or management in Poland; and
- minimum 33% of the income of the subsidiary is generated by passive income (e.g. from dividends, shares, copyrights, interest) or by specific services indicated in the CIT Act (inter alia legal or consulting services, leases, tenancies and others), and;
- the income tax actually paid by the entity is at least 25% lower than the corporate income tax that would be payable by the entity using a 19% tax rate if the entity were a CIT taxpayer.

As of January 2022, a foreign entity in which the Polish taxpayer holds, individually or jointly with related entities or with other taxpayers having their place of residence or registered office or management in Poland, directly or indirectly, more than 50% of the shares in the capital or more than 50% of the voting rights is also deemed to be a CFC (provided that other conditions set forth in the regulations are met).

Thus, if unrelated entities in the course of realising a joint investment project establish a company abroad, there may be an obligation to pay tax on CFC income in Poland.

Foreign companies may also be recognised as CFCs if they meet conditions relating to the level of control and the difference in taxation from that applicable in Poland:

- passive income will be lower than 30% of the sum of the value of certain assets held by this company (e.g. real estate, shares, shares in companies, intangible and legal assets) and at the same time
- assets will constitute at least 50% of the value of all assets of that company.

This category may apply to those Polish taxpayers whose foreign subsidiaries make investments in the early stages of development. In this case 8% of the value of the entity's assets will be recognised as income, even if the CFC does not generate any income.

Additionally, as of January 2022, a company that achieves "above-average" income, calculated according to a special formula (indicated in the CIT Act) relating to the rate of return on assets held, may also be considered a CFC.

Subsidiaries in tax havens are also treated as CFCs. The CFC provisions will not apply if the foreign corporation conducts genuine business activities.

Taxpayers are allowed to decrease the tax due in Poland by the amount of tax already paid abroad by the CFCs. The tax base constitutes the entire amount of income earned by the CFCs (including the passive income and the income earned on the actual business) that can be allocated to the Polish shareholders. The tax base is calculated proportionally to the period in which a particular taxpayer was a foreign entity's shareholder. If the CFCs are located in tax havens, the shareholders are to pay the tax on the whole amount of income earned by the CFCs (irrespective of their actual share in the income).

## F. WITHHOLDING TAX

For certain categories of income, the payer of income is obliged to withhold tax at source, file tax returns and submit the amount of tax withheld to the tax authorities.

The statutory rate of withholding varies from 10% to 20%, but it may be reduced or eliminated by the provisions of a Double Tax Treaty (DTT).

Foreign corporations are subject to withholding tax (WHT) on revenue earned within the territory of Poland:

1) from interest, copyright or related rights, rights to inventive designs, trademarks or ornamental designs, including the sale of those rights, compensation for disclosure of a secret of a recipe or production process, for use or right to use an industrial device, including means of transport, a commercial device or a scientific device, for information associated with industrial, commercial or scientific experience (know-how);

2) from fees for the provision of services related to artistic, entertainment or sport-related activities conducted by legal persons

having their registered office abroad, organised via natural persons or legal persons operating in the field of artistic, entertainment or sports events in the territory of the Republic of Poland;

3) for the provision of: advisory services, accounting services, market research services, legal services, advertising services, management and control, data processing, personnel recruitment services, guarantees and sureties and similar services

– shall be 20% of the revenue;

4) from fees due for transport of cargo and passengers from Polish ports by foreign commercial sea transport companies, except transit cargo and transit passengers;

5) by foreign air navigation companies, excluding revenue earned from scheduled passenger air transport services for which a passenger is required to have an air ticket – shall be 10% of the revenue;

6) from dividends and other revenue (income) arising from a share in the profits of legal persons having their registered office or management within the territory of Poland;

– shall be 19% of the revenue (income) earned.

The above provisions apply, unless double taxation treaties provide otherwise.

However, under the provisions implementing the EU Parent-Subsidiary Directive, dividend distributions by resident subsidiaries to their non-resident EU parent or EEA (European Economic Area) parent companies or resident parent company are exempt. In order to benefit from this regulation, the following conditions must be met:

- The resident parent company or EU parent or EEA parent company in receipt of the dividends must be subject to corporate income tax in Poland or the EU member country or EEA country on worldwide income and must not use an exemption to prevent it from being taxed on the dividends;
- The parent company must have owned at least 10% of the capital in the Polish company continuously for a period of at least two years.

The EU Interest and Royalties Directive was transposed into domestic law on 1 July 2005. As of 1 July 2013 the rate is 0%. In order to benefit from this regulation, the following conditions must be met:

- The payer must be a company which is resident in Poland or is resident in another EU member state and has a taxable permanent establishment in Poland;
- The payee must be a company, which is a tax resident in an EU Member State other than Poland;
- The company receiving the income must be subject to tax on its worldwide income;
- The Polish company must have owned at least 25% of the capital of the EU company continuously for a period of at least two years; or the EU company must have owned at least 25% of the capital of the Polish company continuously for a period of at least two years.

The tax exemption or the preferential rate does not apply in case of tax avoidance or abuse.

From 1 January 2019 “due diligence” requirements were introduced in polish law. Conditions for getting an exemption from WHT or applying the preferential rate are:

- Submitting the residence certificate issued by a state government of the taxable person;
- Determining the status of payee — so-called beneficial owner;
- Requirement of “due-diligence”.

According to the amendments, as of January 2022, the payer, as part of the due diligence procedure, should also take into account the links (within the meaning of the transfer pricing rules) between the participants in the transaction.

Accordingly, higher due diligence standards should be expected in case of payments between related parties than in relations between unrelated parties.

From January 2022, the definition of “beneficial owner” also changes. Now also an entity that is an intermediary obliged to transfer all or part of the receivable to another entity will not be considered as such.

In addition, when assessing whether an entity (beneficial owner) carries out a real economic activity, the nature and scale of the activity carried out by this entity with respect to the receivable received shall be taken into account

It is also worth mentioning that, as of January 2022, the taxpayer’s place of residence for tax purposes may be confirmed by a copy of the residence certificate, if the information arising from the submitted copy of the residence certificate does not raise reasonable doubts as to its accuracy. Previously, such a possibility occurred only in relation to payments for intangible services not exceeding an amount of PLN 10,000 to the same entity within a calendar year.

As of 1 January 2019, the principle of tax collection by the taxpayer depends on the amount of payments related to personal income tax. If a company makes a payment for the same PIT taxpayer exceeding an amount of PLN 2 million (approximately EUR 500,000) that company will always be obliged – as a tax remitter – to collect WHT on those payments and then the tax remitter, if having paid from his own resources and having borne the economic burden of that tax, or the taxable person may apply for a tax refund to the tax authorities (pay and refund mechanism).

The payment and refund procedure for payments exceeding PLN 2 million at the level of the same CIT taxpayer became effective from January 2022.

The above procedure was restricted only to related parties as defined in the transfer pricing regulations.

In addition, the mechanism for collecting the tax in question has been limited to payments of a passive nature, i.e. dividends, interest and royalties.

**Preference opinion**

The exemption opinion in place until the end of 2021 will be replaced by a preference opinion. Among other things, the possible scope of the opinion will change, as its new form, in addition to the exemptions provided for in EU directives, will be able to refer to preferential tax rates or exemptions resulting from a relevant double tax treaty. A request for issuance of an opinion will be submitted by both the taxpayer and the payer, however, what is noteworthy, the possibility for the payer to submit a request for

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issuance of an opinion on application of preferences will no longer depend on the economic burden of the tax incurred by him. The opinion on the application of preferences, just like its predecessor, should be issued by the tax authority within 6 months from the date of receipt of the application and is valid for 36 months from the date of its issuance. The opinion is subject to a fee of PLN 2,000. Transitional provisions also provide for the extension of the validity of opinions on the application of the exemption issued until the end of 2021 (in which case the validity expires on 1 January 2025).

**Tax remitter's statement**

Another possibility related to the tax remitter's actions when paying out withholding tax in the amount exceeding PLN 2 million is to submit a WH-OSP statement (regarding PIT) or WH-OSC statement (regarding CIT). Such a statement may be provided by the tax remitter before the payment is made and will result in the tax remitter being able to apply a tax reduction or tax exemption under Polish law or international agreements.

The tax remitter's statements may be submitted in electronic form to the tax office competent for the taxpayer before making the payment being subject to withholding tax or at the latest on the payment date and must be signed by all members of the Management Board.

The WH-OSC statement must confirm the following:

- the tax remitter holds documents required by provisions of law for application of a tax rate or an exemption or non-collection of tax arising from special provisions or from double tax treaties;
- statement that the tax remitter, after carrying out the verification, has no knowledge that would justify a suspicion that there are circumstances excluding the possibility of the application of tax rate or an exemption or non-collection of tax arising from special provisions or from double tax treaties.

**Tax refund request**

A taxpayer or tax remitter, if he has borne the economic burden of the tax, may recover the difference between the amount collected and the amount due by submitting a tax refund request.

- The tax refund request should include, among others, the following documents:
- the taxable person's residence certificate;
- confirmation of settlements with the counterparty;
- the taxable person's statement on fulfilment of the conditions for exemption;
- statement of the status of the beneficial owner of the receivable;
- confirmation that the foreign contractor carries out the actual economic activity;
- justification that the conditions subject to the claims are fulfilled.

The tax refund shall be made without undue delay, but not later than within 6 months from the date of receipt of the tax refund request.

## G. EXCHANGE CONTROL

With effect from 2003, most foreign exchange transactions are allowed by the Foreign Exchange Act, and do not require a special permit from the National Bank of Poland. Domestic persons doing business in Poland, which normally operates wholly in Zlotys, generally may hold foreign currency accounts for foreign receivables. Invoices and services purchased abroad may be paid in foreign currencies at the official exchange rate on the day that the payment is made or from their foreign currency accounts.



## H. PERSONAL TAX

Personal income tax is levied on the aggregate taxable income after the application of the personal allowance based on the following brackets applicable in 2022.

| Taxable income (PLN) | Tax (PLN/%) |
|---|---|
| Up to 120,000 | 17% minus tax-reducing amount of 5,100 |
| Over 120,000 | 15,300 + 32% of the surplus over 120,000 |

Taxpayers are obliged to file an annual tax return by 30th April of the following year. This obligation does not apply to taxpayers for whom the annual tax return is made by the tax collector. The submission of the tax return has to be accompanied by payment of the difference between the income tax due, as calculated in the tax return, and the sum of any tax paid in advance. The income tax arising from the tax return is the tax due for a given year, unless the tax office issues a decision establishing a different amount of tax due.

Individuals who receive inheritances or gifts are liable to tax for the portion they receive. Polish citizens and persons who are domiciled in Poland are also liable to this tax if the property received by them is located abroad. Gifts and inheritances of property located in Poland are exempt if neither party is a Polish citizen or domiciled in Poland. The rates are progressive depending on the category of taxpayer and value of property received and will vary from 3% to 20%.

From January 2022, it is no longer possible to deduct from income tax the health insurance contribution paid.

**Solidarity Tax**

Starting 1 January 2019 an additional tax has been implemented (apart from Personal Income Tax basic tax rates). Solidarity tax comes at a rate of 4%. The taxation base is the amount of taxable income surplus over PLN 1 million. The taxable income for purposes of this tax is calculated by adding taxable income from all sources (after including any deductibles if they apply for each source of income separately accordingly to other regulations).

Solidarity tax is calculated by the taxpayer and submitted (paid) by 30th April of the following year, which is also the date for submitting the tax form that includes those calculations to the tax authorities.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends[1] (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-treaty countries** | 19 | 20 | 20 |
| **Treaty countries:** | | | |
| Albania | 5/10 | 10 | 5 |
| Armenia | 10 | 5 | 10 |
| Australia | 15 | 10 | 10 |
| Austria | 5/15 | 5 | 5 |
| Azerbaijan | 10 | 10 | 10 |
| Bangladesh | 15/10 | 10 | 10 |
| Belarus | 10/15 | 10 | 0 |
| Belgium | 0/10 | 5 | 5 |
| Bosnia and Herzegovina | 15/5 | 10 | 10 |
| Bulgaria | 10 | 10 | 5 |
| Canada | 5/15 | 10 | 5/10 |
| Chile | 15/5 | 15 | 5/15 |
| China | 10 | 10 | 7/10 |
| Croatia | 5/15 | 10 | 10 |
| Cyprus | 0/5 | 5 | 5 |
| Czech Republic | 5 | 5 | 10 |
| Denmark | 0/5/15 | 5 | 5 |
| Egypt | 12 | 12 | 12 |
| Estonia | 5/15 | 10 | 10 |
| Ethiopia | 10 | 10 | 10 |
| Finland | 5/15 | 5 | 5 |
| France | 5/15 | 0 | 5/10 |
| Georgia | 10 | 8 | 8 |
| Germany | 5/15 | 5 | 5 |
| Greece | 19 | 10 | 10 |
| Hungary | 10 | 10 | 10 |
| Iceland | 15/5 | 10 | 10 |
| India | 10 | 10 | 15 |
| Indonesia | 10/15 | 10 | 15 |
| Iran | 7 | 10 | 10 |
| Ireland | 0/15 | 10 | 10 |
| Israel | 5/10 | 5 | 5/10 |
| Italy | 10 | 10 | 10 |
| Japan | 10 | 10 | 10 |
| Jordan | 10 | 10 | 10 |
| Kazakhstan | 10/15 | 10 | 10 |
| Korea (South) | 5/10 | 10 | 5 |
| Kuwait | 5/0 | 0/5 | 15 |
| Kyrgyzstan | 10 | 10 | 10 |
| Latvia | 5/15 | 10 | 10 |
| Lebanon | 5 | 5 | 5 |
| Lithuania | 5/15 | 10 | 10 |
| Luxembourg | 0/15 | 5 | 5 |
| Malaysia | 0 | 15 | 15/(–) |
| Malta | 0/10 | 5 | 5 |
| Mexico | 5/15 | 5/15 | 10 |
| Moldova | 5/15 | 10 | 10 |
| Mongolia | 10 | 10 | 5 |
| Montenegro | 5/15 | 10 | 10 |
| Morocco | 7/15 | 10 | 10 |

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| | Dividends[1] (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Netherlands | 5/15 | 5 | 5 |
| New Zealand | 15 | 10 | 10 |
| North Macedonia | 5/15 | 10 | 10 |
| Norway | 0/15 | 5 | 5 |
| Pakistan | 15/19 | 20 | 15/20 |
| Philippines | 10/15 | 10 | 15 |
| Portugal | 10/15 | 10 | 10 |
| Qatar | 5 | 5 | 5 |
| Romania | 5/15 | 10 | 10 |
| Russia | 10 | 10 | 10 |
| Saudi Arabia | 5 | 5 | 10 |
| Serbia | 15/5 | 10 | 10 |
| Singapore | 5/10 | 5 | 2/5 |
| Slovak Republic | 0/5 | 5 | 5 |
| Slovenia | 5/15 | 10 | 10 |
| South Africa | 5/15 | 10 | 10 |
| Spain | 5/15 | 0 | 10 |
| Sri Lanka | 15 | 0 | 0/10 |
| Sweden | 5/15 | 0 | 5 |
| Switzerland | 15 | 5 | 5 |
| Syria | 10 | 10 | 18 |
| Taiwan | 10 | 10 | 3/10 |
| Tajikistan | 5/15 | 10 | 10 |
| Thailand | 19 | 10 | 5/15 |
| Tunisia | 5/10 | 12 | 12 |
| Turkey | 10/15 | 10 | 10 |
| Ukraine | 5/15 | 10 | 10 |
| United Arab Emirates | 5 | 5 | 5 |
| United Kingdom | 0/10 | 5 | 5 |
| United States | 5/15 | 0 | 10 |
| Uzbekistan | 5/15 | 10 | 10 |
| Vietnam | 10/15 | 10 | 10/15 |
| Zimbabwe | 10/15 | 10 | 10 |

NOTES:

1. Different treaty rates may apply depending on whether the dividend is received by a company or an individual, or the participation percentage in the Polish company held by the recipient of the dividend. It is important to consult the relevant treaty for further details.

## PORTUGAL

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Lisbon / Oporto/Madeira | José Parada Ramos | +351 213 182 720<br>paradaramos@pkf.pt |

### BASIC FACTS

| | |
|---|---|
| Full name: | Portuguese Republic |
| Capital: | Lisbon |
| Main languages: | Portuguese |
| Population: | 10.14 million (2022 estimate) |
| Monetary unit: | 1 Euro (EUR) = 100 cents |
| Internet domain: | .pt |
| Int. dialling code: | +351 |

## KEY TAX POINTS

- Resident corporations are subject to Portuguese corporate income tax (CIT) on their worldwide income. Non-resident companies with a permanent establishment in Portugal are liable for CIT on the income attributable to that permanent establishment.
- Foreign-sourced income, gross of tax paid abroad, is included in taxable income. A unilateral credit for foreign income tax suffered can be set off against the Portuguese corporate income tax.
- Group taxation is available where all companies in the group are resident in Portugal. The parent company must hold, directly or indirectly, at least a 75% shareholding in the remaining companies of the group.
- The standard rate of VAT is 23%. In addition, an intermediate rate of 13%, and a reduced rate of 6% are applicable to a range of goods and services.
- Transfer pricing legislation enables the tax authorities to make corrections to taxable income when the conditions (and prices) agreed between related parties are different from those that would have been agreed and accepted between independent entities (arm's length principle).
- Resident individuals are subject to income tax on their worldwide income whilst non-residents are liable to income tax only on income sourced in Portugal. There is a special tax regime for non-habitual resident taxpayers.
- Social security is due on remunerations at a 23.75% rate for the employer and 11% for the employee. An additional 1% contribution is due by the employer for the unemployment Compensation Fund.

## A. TAXES PAYABLE

### COMPANY TAX: GENERAL REGIME

Resident corporations are subject to corporate income tax (CIT) on their worldwide income. Resident companies are those which have their head office or place of effective management in Portugal.

Non-resident companies with a permanent establishment in Portugal are liable for CIT on the income attributable to that permanent establishment. A non-resident company having no permanent establishment in Portugal is taxed on the following types of income sourced in Portugal: rental income, capital gains, dividends, services, interest and royalties.

The taxable profit is subject to a 21% tax rate. Companies qualifying as small and medium-sized enterprises are taxed at 17% on the first EUR 25,000 of taxable income (for companies situated in the interior region of the country the rate is 12,5%). A municipal surcharge of up to 1.5% is also levied on the taxable profit amount.

An additional state surcharge is levied at the following progressive rates:

| Taxable income (EUR) | Tax rate |
|---|---|
| First 1.5 million | 0% |
| From 1.5 million to 7.5 million | 3% |
| From 7.5 million to 35 million | 5% |
| Over 35 million | 9% |

Certain expenses, such as costs related to vehicles and non-documented expenses, are subject to an autonomous taxation at rates varying from 5% (e.g. travel and kilometres allowances) to 50% (confidential expenses). These rates are increased by an additional 10% in the years where a company has incurred tax losses (this increase does not apply to the initial year of activity and to the subsequent year). The 2021 State Budget includes a transitory provision that provides for the non-application of said increase for the 2020 and 2021 tax periods, subject to certain conditions.

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The tax year usually coincides with the calendar year (1 January to 31 December). However, different tax years may be adopted. Tax is payable by the end of the fifth month following the end of the tax year – generally 31st of May.

Payments on account of the final tax liability are due in July, September and December of the respective tax year. Such payments are computed by applying the following percentages to the previous tax year's CIT liability, net of any tax withheld at source, depending on the taxpayer's turnover, as follows:

- Three instalments of 26.67% each (total 80%) – for taxpayers with turnover up to EUR 500,000;
- Three instalments of 31.67% each (total 95%) – for taxpayers with turnover exceeding EUR 500,000.

Permanent establishments of non-resident companies are taxed at the rates applicable to resident companies. The tax rate for non-resident companies having no permanent establishment obtaining Portuguese-sourced income is 25%, except for entities which are resident in a listed offshore jurisdiction in which case the rate may rise up to 35%.

### CAPITAL GAINS TAX

Worldwide capital gains obtained by resident companies are included in their taxable income.

### BRANCH PROFITS TAX

All income attributable to a Portuguese branch (permanent establishment) is subject to corporate tax. No tax is imposed on the eventual remittances of profits from the branch to the head office.

### VALUE ADDED TAX (VAT)

As a member of the European Union, Portugal has adopted VAT which is a sales tax levied on the supply of goods and services as well as on the import of goods from non-EU countries into Portugal (for VAT purposes, Portugal includes Azores and Madeira islands), and acquisition of goods from other EU Member States. The standard rate is 23%. In addition, an intermediate rate of 13% and a reduced rate is 6% is applicable to a range of goods and services. The standard, intermediate and reduced VAT rates in the Azores are 18%, 9% and 4%, and in Madeira 22%, 12% and 5%, respectively.

## FRINGE BENEFITS TAXATION

In general, benefits provided to employees are added to their remuneration and taxed as such. There are, however, some exceptions, such as lunch allowances, travel allowances and the use of a car (provided such use is not formally agreed in the employment contract).

## OTHER TAXES

## STAMP TAX

Stamp tax is due on several documents, acts and transactions, which occur or are presented for legal purposes in Portugal and are not subject to or exempt from VAT. The rates may be set in specific amounts or on a percentage basis.

Among others, stamp tax is due on the following transactions/acts:

| Tax base | Tax rate (%) |
|---|---|
| Real Estate Transfer | 0.8 |
| Loans (on the principal) | |
| - Current account, undetermined term or term less than one year | 0.04 per month or fraction |
| - Term for one year or more | From 0.5 to 0.6 |
| Guarantees | |
| - Term less than one year | 0.04 per month or fraction |
| - Term from one year and less than five years | 0.5 |
| - Undetermined term and term for five years or more | 0.6 |
| Transactions by Financial Institutions | |
| - Interest and commissions charged | 4 |
| - Commissions on banking guarantees | 3 |
| - Commissions on insurance brokerage | 2 |
| Insurance premiums | From 3 to 9 |
| Letting or sub-letting (on one-month rent) | 10 |
| Sale of business as going concern | 5 |
| Social gambling prizes exceeding EUR 5,000 | 20 |

Some stamp tax exemptions apply on the above listed transactions/acts, depending on the fulfilment of certain conditions.

## REAL ESTATE MUNICIPAL TAX

The owners of real estate located in Portugal as at 31 December of each year are subject to the annual Real Estate Municipal Tax (REMT).

The applicable tax rate for rural properties is 0.8% and for urban properties the tax rates vary between 0.3% and 0.45%, both on the tax registration value. A 7.5% rate applies when the real estate is owned by a resident entity of an offshore jurisdiction, as defined in a 'blacklist' published by the Finance Ministry (not for individuals) and also entities dominated or controlled, directly or indirectly, by an entity that has a tax domicile in a country/region considered offshore.

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## ADDITIONAL REAL ESTATE TAX

Owners of real estate located in Portugal, intended for residential purposes and land for construction (regardless of the purpose of the construction) are subject to an Additional Real Estate Tax. The taxable basis corresponds to the sum of the tax registration value of all residential properties and land for construction held by each taxpayer, reported as per 1 January of each year. For individuals a tax exemption applies up to a taxable basis of EUR 600,000.

The tax rate for individuals varies from 0.7% to 1.5% and for entities it is 0.4%. A 7.5% rate applies when the real estate is owned by a resident entity of an offshore jurisdiction, as defined in a 'blacklist' published by the Finance Ministry (not for individuals). An exemption applies if the property was exempt from (or not subject to) REMT in the preceding year.

## MUNICIPAL REAL ESTATE TRANSFER TAX

The Municipal Real Estate Transfer is levied on the transfer of real estate and is normally due by the acquirer. This tax is levied on the higher of the purchase price or the tax registration value (tax value appraised by the tax authorities).

The tax rates vary according to the type of use of the real estate:

i. From 0% to 6% in case of residential real estate up to EUR 574,323; 6% between EUR 574,323 and EUR 1,000,000; above EUR 1,000,000 a rate of 7,5% is applicable.
ii. 6.5% in case of other urban real estate such as retail, offices or land for construction; and
iii. 5% in case of rural land.

A 10% rate applies when the purchaser of the property is a resident of a black-listed offshore jurisdiction, and also entities dominated or controlled, directly or indirectly, by an entity that has a tax domicile in a country/region considered offshore. Transactions which are subject to this tax are exempt from VAT.

## B. DETERMINATION OF TAXABLE INCOME (CIT)

General regime: Taxable income is calculated by adjusting the accounting profits from non-taxable income and non-deductible expenses. As a general principle, costs are only deductible when necessarily incurred with the purpose of producing taxable income.

## DEPRECIATION AND AMORTISATION

Tangible fixed assets and intangible assets can be depreciated/amortised for tax purposes. The depreciation rates are set by specific legislation and include 2% for office buildings and 5% for industrial buildings. No depreciation is allowed on land. The normal method of calculation is the straight-line basis, but the declining-balance method may be used except for items such as buildings, machinery, cars and office furniture. The acquisition cost of intangible assets with no limited period of exclusive use, acquired from 2014 onwards, may be tax depreciated over 20 years (not applicable for the depreciation of Intangible assets acquired from related parties, or for goodwill included in the acquisition of shares).

Depreciation is not allowed regarding investment properties that are accounted for using the fair value method. Nevertheless, for tax purposes they may be tax depreciated over the maximum period of the useful lifetime of the real estate, i.e. at 1%. The taxable basis for tax depreciation corresponds to the acquisition/construction cost, disregarding any fair value variations.

## STOCKS / INVENTORY

Inventory must normally be valued at the effective cost of acquisition or production (historic cost). Other methods which may be adopted include:

- The standard cost method, which must be calculated in accordance with the appropriate technical and accounting principles;
- The sale price method based on the market value less a normal profit margin.

## CAPITAL GAINS AND LOSSES

Capital gains (or losses) are calculated as the difference between the sales proceeds and the acquisition cost which may be updated using official inflation coefficients. If the proceeds of the sales are reinvested in other assets, 50% of the gain obtained (net of the related losses) will be excluded from taxation. For this purpose, reinvestments made in the preceding year, in the year of sale and in the two subsequent years will be taken into account. This is applicable to tangible, intangible and biological assets. Investment properties do not benefit from this regime, although recognized for accounting purposes as tangible fixed assets.

When only part of the consideration is reinvested, only the corresponding part of the gain qualifies for the relief.

Generally, gains derived from the disposal of shares are not subject to taxation, if, among others, the participation has been held for at least 1 year and corresponds to a minimum of 10% of the share capital in the participated company. Gains derived from the disposal of shares in which the value of real estate, directly or indirectly held, represents more than 50% of the assets (except for real estate attributable to an agricultural, industrial or commercial activity which does not consist in the acquisition and disposal of real estate) are subject to taxation.

As a general rule, gains obtained by non-resident entities from the disposal of shares are exempt from tax, except for entities resident in listed offshore jurisdictions. However, some exceptions apply, whereby capital gains are taxed at the rate of 25% for corporations:

- Gains realized by non-resident entities on the sale of shares in a company resident in Portugal whose assets are attributable for more than 50% to real estate located in Portugal. Some double tax treaties signed by Portugal override this rule and give the right to tax those gains solely to the state of residence of the seller.
- Gains resulting from the transfer of share capital or similar rights in any entity (non-resident in Portuguese territory), when, at any moment during the previous 365 days, the value of those shares or rights consist, directly or indirectly, in more than 50% of real estate located in Portugal (except if attributable to an agricultural, industrial or commercial activity which does not consist in the acquisition and disposal of real estate).

## DIVIDENDS



There is a full participation exemption on dividend payments between Portuguese resident companies when the recipient of the dividends is a company that has held a participation of not less than 10% of the share capital of the distributing company for a minimum period of one year. If such conditions are not met, the dividend amount is subject to taxation. Subject to some additional conditions, this full participation exemption is also available for dividends derived from non-resident companies.

Dividends paid to non-resident shareholders are normally subject to withholding tax at 25% (or at the treaty rate if applicable). When the parent company is resident of an EU Member State or on a territory with which Portugal has signed a Double Tax Treaty, and has held a participation of at least 10% for one year in the share capital of the Portuguese company distributing the dividends, no withholding tax shall apply provided the company receiving the dividend is subject to one of the taxes listed in the Parent-Subsidiary Directive, or, in case of non-EU shareholders, at a nominal rate of no less than 60% of the Portuguese CIT rate.

## INTEREST DEDUCTIONS

The deductibility of net financing costs is limited to the higher of:

- EUR 1 million; or,
- 30% of the tax EBITDA.

The tax EBITDA is based on the taxable income or tax loss that is not exempt, adjusted by the net financial expenses as well as the depreciations and amortisations that are tax deductible.

The net financial expenses are calculated as the balance of borrowing expenses and financing revenue, both subject to and not exempt from taxation will be relevant.

Non-deductible net borrowing expenses may be deducted in the following five years, provided the total financial costs (costs of the year plus costs carried forward) do not exceed the above limits.

Financial expenses that are not deductible because of the limitation may be carried forward for a period of 5 tax years. Moreover, if the financial costs are below 30% of the EBITDA, the amount of the limit that was not used may be carried forward to offset financial costs of the following 5 tax years.

This limitation applies to all types of financing (banks, intra-group, domestic and foreign financing). However, this limitation is not applicable to banks and other financial institutions.

## TAX LOSSES

From 2017 onwards, losses incurred by resident companies, or by a branch of a non-resident company, may be carried forward to be offset against taxable profits for five years. If these entities are certified as small or medium-sized enterprises, this period is extended to twelve years. However, companies are only allowed to deduct tax losses up to 70% of the taxable profits in any given period. No deduction is allowed if the ownership of 50% or more of the share capital has changed, compared to the year in which the losses were incurred, unless the change of ownership is justified by special economic relevance and the deduction is accepted by the tax authorities.

Due to Covid-19, tax losses calculated in the taxation periods 2020 and 2021 the deduction is of 12 subsequent tax periods. The deduction limit provided is also increased to 80%, when the difference results from deducting losses tax calculated in the 2020 and 2021 tax periods.

As a result of Covid-19, an extension of the tax losses carry-forward period (from 5 to 12 years) regarding losses computed in financial years 2020 and 2021 has been introduced as well as an increase in the allowed loss offset from 70% of the taxable income to 80% for losses computed in covered financial years, and the suspension of the carry-forward period for the tax losses available as from 1 January 2020 during financial years 2020 and 2021.

Tax loss carry-back is not allowed.

## FOREIGN SOURCED INCOME

Resident companies are taxed on their worldwide income.

## COLLECTIVE INVESTMENT VEHICLES (INVESTMENT FUNDS)

Investment funds are subject to CIT at the general rate (currently 21%). However, both securities and real estate funds, are exempt from tax on income derived from their "core business" (capital gains, rental income and investment income).

Income obtained by foreign investors regarding distributions and gains arising from the redemption of participations units or shares in the fund are taxed as follows (i) securities funds – exempt; (ii) real estate funds – taxed at a 10% final tax rate.

Additionally, funds are subject to stamp tax on their global net value on a quarterly basis at a rate of 0.0025% for the securities funds and 0.0125% for real estate funds.

## INCENTIVES

Incentives under Portuguese tax legislation include: the free-trade zones of Azores and Madeira; investment tax credits; incentives for small companies; and tax credits for research and development investments.

## C. FOREIGN TAX RELIEF

Foreign-sourced income, gross of tax paid abroad, is included in taxable income. A unilateral credit for foreign income tax suffered can be offset against Portuguese CIT. Portugal's tax treaties also apply the ordinary credit method. The tax credit is restricted to the lower of:

- The income tax paid abroad;
- The Portuguese income tax chargeable on that foreign income, net of related expenses.

## D. CORPORATE TAX GROUP

Companies meeting certain conditions can choose to be taxed on a group basis. Among other conditions:

- All companies in the Tax Group are resident in Portugal;
- The parent company must hold, directly or indirectly, at least 75% in the remaining companies of the group. The 75% control can be held either by a Portuguese company or by a parent company resident in another EU State.

Under this regime, the taxable income of the group is computed by summing up the taxable income and losses of the companies included in the group.

## E. RELATED PARTY TRANSACTIONS

Transfer pricing legislation enables the tax authorities to make corrections to taxable income when the conditions (and prices) agreed between related parties are different from those that would have been agreed and accepted upon by independent entities. Taxpayers with an operating revenue equal to or above EUR 10 million, and intra-group transactions exceeding EUR 100,000 per counterpart and EUR 500,000 globally, must keep a documentation set to support the transfer pricing policy within the group.

## F. WITHHOLDING TAX

Certain types of earnings are subject to withholding tax rates generally at a 25% rate and in case of payments made to a listed offshore jurisdiction the withholding tax rate is 35%. The withholding tax rate may be reduced if there is a double tax treaty in force with the country of the beneficiary of the income.

## G. EXCHANGE CONTROL

There are no exchange control regulations.

## H. PERSONAL TAX

Income tax is payable by individuals on income obtained from employment, a business activity or independent profession, investment income, immovable property, capital gains and pensions. Resident individuals are subject to income tax on their worldwide income while non-residents are liable to income tax only on income sourced in Portugal. Tax residence is determined by physical presence in Portugal for more than 183 days, consecutive or not, during any period of 12 months. Having remained for less time, residence is also determined by having a place of abode in a way that may lead to the supposition of an intention to keep and occupy it as a habitual home/ residence.

When determining the taxable income, certain tax credits are allowed in addition to some specific deductions concerning each category of income. These include a percentage of expenses incurred on health, education and family overheads.

Husbands and wives living together, and their dependent children, may choose to be taxed on their joint income. Normally, the tax year coincides with the calendar year but may be split in situations of partial fiscal residence. Nonetheless, whenever a taxpayer has two different tax residence statuses (resident and non-resident) in the same tax year, they may be obliged to submit a tax return for each residence status.

Special rules apply for the calculation of gains on immovable property, shares or other corporate rights, securities and patents. Exempt income includes various employment allowances (up to certain limits); special tax regimes for youngsters or working students; a portion of pension income; capital gains from the sale of the habitual private residence when the proceeds are reinvested in another private residence.

Tax returns can only be submitted via the internet during a period running from 1 April until 30 June of the subsequent tax year for all taxpayers, regardless of the source of income. The following progressive tax rates apply to the aggregate net results of employment income, business income, investment income (if subject to a final withholding tax), income from land, capital gains and pension income:

| Taxable income (EUR) | Marginal rate on excess over lower limit (%) | Average rate on lower limit (%) |
|---|---|---|
| Up to 7,112 | 14.5 | 14.5 |
| 7,113 – 10,732 | 23 | 17.367 |
| 10,733 – 20,322 | 28.5 | 22.621 |
| 20,323 – 25,075 | 35 | 24.967 |
| 25,076 – 36,967 | 37 | 28.838 |
| 36,968 – 80,882 | 45 | 37.613 |
| Over 80,882 | 48 | |

In addition, a surtax (“solidarity tax”) of 2.5% applies on the part of the income exceeding EUR 80,000 while on the part of the income exceeding EUR 250,000, a 5% rate applies:

| Taxable income (EUR) | Tax Rates (%) |
|---|---|
| From 80,000 to 250,000 | 2.5 |
| In excess of 250,000 | 5 |

Domestic income may be subject to withholding tax. In most cases, tax withheld from residents represents a payment on account of the recipient’s ultimate tax liability. In other cases, such as interest on bank deposits or dividends the tax withheld represents the final tax, but the individuals have an option to include such income in the tax return, in which case the withholding tax will be treated as a payment on account.

### Special Tax Regime for Non-Habitual Residents

A special tax regime for non-habitual residents is available. Individuals becoming tax residents and who have not been resident in Portugal for tax purposes for the past five years may apply for being covered by this regime. Under this regime, certain foreign-sourced income, such as investment income and capital gains may be exempt from taxation in Portugal, if certain conditions are met, for a period of 10 years. In addition, non-habitual residents may benefit from a reduced tax rate of 20% on Portuguese-sourced employment and self-employment income, if derived from high value-added activities performed in Portugal. Such professions are listed in Ministerial Order 230/2019 and defined, based on the Portuguese Classification of Professions, as certain professions such as (among others) architects, journalists, designers, geologists, IT consultants, biologists and life science experts, university lecturers, hotel directors, creative artists, doctors, dentists and stomatologists. Pension income obtained abroad is also taxed at a reduced rate of 10% for new applications.



### Special Tax Regime for Former Residents returning to Portugal in 2019 or in 2020

This special tax regime applies to individuals that did not qualify as tax residents during the three years prior to their return but qualified as tax residents in Portugal prior to 31 December 2015 and did not apply for the special tax regime for non-habitual residents.

For qualifying individuals, 50% of employment income or professional/self-employed income is excluded from taxation for a five-year period between 2019 and 2023 or between 2020 and 2024, depending on the first year of residence.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The following table is for general guidance only and reflects the lower of the treaty rate and the rate under domestic tax law. The rates are applicable to payments by Portuguese companies to non-residents under the treaties currently in force.

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies[2] (%) | | |
| **Domestic rates** | | | | |
| Companies | 25/35[1] | 0 | 0/25/35[3] | 0/25/35[4] |
| Individuals | 0/28/35 | -- | 28/35 | 25/35 |
| **Treaty countries:** | | | | |
| Algeria | 15 | 10 | 0/15 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies[2] (%) | | |
| Andorra | 15 | 5 | 10 | 5 |
| Angola[5] | 15 | 8 | 10 | 8 |
| Austria | 15 | 15 | 10 | 5/10 |
| Bahrain | 15 | 10 | 10 | 5 |
| Barbados | 15 | 5 | 10 | 5 |
| Belgium | 15 | 15 | 15 | 10 |
| Brazil | 15 | 10 | 15 | 15 |
| Bulgaria | 15 | 10 | 0/10 | 10 |
| Canada | 15 | 10 | 0/10 | 10 |
| Cape Verde | 10 | 10 | 0/10 | 10 |
| Chile | 15 | 10 | 5/10/15 | 5/10 |
| China | 10 | 10 | 10 | 10 |
| Colombia | 10 | 10 | 10 | 10 |
| Croatia | 10 | 5 | 10 | 10 |
| Cuba | 10 | 5 | 0/10 | 5 |
| Cyprus | 10 | 10 | 10 | 10 |
| Czech Republic | 15 | 10 | 0/10 | 10 |
| Denmark | 10 | 0 | 0/10 | 10 |
| Estonia | 10 | 10 | 10 | 10 |
| Ethiopia | 10 | 5 | 10 | 5 |
| France | 15 | 15 | 10/12 | 5 |
| Georgia | 10 | 5 | 0/10 | 5 |
| Germany | 15 | 15 | 10/15 | 10 |
| Greece | 15 | 15 | 15 | 10 |
| Guinea-Bissau | 10 | 10 | 10 | 10 |
| Hong Kong | 10 | 5 | 10 | 5 |
| Hungary | 15 | 10 | 0/10 | 10 |
| Iceland | 15 | 10 | 0/10 | 10 |
| India | 15 | 10 | 0/10 | 10 |
| Indonesia | 10 | 10 | 10 | 10 |
| Ireland | 15 | 15 | 0/15 | 10 |
| Israel | 15 | 5 | 10 | 10 |
| Italy | 15 | 15 | 0/15 | 12 |
| Ivory Coast | 10 | 10 | 10 | 5 |
| Japan | 10 | 5 | 5/10 | 5 |
| Korea (South) | 15 | 10 | 0/15 | 10 |
| Kuwait | 10 | 5 | 10 | 10 |
| Latvia | 10 | 10 | 10 | 10 |
| Lithuania | 10 | 10 | 10 | 10 |
| Luxembourg | 15 | 15 | 10/15 | 10 |
| Macau | 10 | 10 | 0/10 | 10 |
| Malta | 15 | 10 | 10 | 10 |
| Mexico | 10 | 10 | 0/10 | 10 |
| Moldova | 10 | 5 | 10 | 8 |
| Montenegro | 10 | 5 | 10 | 5/10 |
| Morocco | 15 | 10 | 12 | 10 |
| Mozambique | 10 | 10 | 0/10 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies[2] (%) | | |
| Netherlands | 10 | 0 | 0/10 | 10 |
| Norway | 15 | 5 | 10 | 10 |
| Oman | 15 | 5/10 | 10 | 8 |
| Pakistan | 15 | 10 | 0/10 | 10 |
| Panama | 15 | 10 | 10 | 10 |
| Peru | 15 | 10 | 10/15 | 10/15 |
| Poland | 15 | 10 | 0/10 | 10 |
| Qatar | 10 | 5 | 10 | 10 |
| Romania | 15 | 10 | 0/10 | 10 |
| Russia | 15 | 10 | 0/10 | 10 |
| San Marino | 15 | 10 | 10 | 10 |
| Sao Tome and Principe | 15 | 10 | 10 | 10 |
| Saudi Arabia | 5/10 | 5 | 0/10 | 8 |
| Senegal | 10 | 5 | 0/10 | 10 |
| Singapore | 10 | 10 | 0/10 | 10 |
| Slovak Republic | 15 | 10 | 10 | 10 |
| Slovenia | 15 | 5 | 10 | 5 |
| South Africa | 15 | 10 | 10 | 10 |
| Spain | 15 | 10 | 15 | 5 |
| Switzerland | 15 | 0/5 | 10 | 5 |
| Tunisia | 15 | 15 | 15 | 10 |
| Turkey | 15 | 5 | 10/15 | 10 |
| Ukraine | 15 | 10 | 0/10 | 10 |
| United Arab Emirates | 15 | 5 | 10 | 5 |
| United Kingdom | 15 | 10 | 10 | 5 |
| United States | 15 | 5 | 0/10 | 10 |
| Uruguay | 10 | 5 | 10 | 10 |
| Venezuela | 10 | 10 | 0/10 | 10/12 |
| Vietnam | 15 | 5/10 | 0/10 | 7.5/10 |

Notes:

1. Dividends (other than stock dividends) paid to a non-resident company without a permanent establishment in Portugal are subject to a 25% final withholding tax. A 35% withholding tax applies to (i) dividends paid to accounts held on behalf of non-identified third parties and (ii) dividends paid or made available to persons resident in a black-listed jurisdiction without a permanent establishment in Portugal.
2. Under Portuguese domestic law implementing the provisions of the EU Parent-Subsidiary Directive, outbound dividends and other profit distributions by Portuguese subsidiaries to their parent companies may be exempt from withholding tax. To qualify for the withholding tax exemption, the non-resident parent company must (i) be resident in an EU Member State or a resident country that has signed a tax treaty with Portugal (ii) be subject to, and not exempt from, corporate income tax, provided that the tax rate is not less than 60% of the applicable general CIT rate (i.e. 12.6% for 2019) (iii) maintain a direct holding of at least 10% in the share capital or voting rights of the Portuguese subsidiary and (iv) have maintained the holding continuously for at least 1 year prior to the date of distribution. Distributions within a holding period of less than 1 year qualify for the relief, provided that the parent company maintains the holding until the 1 year requirement is met. Reduced withholding tax rates on dividends (qualifying companies) are also available under the treaties with non-EU member states, subject to certain conditions and participations.
3. Interest payments to non-resident companies are generally subject to a 25% final withholding tax. A 35% withholding tax applies to (i) interest paid to accounts held on behalf of non-identified third parties and (ii) interest paid or made available to persons resident in a black-listed jurisdiction without a permanent establishment in Portugal. The EU Interest and Royalties Directive precludes any taxation on interest and royalty payments to associated EU companies. Two companies are associated companies if (a) one of them has a direct minimum holding of 25% in the capital of the other or (b) a third EU company has a direct minimum holding of 25% in the capital of the two companies. The relevant companies must have a legal form listed in the Annex of the Directive and be subject to a corporate income tax. A minimum holding period of 2 years is required.
4. Royalties (including payments in respect of know-how, leasing of equipment and technical assistance) are generally subject to a 25% final withholding tax. A 35% withholding tax applies to royalties paid or made available to persons resident in a black-listed jurisdiction without a permanent establishment in Portugal. For the EU Interest and Royalties Directive, see footnote 3.
5. A double tax treaty between Portugal and Angola came into force on 22 August 2019, effective in Angola as from 31 December 2019 and in Portugal as from 1 January 2020. This treaty is the first one signed by Angola with a European country and the only one already in force.

# PUERTO RICO

## CORRESPONDENT FIRM

| City | Name | Contact Information |
|---|---|---|
| Trujillo Alto | Edwin E. Torres | +1 787 400 9548<br>+1 904 763 8670<br>etorres@pkfpuertorico.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Commonwealth of Puerto Rico |
| Capital: | San Juan |
| Main languages: | Spanish and English |
| Population: | 2.73 million (2022 estimate) |
| Monetary unit: | United States Dollar |
| Internet domain: | .pr |
| Int. dialling code: | +1 787 |

## KEY TAX POINTS

- The corporate income tax rate is a basic 18.5% rate (for tax years commencing after 31 December 2018) plus an additional graduated surcharge ranging from 5% to 19%.
- Capital gains are subject to a 20% tax rate.
- A resident foreign corporation deriving less than 80% of its income from Puerto Rico activities is subject to a 10% branch profits tax, instead of the 10% withholding tax on dividends.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

## COMPANY TAX

Companies organised in Puerto Rico are subject to Puerto Rican tax on their worldwide income. Non-resident companies are only subject to tax on income from sources within Puerto Rico.

The corporate income tax rate is a basic 18.5% rate (for tax years commencing after 31 December 2018) plus an additional graduated surcharge ranging from 5% to 19%.

**Alternative minimum tax (AMT)**

AMT is applied at a 30% rate on alternative minimum net income and may be reduced by the AMT credit for foreign taxes paid.

For tax years commencing after 31 December 2018, the AMT for taxpayers with business volumes not exceeding USD 3 million will be the greater of USD 500 or 18.5% of the alternative minimum net income. In the case of taxpayers with business volumes exceeding USD 3 million or more the AMT rate will be 23%.

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## CAPITAL GAINS TAX

Capital gains are subject to a 20% tax rate.

## BRANCH PROFITS TAX

A resident foreign corporation deriving less than 80% of its income from Puerto Rico activities is subject to a 10% branch profits tax, instead of the 10% withholding tax on dividends. This is determined annually at the time the income tax return is submitted. Branch profits tax is due even when an annual dividend has not been paid.

## SALES TAX / VALUE ADDED TAX (VAT)

Sales and Use Tax (SUT) is levied on the sale and use of tangible personal property, taxable services, and admission rights in Puerto Rico. The SUT standard rate is 10.5% at state level plus an additional 1% at municipal level.

A reduced 4% rate applies for designated professional services and B2B services.

## B. DETERMINATION OF TAXABLE INCOME

The gross income of a corporation generally includes business income, profits from the sale of property, interest, dividends, and income derived from any source, unless specifically exempted by law.

A corporation's net income is generally calculated in accordance with the method used for financial statement purposes, except for various items of income and expenses, which are treated differently.

## DEPRECIATION

A reasonable depreciation allowance is deductible for the exhaustion, wear and tear, and obsolescence of property used in business. The most common depreciation method used by corporations is the straight-line method. Nevertheless, any other consistent method may be used in lieu of the straight-line method as long as it is in accordance with the recognised trade practice.

### STOCK / INVENTORY

In general, inventory is valued at the lower of cost or market. Retail merchants can use the retail method of accounting.

### INTEREST DEDUCTIONS

Interest expense is deductible without limitation. However, interest expenses related to exempt income are not deductible. If interest is paid to a non-Puerto Rico resident related party, a 29% withholding at source applies. If the 29% withholding is not withheld, no deduction is available.

### LOSSES

For net operating losses (NOLs) incurred in taxable years commencing after 31 December 2004 and before 1 January 2013, they may be carried forward to the subsequent 12 taxable years. For taxable years commencing after 31 December 2012, NOLs may be carried forward to the subsequent 10 taxable years. For tax years commencing after 31 December 2012, but before 1 January 2015, the amount of NOLs allowed to be carried forward will be limited to 90% of net income. For taxable years commencing after 31 December 2014, the amount will be limited to 80% of net income. No carry-back is allowed. For taxable years commencing after 31 December 2018, the taxable income limitation is increased to 90% of net income.

## C. FOREIGN TAX RELIEF

Puerto Rico provides a foreign tax credit for the amount of income and excess profits taxes imposed by the United States of America (i.e. federal and state taxes paid) and foreign countries. For purposes of the foreign tax credit, the term “income and excess profits taxes” includes a tax paid in lieu of these taxes.

The credit is allowed for foreign taxes incurred but limited to the equivalent Puerto Rican tax on the foreign-source portion of the taxable income.

## D. CORPORATE GROUPS

There is no consolidated return treatment.

## E. WITHHOLDING TAX

- Dividends paid by resident companies to non-resident companies not engaged in a trade or business in Puerto Rico are subject to a 10% withholding tax. Subject to certain conditions, a 7% withholding tax applies for certain dividends received by non-resident companies derived from industrial development income;
- Interest on related party loans (if the non-resident company is a related person of the debtor) received by non-resident companies not engaged in a trade or business in Puerto Rico is subject to a 29% withholding tax on the gross amount. Interest received by non-resident companies not engaged in trade or business in Puerto Rico, for loans other than related party loans, is generally not subject to withholding tax;
- Royalties received by a non-resident company that is not engaged in a trade or business in Puerto Rico are subject to a 29% withholding tax on the gross amount.

## F. PERSONAL TAX

The tax rates are as follows:

| Net taxable income (USD) | Tax Payable (USD) |
|---|---|
| Not over 9,000 | Nil |
| Over 9,000, but not over 25,000 | 7% of the excess over USD 9,000 |
| Over 25,000, but not over 41,500 | USD 1,120 plus 14% of the excess over USD 25,000 |
| Over 41,500, but not over 61,500 | USD 3,430 plus 25% of the excess over USD 41,500 |
| Over 61,500 | USD 8,430 plus 33% of the excess over USD 61,500 |

## G. TREATY AND NON-TREATY WITHHOLDING TAX RATES

There are no tax treaties between foreign countries and Puerto Rico.

# QATAR

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Doha | Tareq Ayoub | +974 4493 5196<br>tareq.ayoub@pkf.com.qa |

## BASIC FACTS

| | |
|---|---|
| Full name: | State of Qatar |
| Capital: | Doha |
| Main languages: | Arabic, English |
| Population: | 2.97 million (2022 estimate) |

| | |
|---|---|
| Monetary unit: | Qatari Riyal (QAR) |
| Internet domain: | .qa |
| Int. dialling code: | +974 |

## KEY TAX POINTS

- An annual tax shall be imposed on the taxpayer's taxable income derived from sources in the State during the previous taxable year. A flat 10% rate applies.
- There is no sales tax, estate tax or gift tax in Qatar.
- Subject to the provisions of tax agreements, payments made to non-residents with respect to activities not connected with a permanent establishment in the State shall be subject to a final withholding tax of 5%.
- There are no personal taxes, social insurance or other statutory deductions from salaries and wages paid in Qatar. However, income arising from business activities (rent from property, consulting, etc.) is taxable.

## A. TAXES PAYABLE

The income tax system and filing procedure in Qatar is covered by Law No. 24 of 2018. An annual tax shall be imposed on the taxpayer's taxable income derived from sources in the State during the previous taxable year. Notwithstanding the provisions of the previous paragraph, the tax shall be imposed on:

(1) Bank interest and returns realised outside the State provided that they are derived from amounts resulting from the activity of the taxpayer in the State; and,

(2) Commissions due under agency, brokerage or commercial representation agreements accrued outside the State in respect of activities carried on in the State.

Income derived from the State shall include

(1) Gross income derived from an activity carried on in the State;

(2) Gross income derived from contracts wholly or partly performed in the State;

(3) Gross income from real estate situated in the State including the sale of shares in companies or partnerships the assets of which consist mainly of real estate situated in the State;

(4) Gross income from shares in companies resident in the State or listed on its stock markets;

(5) Consideration for services paid to head offices, branches or related companies;

(6) Interest on loans obtained in the State;

(7) Gross income from the exploration, extraction or exploitation of natural resources situated in the State; and,

(8) Gross income subject to tax in the State under a double taxation agreement.

Article 37 of the 2019 Executive Regulations addresses reporting requirements. The reporting requirements generally apply to all service and supply contracts completed by government authorities, companies, associations, philanthropic foundations, and individual enterprises.

(1) Contracts with non-residents that do not have a permanent establishment in Qatar are required to be reported regardless of their value.

(2) Contracts with residents or non-residents that have a permanent establishment in Qatar are required to be reported if the contract value is equal to or greater than QAR 200,000 for service contracts OR QAR 500,000 for supply contracts.

The taxpayer must submit a notification to the General Tax Authority within 30 days of the effective date of the contract.

## TAX EXEMPTIONS

Notwithstanding other tax exemptions provided for under special laws or international agreements or under the provisions of Article 35 of tax law No. 24 of 2018, the following items of income shall be exempt from tax:

(1) Bank interest and returns due to natural persons other than those carrying on a taxable activity in the State, whether or not resident in the State;

(2) Interest and returns on public treasury bonds, development bonds and public corporation bonds;

(3) Capital gains on the disposal of real estate and securities derived by natural persons provided that the real estate and securities disposed of are not part of the assets of a taxable activity;

(4) Capital gains from revaluation of assets used as in-kind contribution to the capital of a public company provided the shares are at nominal value and are not sold for five years;

(5) Dividends and other income from shares if the amounts distributed during a taxable year were taken from profits that were:

  (a) Subject to the tax under this law; or,

  (b) Distributed by a company the income of which is exempt from tax under this law or other laws.

(6) Gross income from handcraft activities that do not use machines provided that the gross income does not exceed QAR 200,000 per year, the average number of employees does not exceed three during the taxable year and the activity is carried on in one single establishment, in accordance with the limits and conditions provided for in the executive regulations of this law;

(7) Gross income from agricultural and fishing activities not connected with any industrial or commercial activities;

(8) Gross income of non-Qatari air and sea transport companies operating in the State, subject to reciprocity;

(9) Gross income of Qatari natural persons resident in the State;

(10) Gross income of legal entities resident in the State and wholly owned by Qatari nationals who reside in the state;

(11) Portion of the profit of legal entities resident in the State where said portion is attributed to:

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(a) Qatari natural persons;
(b) Legal entities wholly owned by Qatari nationals;
(c) Legal entities partially owned by Qatari nationals limited to share in profit of the Qatari nationals.

This provision shall not apply to profits of State-owned companies, whether in whole or in part, directly or indirectly, engaged in petroleum operations and petrochemical industries.

(12) Gross income from private organisations registered in the State or in another state engaged in non-profit activities;
(13) Non-Qatari investor's share in profit of companies listed on stock exchange. This exemption does not apply to the profits of the subsidiaries to the listed companies;
(14) Non-Qatari investor's share in profit of investment funds listed on stock exchange;
(15) Non-Qatari investor's share in profit resulting from trading of all securities, including investment fund units, listed on stock exchange.

## ACCOUNTING PERIOD

The accounting period of a taxpayer who carries on an activity shall be the calendar year. However, the taxpayer may, after obtaining the approval of the Department, adopt an accounting period that is different from the calendar year in accordance with the provisions of the executive regulations of this law. The accounting period of a taxpayer shall be 12 months, subject to the following:

(1) Where the taxpayer starts the activity after the beginning of the taxable year, the accounting period shall start from the date of the beginning of the activity.
(2) The first accounting period may not be less than six months nor more than 18 months. In all cases, the tax shall be calculated on the taxable income of the actual accounting period.
(3) Where the activity is liquidated, the accounting period shall run from the end of the previous accounting period until the end of liquidation.
(4) Where the activity is ceased, assigned or sold, the accounting period shall run from the end of the previous accounting period until the date of cessation, assignment or sale.
(5) Where the taxpayer carries on a temporary activity the period of which does not exceed 18 months, the accounting period shall be the period of activity.

The taxpayer shall determine the taxable income on accrual basis in commercial accounting in accordance with international accounting standards, and subject to the provisions of this law and its executive regulations. The taxpayer may not use another method of accounting, except upon the approval of the Department.

## OTHER TAXES

There is no sales tax, estate tax or gift tax in Qatar.

Excise tax was introduced beginning of January 2019 with the promulgation of Law No. 25 of 2018 which imposes taxes on certain health-damaging goods. The new excise law covers the following goods and applicable tax rates:

(1) Tobacco and tobacco derivatives – 100%;
(2) Carbonated drinks or aerated beverage such as cola and soda derivatives, and concentrates, powder, gel or extracts intended to be made into an aerated beverage – 50%;
(3) Energy drinks containing stimulant substances such substances can include caffeine, taurine, ginseng and guarana (except coffee, tea and alcoholic beverages) – 100%; and
(4) Special purpose goods that are consumed under specific conditions and authorisations – 100%.



## B. DETERMINATION OF TAXABLE INCOME

Taxable income shall be determined on the basis of the gross income derived from all transactions carried out by the taxpayer after subtracting allowable deductions and losses provided for in Tax Law No. 24 of 2018. Allowable deductions mean expenses and costs incurred by the taxpayer that satisfy the following requirements:

(1) They are necessary to derive the gross income;
(2) They are actually incurred and supported by documentary evidence;
(3) They do not increase the value of fixed assets used in the activity;
(4) They are related to the taxable year.

Allowable deductions include mainly the following, in accordance the Executive Regulations of the Tax Law No. 24 of 2018:

(1) Costs of raw materials, consumables and services required for carrying on the activity;
(2) Interest on loans used in the activity;
(3) Salaries, wages, end of services benefits and similar payments including contributions to set up retirement pensions or end of service payments or contributions to investment funds for the employees;
(4) Rents;
(5) Insurance premiums;
(6) Bad debt expenses;
(7) Provisions set up by banks for doubtful debts and by insurance companies for risks covered up to 10% of the net income before making this deduction and the other deductions provided below;
(8) Depreciation of fixed assets;
(9) Entertainment, hotel, restaurant food, vacations, club subscriptions and customer gifts expenses provided their value does not exceed (2%) two percent of total net income before this deduction is made or QAR 500,000, whichever is higher. However, out of state expenses are capped at QAR 500,000;

(10) Donations, gifts, aids and subscriptions to charitable, humanitarian, scientific, cultural or sporting activities paid in the State to governmental authorities, public bodies or institutions or any other authorized body in the State, provided that their value does not exceed (3%) three percent of the net income before making this deduction and the deduction provided below;

(11) Taxes and duties other than the income tax provided for in this law.

Notwithstanding the provisions of the previous paragraph, persons carrying on a liberal profession may opt to deduct 30% of their gross income in lieu of all their deductible expenses and costs. The following expenses and costs may not be deducted:

(1) Expenses and costs incurred to derive exempt income;

(2) Payments that are made in breach of the laws of the State;

(3) Fines and penalties for the breach of the laws of the State;

(4) Expenditures or losses in respect of which compensation is receivable or has been received if that compensation has not been included in the taxpayer's gross income;

(5) The share of total expenditures on entertainment, hotel accommodation, restaurant meals, vacations, club fees and gifts to customers, in accordance with the circumstances, conditions and limits provided for in the Executive Regulations of this law;

(6) Salaries, wages and similar remuneration including fringe benefits paid to the owner, his/her spouse and children, members of a general or limited partnership or the director of a limited liability company who owns, directly or indirectly, the majority of the shares of the company;

(7) The share of the branch in the headquarters' or head office's general and administrative expenses that exceeds the percentage determined in the executive regulations of this law;

(8) Agents commission of foreign companies that exceeds the percentage determined in the executive regulations of this law;

(9) Any other disallowed deduction pursuant to the provisions of this law.

The taxpayer may deduct losses incurred during a taxable year from the net income of subsequent years, subject to the following:

(1) Losses may not be carried forward for more than five years as of the end of the taxable year during which they are incurred;

(2) Losses resulting from an exempt or non-taxable source of income may not be deducted.

## DEPRECIATION OF ASSETS

The following rules shall be taken into consideration when computing the depreciation of assets:

(1) The cost of asset under depreciation: The cost of asset means all the expenses incurred by the tax-payer in order to acquire the asset and to prepare it to become usable;

(2) The method of depreciation: The fixed instalment method shall be followed in determining the charge, of annual depreciation for the asset according to the rates stated in the following paragraph;

(3) Depreciation rates: The depreciation is calculated as a result of use or ordinary damage arising from the use of asset or by lapse of time in accordance with the specific rates of the following table:

| Assets | Maximum |
|---|---|
| **Intangible assets** | |
| Pre-activity expenses | 50% |
| Capitalised research and development expenses | 20% |
| Trademarks, patents and the likes | 15% |
| **Fixed Assets** | |
| 1. Building and facilities excluding land value | |
| Buildings such as offices, houses, warehouses, hospitals and clubs | 5% |
| Light prefabricated buildings | 10% |
| Roads and bridges railways, and electrified railways | 5% |
| Storage tanks, pipelines and ports' ducts | 5% |
| Refinery machines and pipelines (inside the refinery) and small tanks | 10% |
| Networks and channels | 5% |
| 2. Transportation | |
| Means of transporting goods and people including cars, vehicles, tractors, trailers, cranes and motorcycles. | 20% |
| Ships and boats | 10% |
| Airplanes and rafts | 20% |
| Rail and electrified transport | 10% |
| 3. Machinery, equipment and fixtures | |
| Computer equipment | 33.33% |
| Electrical equipment | 20% |
| Industrial machines, equipment and supplies | 20% |
| Public works and construction machinery and equipment | 20% |
| Drilling instruments | 15% |
| Air conditioners | 25% |
| People or cargo elevators and moving runways | 15% |
| Furniture and office furniture | 15% |
| Gas equipment, transport and distribution | 5% |

| Assets | Maximum |
|---|---|
| Equipment for the production, transmission and distribution of electricity and water | 5% |
| Machinery, equipment and other supplies | 15% |
| 4. Hotels, motels, resorts, restaurants, cafes and rest rooms | |
| Cooking and washing machines | 20% |
| Glass eating pots | 50% |
| Other eating utensils | 25% |
| Furniture, furnishings and decoration | 25% |
| Swimming pools and their supplements | 15% |

## HEAD OFFICE CHARGES

Charges of a general or administrative nature raised by a head office of a foreign entity on its Qatar branch are allowed as a deduction subject to a ceiling of 3% of turnover less subcontract costs. In the case of banks, the limit is 1%. The allowable ceiling for insurance companies is set at 1%.

## TAX RATE

The tax rate shall be 10% of the taxable income of the taxpayer during the taxable year. Notwithstanding the provisions of the previous paragraph, the tax rate shall be as follows:

(a) The rate of tax provided for in agreements to which the Government, the Ministries or other governmental bodies or public bodies or enterprises are a party, which are concluded before the entry into force of this law, shall apply. If such agreements do not specify a tax rate, the tax shall be levied at the rate of 35%.

(b) The tax rate and all other tax conditions provided for in agreements relating to oil operations as defined in Law No. 3 of 2007 concerning the exploitation of natural wealth and their resources shall apply provided that, in all cases, the tax rate shall not be less than 35%.

(c) Law No. 24 of 2018 expanded the coverage of the above to include the petrochemical industries.

## C. WITHHOLDING TAX

Subject to the provisions of double tax treaties, payments made to non-residents with respect to activities not connected with a permanent establishment in the State shall be subject to a final withholding tax of 5% of the gross amount of royalties and technical fees, interest, commissions, brokerage fees, director's fees, attendance fees and any other payments for services carried out wholly or partly in the State.

Payments subject to withholding tax are considered paid after 12 months from the payment due date, and the 5% withheld tax will be due.

## D. TRANSFER PRICING

Qatar's General Tax Authority published Executive Regulations relating to the implementation of Income Tax Law No. 24 of 2018, which included transfer pricing provisions. The Executive Regulations, published on 11 December 2019, are effective as from 12 December 2019. However, transfer pricing requirements were published on 2 February 2021.

The Executive Regulations contain specific transfer pricing compliance and documentation requirements for entities in Qatar. Specifically, Qatar-based entities with related party transactions equalling or exceeding QAR 10 million of revenue or total assets are required to file a Transfer Pricing disclosure by the tax return filing deadline. Those entities should prepare and maintain information on the related party transactions based on the OECD recommendations as this information may be requested by the General Tax Authority.

On 30 September 2021, the Tax Authority issued a decision requiring resident entities and permanent establishments to submit more detailed transfer pricing information if they undertake cross-border related party transactions and have a turnover or total assets exceeding QAR 50 million during the financial year.

## E. PERSONAL TAX

There are no personal income taxes, social insurance or other statutory deductions from salaries and wages paid in Qatar. However, income arising from business activities (rent from property, consulting, etc) is taxable.

## F. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 0[1] | 0[1] | 5 | 5 |
| Individuals | 0 | -- | 5 | 5 |
| **Treaty countries:** | | | | |
| Albania | 0/5 | 0/5 | 0/5 | 6 |
| Algeria | 0 | 0 | 0 | 5 |
| Argentina | 15 | 10 | 12 | 10 |
| Armenia | 10 | 5 | 5 | 5 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Austria | 0 | 0 | 0 | 5 |
| Azerbaijan | 7 | 7 | 7 | 5 |
| Barbados | 0 | 0 | 0 | 5 |
| Belarus | 5 | 5 | 5 | 5 |
| Bosnia - Herzegovina | 0 | 0 | 7 | 7 |
| Brunei | 0 | 0 | 0 | 5 |
| Bulgaria | 0 | 0 | 3 | 5 |
| China | 10 | 10 | 10 | 10 |
| Croatia | 0 | 0 | 0 | 10 |
| Cuba | 10 | 5 | 10 | 5 |
| Cyprus | 0 | 0 | 0 | 5 |
| Ecuador | 10 | 0/5 | 10 | 10 |
| France | 0 | 0 | 0 | 0 |
| Georgia | 0 | 0 | 0 | 0 |
| Greece | 5 | 5 | 5 | 5 |
| Guernsey | 0 | 0 | 0 | 5 |
| Hong Kong | 0 | 0 | 0 | 5 |
| Hungary | 0 | 5 | 0 | 5 |
| India | 10 | 5 | 10 | 10 |
| Indonesia | 10 | 10 | 10 | 5 |
| Iran | 7.5 | 5 | 10 | 5 |
| Ireland | 0 | 0 | 0 | 5 |
| Isle of Man | 0 | 0 | 0 | 5 |
| Italy | 15 | 5 | 5 | 5 |
| Japan | 10 | 5 | 0/10 | 5 |
| Jersey | 0 | 0 | 0 | 5 |
| Jordan | 10 | 10 | 5 | 10 |
| Kazakhstan | 10 | 5 | 10 | 10 |
| Kenya | 10 | 0/5 | 10 | 10 |
| Korea (Rep.) | 10 | 10 | 10 | 5 |
| Kyrgyzstan | 0 | 0 | 0 | 5 |
| Latvia | 0/5 | 0 | 0/5 | 5 |
| Lebanon | 0 | 0 | 0 | 0 |
| Luxembourg | 5/10 | 0 | 0 | 5 |
| Malaysia | 10 | 5 | 5 | 8 |
| Malta | 0 | 0 | 0 | 5 |
| Mauritius | 0 | 0 | 0 | 5 |
| Mexico | 0 | 0 | 5/10 | 10 |
| Monaco | 0 | 0 | 0 | 5 |
| Morocco | 10 | 5 | 10 | 10 |
| Nepal | 10 | 10 | 10 | 15 |
| Netherlands | 10 | 0 | 0 | 5 |
| North Macedonia | 0 | 0 | 0 | 5 |
| Norway | 15 | 5 | 0 | 5 |
| Pakistan | 10 | 5 | 10 | 10 |
| Panama | 6 | 0/6 | 6 | 6 |
| Philippines | 15 | 10 | 10 | 15 |
| Poland | 5 | 5 | 5 | 5 |
| Portugal | 10 | 5 | 10 | 10 |
| Romania | 3 | 3 | 3 | 5 |
| Russia | 5 | 5 | 5 | 0 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| San Marino | 0 | 0 | 0 | 5 |
| Senegal | --[2] | --[2] | --[2] | --[2] |
| Serbia | 10 | 5 | 10 | 10 |
| Seychelles | 0 | 0 | 0 | 5 |
| Singapore | 0 | 0 | 5 | 10 |
| Slovenia | 5 | 5 | 5 | 5 |
| South Africa | 10 | 5 | 10 | 5 |
| Spain | 5 | 0 | 0 | 0 |
| Sri Lanka | 10 | 10 | 10 | 10 |
| Sudan | --[2] | --[2] | --[2] | --[2] |
| Switzerland | 15/10 | 0/5 | 0 | 0 |
| Syria | 5 | 5 | 10 | 18 |
| Tunisia | 0 | 0 | --[2] | 5 |
| Turkey | 10 | 5 | 10 | 10 |
| Ukraine[3] | 10 | 0/5 | 5/10 | 5/10 |
| United Kingdom | 0/15 | 0/15 | 0 | 5 |
| Venezuela | 10 | 5 | 5 | 5 |
| Vietnam | 12.5 | 5 | 10 | 5/10 |
| Yemen | 0 | 0 | 0 | 9 |

Notes:

1. Dividends paid to non-resident companies are not taxed when paid out of profits that where subject to tax or are exempt from tax under a Qatari law.
2. No limitation under the tax treaty so domestic law applies.
3. Effective date: 1 January 2020.

## ROMANIA

### MEMBER FIRMS

| City | Name | Contact Information |
|---|---|---|
| Bucharest | Florentina Susnea | +40 21317 3190<br>florentina.susnea@pkffinconta.ro |
| Timisoara | Carmen Mataragiu | +40 25620 1175<br>carmen.mataragiu@econometrica.pkf.ro |

### BASIC FACTS

| | |
|---|---|
| Full name: | Romania |
| Capital: | Bucharest |
| Main languages: | Romanian |
| Population: | 19 million (2022 estimate) |
| Monetary unit: | New Romanian Leu (RON) / Euro (EUR) |
| Internet domain: | .ro |
| Int. dialling code: | +40 |

### KEY TAX POINTS

- Corporate income taxes are chargeable on resident companies as well as non-resident companies with a permanent establishment in Romania and on foreign legal entities resident in Romania according to the place of effective management.
- Capital gains are generally treated as ordinary business income and taxed accordingly.
- Residents and non-residents owning more than one building are subject to real estate tax.
- Dividends paid to non-resident companies are subject to withholding tax, subject to some exceptions. Generally dividends paid by resident companies to other resident companies are tax exempt.
- Transactions between legally related parties are subject to arm's length requirements for tax purposes. Starting from 2016 proper transfer pricing documentation is mandatory for large taxpayers.

- There is no concept of group tax relief. Profits and losses cannot be transferred between related parties. Starting from 2022, profit taxpayers will be allowed to set up fiscal groups in which the profits and losses generated by the members will be aggregated.
- The standard VAT rate is 19%, while also reduced rates of 9% and 5% apply to certain goods and services.
- Residents, and certain non-residents are subject to individual income tax on their worldwide income and capital gains.
- The obligation to transmit the standard fiscal control file (SAF-T) through the Informative Declaration D406 becomes effective for each category of taxpayers.
- The Standard Audit File for Tax (SAF-T) is an international standard for the electronic exchange of accounting data between taxpayers and tax authorities. This standard was developed by the Organization for Economic Co-operation and Development (OECD) in 2005. Informative Statement D406 (SAF-T) is an electronic file, based on a .XML file type, internationally standardised for sending tax reports, from taxpayers to tax authorities.

## A. TAXES PAYABLE

## NATIONAL AND OTHER TAXES

### COMPANY TAX

The following entities are subject to corporate income tax in Romania:

- Legal entities registered in accordance with Romanian law;
- Foreign legal entities doing business in Romanian through permanent establishments;
- Foreign legal entities resident in Romania according to the place of effective management;
- Foreign legal entities which derive income from or in connection with real estate transactions or from transactions with participations in Romanian legal entities;
- Companies with a registered office in Romania incorporated in accordance with EU legislation.
- Foreign legal persons resident in a third State that operate in Romania through one or more elements treated as permanent establishments, in relation to situations involving non-uniform treatment or hybrid elements or non-uniform treatment of the tax residence.
- Tax-transparent entities, in respect of situations involving the existence of non-uniform treatment of inverted hybrid items.

Romanian residency is determined based on the location of the head office or place of effective management. The standard corporate income tax rate is 16%, payable quarterly by the 25th of the following month with a final adjustment for year-end. Starting from 2021, the deadlines for submitting the final tax return and paying the tax have been extended until 25th June included of the following year for taxpayers paying corporate tax, income tax on micro-enterprises, as well as the specific tax.

For taxpayers with an amended fiscal year, the annual income tax return should be submitted no later than 25th included of the sixth month following the end of the amended fiscal year.

However, certain categories of corporate income taxpayers are required to submit the tax return to the tax authorities and pay the final tax by 25th March of the following year and by 25th February of the following year respectively.

Resident banks, credit institutions and other similar legal entities as well as Romanian branches of foreign-based banks are liable for quarterly advance payments of the annually determined corporate income tax.

Starting 1 January 2017 all income derived from hotel and restaurant businesses is taxed according to a specific tax regime based on different indicators such as the town rank where the unit is established, its surface and its seasonality coefficient, irrespective of whether a profit is registered or not. This particular system replaces the regularly applicable corporate income tax regime.

Another applicable tax regime is for micro-companies, i.e. entities that meet the following conditions:

- They have generated income of up to EUR 1,000,000 during the past tax year;
- They are privately owned; and
- They are not dissolved, followed by liquidation, registered in the trade register or before court.

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Depending on whether the company has at least one full time employee, the flat income tax rate applicable to generated turnover can be at either 1% (1 or more employees) or 3% (no employees).

The tax year coincides with the calendar year. The law allows for motivated changes in respect to a company's tax year provided they are affiliates of a non-resident company applying a different tax year than the calendar one (i.e. to follow the same regime as the parent company).

Companies may choose an annual corporate income tax system whereby quarterly payments are also required. This system must be applied for at least two consecutive years once adopted and a prior notification to the tax authorities is mandatory. However, some categories are exempted from the application of these provisions, namely:

- Newly established companies;
- That have registered a tax loss in the previous year;
- That been temporarily suspended;
- That have had no activity either at the registered or at the subsidiary office; and
- That have been registered as a micro-company.

### BRANCH PROFIT TAX

Foreign entities are generally subject to income tax in Romania, provided that the income was derived from Romania. This is determined based on the type of activities it has undertaken in Romania and whether they are indeed related to Romania. Income derived from Romanian established branches, permanent establishments or representative offices of foreign entities shall also be subject to Romanian corporate income tax.

Branches have to be registered with the Romanian tax authorities. The registration, filing and payment requirements are similar to those imposed on a Romanian company. A distribution of funds to the head office is not treated as a dividend distribution and no withholding tax liability should arise (no branch remittance tax). However, profits are transferred at year-end, after the head office approves the financial statements of the branch. The taxable profits of the branch are subject to general Romanian tax rules, provided that the following conditions are met:

- Taxable income shall consist only of that income which can be assigned to the branch;
- Expenses deducted shall consist only of those expenses incurred in relation to the branch's activity.

A permanent establishment is not necessarily a legal entity but is taxable in Romania. The income obtained by a permanent establishment is taxable in Romania, provided that it is recognized as the place through which the activity of a non-resident is conducted, fully or partially, directly or through a dependent agent. Once a permanent establishment is created, the profits of the foreign enterprise derived from the activity performed by the permanent establishment may be taxed in Romania.

A representative office may only conduct auxiliary or preparatory activities. A representative office cannot trade in its own name and cannot engage in any commercial activity. Any representative office registered in Romania is subject to a RON 18,000 yearly tax. The payment of rep office tax has been changed from two instalments to a single instalment, which is due by the end of February of the tax year.

Representative offices are obliged to keep accounting records in accordance with Romanian legislation.

## VALUE ADDED TAX (VAT)

Companies with an annual turnover of at least RON 300,000 must register for VAT purposes. Companies with a turnover below this threshold may register upon request.

The general VAT rate is 19%, while a 9% VAT rate is applicable to various goods and services such as:

- Food including non-alcoholic beverages destined for human as well as for animal consumption;
- Medicine and certain medical products such as prosthetics;
- Supply of fertilisers and pesticides used in agriculture; seeds and other agricultural products intended for sowing or planting;
- Water supply and sewerage services as well as the supply of water for irrigation in agriculture.

Additionally, a 5% VAT rate is applied to:

- The sale of property carried out as part of the country's social policy; as from 2019 with a maximum utility surface area of 120 m², with a property value, including the related land, not exceeding RON 450,000 except for VAT and the procurement is done by individuals.
- Starting from 1 January 2022, the possibility of sale of property with a maximum utility surface area of 120 m², with a property value exceeding RON 450,000 but not exceeding RON 700,000 excluding VAT was introduced. Any individual may purchase individually or together with another individual / other individuals, a single property whose value exceeds RON 450,000, but does not exceed RON 700,000, excluding VAT, at a reduced rate of 5%.;
- Changes to the rules on purchase of immovable property with the reduced 5% VAT rate will encourage the development of the real estate market by lifting the limitation on the ownership of such property by individuals;
- The sale of school books, books, newspapers and magazines, in physical and / or electronic form, excluding those that have, in whole or in part, video or audio music content and those intended exclusively or mainly for advertising;
- Admission fees to castles, museums, sport events, cinemas etc.
- Restaurants and catering services;
- Hotel, camping and other assimilated services.
- The right to use sports facilities for the purpose of practicing sport and physical education, other than those already VAT exempt;
- Transport services for tourism or leisure purposes, such as transport of passengers by vintage steam narrow-gauge trains or vehicles, cableway transport of passengers (e.g. cable cars, gondola lifts, chair lifts, ski lifts), transport of passengers by animal-pulled vehicles, and transport of passengers by boats used for tourism or leisure purposes;
- Supply of high-quality food products, i.e. products sourced from mountain areas, organic, and traditional products, certified by the MARD. The conditions for applying the 5% reduced rate in the context of the specific regulatory requirements for authorisation should be assessed;
- Supply of firewood to individual or legal persons, in the form of logs, stumps, twigs, branches or similar forms falling within CN codes 4401 11 00 and 4401 12 00;
- Delivery of thermal energy in the cold season, intended for the following categories of consumers: population, public and private hospitals, non-governmental organisations and religious units and accredited social service providers (public and private).

Local reverse charge is applicable in some cases between two Romanian VAT payers, for example:

- Cereals and technical plants, including oilseeds and sugar beets;
- Certain waste and recyclable materials;
- Wood and alike material;
- Gas emission and "green" certificates;
- Electric energy to traders;
- Natural gas to traders;
- Land and buildings;
- Investment gold, subject to certain conditions;
- Mobile phones, integrated circuits such as microprocessors and central processing units, portable automatic data processing devices (such as laptops, tablets etc., video game consoles
- (If the value of the goods delivered, excluding VAT, entered in an invoice, is equal to or greater than RON 22,500).

**The VAT cash accounting system:**

This system is optional for taxpayers with a previous year turnover and during the current year until the application date not exceeding RON 4,500,000 and for newly established companies. However, non-resident taxpayers as well as taxable persons who are part of a unique tax group are not eligible to apply for this system.

Taxpayers who are subject to this system must only pay VAT on sales after invoices have been paid by the recipients of goods or services they have been supplied to. Also, the right to deduct the input VAT for the acquisition of goods/services is deferred until payment is done.

Taxpayers not making use of the VAT cash accounting, regardless of the tax system to which they are subject, may exercise their right to deduct the input VAT for their acquisitions from suppliers who are subject to VAT cash accounting – but only upon payment of the relevant invoices.

As from 1 January 2010, Romania has transposed various EU VAT directives into its domestic law, namely:

- 2008/8/CE Directive regarding the place of supply of services (B2B and B2C rules);
- 2008/9/CE Directive regarding VAT reimbursement for individuals established in the EU;
- 2008/117/CE Directive regarding the fight against tax fraud related to community operations.

In addition to the abovementioned changes, certain amendments have been made to allow for the harmonisation of Romanian legislation with the EU VAT Directives, such as:

- A clarification of the definition ‘established in Romania’ in the sense of ‘fixed establishment’;
- Rules regarding the chargeability of VAT for consignment stock, goods supplied for testing and conformity checking, call of stock and supply of immovable property;
- Turnover for small enterprises includes the operations for which the place of taxation is deemed to be abroad (provided the tax would be deemed as deductible should the operations be performed in Romania).

The provisions of 2010/45/CE directive regarding invoicing have also been transposed.

The import of goods is subject to VAT at the standard rate while all exports are VAT exempted.

As from 1 January 2020, Romania has transposed Directive 1910/2018 into national law, which establishes a common regulatory framework at the EU level for the following operations (the so-called “quick fixes”):

- simplification of call-off stock arrangements;
- allocation of transport for chain transactions;
- conditions for applying the VAT exemption for Intra-Community supplies.

Starting from 1 July 2021, in the context of the implementation of the new European VAT rules included in the e-commerce package, the One Stop Shop (“OSS”) system becomes operational in Romania. The provisions aim to reduce the administrative burden for companies by simplifying the procedure for reporting and paying VAT, corresponding to e-commerce carried out on EU territory (i.e. centralised submission and payment of VAT), respectively, in order to reduce the competitive differences between EU and non-EU sellers.

The application of these VAT regimes is optional.

## FRINGE BENEFITS

Under Romanian tax law fringe benefits are benefits received by employees under their employment contract, if any. Benefits in kind or cash must be taxed along with the salary income at the same time they have been granted by the employer. The income tax rate is 10% and subject to withholding by the income payer.

## LOCAL TAXES

The Tax Code sets Romanian local taxes at a maximum percentage, applicable to both individuals and legal entities. EU or EEA (European Economic Area) individuals are granted the right to own land in Romania. Non-EU individuals may acquire land in Romania, provided that there is an international treaty between Romania and the relevant state, and that reciprocal arrangements are in place.



## BUILDING TAX

Residents or non-residents owning one or more properties in Romania are subject to real estate tax. All buildings, regardless of their purpose are taxed based on declared value (which for buildings destined for the use of all economic activities shall be determined periodically at least once every 5 years by an authorised appraiser). Tax rates for buildings differ depending on their destination (residential, mixed or business) at rates ranging from 0.08% to 1.3 % per year as set by local council decree. Building tax exemptions are granted for limited periods to those owners performing architectural improvement work on buildings.

If the value of the building cannot be calculated, the tax shall be calculated by applying a rate of 2% to the taxable amount.

The building tax is paid annually, in two equal instalments, by 31st March and 30th September included. However, building tax payable to the same local budget by the taxpayers, up to or equal to RON 50, is paid in full by the first payment term.

For the advance payment of building tax, due for the entire year by the taxpayers, by 31st March of the respective year, a bonus of up to 10% is granted, established by decision of the local council.

## LAND TAX

Land tax is due at a fixed rate per hectare owned, depending on the location of the land within a certain determined area and depending on the use of the land. The tax is payable annually in equal instalments.

The tax on land owned by individuals and legal entities that is used for the provision of tourist services, for a maximum of 180 consecutive or cumulative days during a calendar year, is reduced by 50%. The reduction is applied in the fiscal year following the one in which this condition is met.

The land tax is paid annually, in two equal instalments, by 31st March and 30th September included. However, land tax payable to the same local budget by the taxpayers, up to or equal to RON 50, is paid in full by the first payment term.

For the advance payment of land tax, due for the entire year by the taxpayers, by 31st March of the respective year, a bonus of up to 10% is granted, established by decision of the local council.

## VEHICLE TAX

Vehicle tax is payable by owners of both land/water vehicles registered in Romania. The tax depends on the capacity of the engine and is determined as a fixed amount per 200 cubic centimetres. The tax is payable annually in equal instalments.

Other local taxes and duties include fees for certificate and permit issuing, for using advertising and publicity material.

Vehicle tax is paid annually, in two equal instalments, by 31st March and 30th September included. However, vehicle tax, payable to the same local budget by the taxpayers, up to or equal to RON 50, is paid in full by the first payment term.

For the advance payment of vehicle tax, due for the entire year by the taxpayers, by 31st March of the respective year, a bonus of up to 10% is granted, established by decision of the local council.

## OTHER TAXES

Local Councils and County councils may charge duties for the temporary use of public spaces as well as for entrance to museums, memorial houses or historical, architectural or archaeological monuments. Duties are also payable for the possession or use of certain special purpose constructions or assets, as well as for activities impacting the environment.

The Waste Directive 2008/98/CE has been implemented in Romanian legislation starting 2005 giving rise to environment tax for producers and distributors of goods damaging to the environment as well as packaged goods.

## EXCISE DUTY

Excise duty is due at a fixed amount per unit or as a percentage of a specified taxable base. Romania has imposes excise duties on among others: beer, wine, fermented beverages other than beer and wine, intermediate products, ethylic alcohol, tobacco products, energy products and electricity.

Excise duty legislation is in line with EU Directive 2008/118/CE concerning the general arrangements for excise duty.

## SOCIAL SECURITY CONTRIBUTIONS

Introduced on 1 January 2018 and still in place (the rates remain unchanged for 2020, 2021 and 2022, until further notice), according to the new legislation approved by the Romanian Government, contributions for both employees and employers were modified as follows:

- The new social security contribution rate currently stands at 35%, consisting of a general rate of 25% and a health insurance contribution of 10%.
- Employers' contributions to social security have largely been cancelled. Employers are currently only subject to a 2.25% labour insurance contribution applied to gross income minus amounts coming from medical leave indemnities paid out of the Unified National Health Insurance Fund.
- Employers are also subject to additional pension contributions of 4% or 8% for employees subject to specific working conditions: 4% - additional quota due exclusively by the employer, if it is a question of special working conditions; 8% - additional quota due exclusively to the employer, in the case of special working conditions.
- Another contribution by the employer is the payment to the disability or solidarity fund, which is paid by the public authorities and institutions, legal, public or private persons, who have at least 50 employees and have the obligation to employ people with disabilities of at least 4% of the total number of employees.
- Public authorities and institutions, legal persons, public or private, which do not employ persons with disabilities may opt for one of the following obligations:
  a) to pay monthly to the state budget an amount representing the minimum gross basic salary in the country guaranteed in payment multiplied by the number of jobs in which no disabled persons have been employed;
  b) to pay monthly to the state budget an amount representing the equivalent of at least 50% of the minimum gross basic salary in the country guaranteed in payment multiplied by the number of jobs in which they did not employ people with disabilities, and with the amount representing the difference up to the level of the amount provided in letter a) to purchase, on the basis of a partnership, products or services made through the own activity of the disabled persons employed in authorised protected units.
- The income tax rate was reduced from 16% to 10%.

However, there are certain exceptions from paying income tax. For example: persons who fall into the category of severe disability, employers of economic operators operating in Romania in accordance with the legislation in force, whose object of activity includes creation of computer programmes subject to certain conditions.

In Romania, for the year 2020 the gross minimum wage was RON 2,230 while in 2021 the gross minimum wage increased to RON 2,300 per month (any industry, except for construction and upper studies), and RON 2,350 per month for persons who are employed which require higher education and have at least 1 year seniority in higher education. For the construction industry, the gross minimum wage is RON 3,000 per month starting January 2019 (applied also in 2021). Also, in 2022 the gross minimum wage increased to RON 2,550 per month for all employees (except in the construction sector).

From 1 January 2019 until 31 December 2028, employees who work for employers in the construction sector benefit from the following exemptions, subject to certain conditions:

- Exemption from payment of tax on salaries;
- Exemption from the payment of social health insurance contributions;
- Reduction of social security contribution, which will be 21.25% instead of 25% for other sectors;
- Since 2020, the insurance contribution from work for the construction sector is 2.25% applied to gross income minus amounts coming from medical leave indemnities paid out of the Unified National Health Insurance Fund.

For the construction sector, exemptions apply only if the following conditions are met simultaneously:

- Employers achieve turnover in construction/building materials/architecture to an extent of at least 80% of total turnover, calculated cumulatively from the beginning of the year, including the month as from which the exemption applies;
- Monthly gross wages and wages assimilated to salaries earned by individuals for whom the exemption applies are between 3,000 and 30,000 RON per month all-inclusive and are made on the basis of the individual labour contract on an 8 hours/day basis.

The insurance contribution for work (2.25% from gross salary) collected for the state budget shall be distributed monthly, by the end of the current month, a share of:

- 12%, which is paid to the Guarantee Fund for the payment of salary claims;
- 17%, which is paid to the Unemployment Insurance Budget;
- 2%, which is paid to the Insurance system for accidents at work and occupational diseases;
- 22%, which is paid to the budget of the National Health Insurance Fund for the payment of medical leave;
- 47%, which is paid to the state budget in a separate account.

Between 1 January 2019 and 31 December 2028 included, the insurance contribution for work collected to the state budget from employers who carry out activities in the construction sector and who meet the conditions stipulated in the Tax Code shall be distributed in full to the Guarantee Fund for the payment of salary claims constituted. Once the modifications of the Fiscal Code start, the employers who carry out activities in the construction sector will pay a share of 2.25%.

## B. DETERMINATION OF TAXABLE INCOME

### DEPRECIATION

Romanian tax legislation makes a specific distinction between accounting and tax depreciation. For fixed assets, tax depreciation is calculated based on rules set out by local tax legislation and deductibility no longer depends on the depreciation determined by accounting rules only.

The straight line method is generally preferred by tax legislation, but in certain conditions the declining balance method may also be used. Under the accelerated method, the maximum depreciation in the first year of use is limited to 50% of the asset value.

### STOCK / INVENTORY

Inventory must be valued according to generally accepted accounting principles at the lower of cost or market value.

### CAPITAL GAINS AND LOSSES

Taxable capital gains are included in taxable income and taxed at the normal rate. Income earned by non-residents from the sale of real estate located in Romania is also taxed at the general corporate income tax rate of 16%.

### DIVIDENDS

Dividends paid to resident companies are subject to a final withholding tax of 5%, except where the company receiving the dividends holds at least 10% of the shares for a period of minimum 1 year at the date the dividend is paid.

As a general rule, dividends paid to non-resident companies are subject to 5% withholding tax.

However, as Romania is an EU member state, the EU Parent-Subsidiary directive can be applied. Therefore, dividends paid by Romanian companies to resident companies in one of the EU member states are exempt from taxation if the beneficiary of the dividend has held, at the time of distribution, a minimum of 10% of the shares of the Romanian company for an uninterrupted period of at least one year.

Companies may opt for quarterly distribution of profits to shareholders. Reconciliation of such amounts is done after the annual financial statements have been approved. Those who opt for the quarterly distribution of dividends are required to prepare interim financial statements. Any differences resulting from the reconciliation are payable within 60 days of the date of approval of the annual financial statements. Failure to meet that deadline results in penalty interest being due.



### INTEREST DEDUCTIONS

Thin capitalisation rules applicable to the deductibility of interest expenses have been replaced by new rules as of 1 January 2019. The limitation applies to the deductibility of debt related costs, which are defined as having a very wide meaning so as to cover a wide range of costs related to financing. Excess debt related costs, calculated as the difference between debt related costs and income from interest and other equivalent income incurred in a tax period exceeding the equivalent in RON of 1 million EUR can be considered deductible for corporate income tax purposes only within the limit of 30% of the following calculation base: gross accounting profit including corporate income tax payable minus non-taxable revenue plus excess debt related costs and tax depreciation. If the tax base described above is zero or negative, the excess debt related costs are treated as non-deductible for corporate tax purposes during the current tax period, but can be carried forward indefinitely.

### LOSSES

Ordinary losses incurred after 1 January 2009 can be carried forward for seven years.

### FOREIGN SOURCED INCOME

Resident companies are subject to tax on their worldwide income. Foreign losses may be deducted only from foreign income on a source-by-source basis. Foreign exchange gains from the revaluation of an asset or liability at year-end are deemed to be realized and are taxable.

Romania is in the process of transposing EU Council Directive 2018/822 amending Directive 2011/16/EU regarding mandatory automatic exchange of information in the tax field in relation to reportable cross-border arrangements (also known as “DAC 6”).

This is aimed at eliminating tax practices that allow companies to avoid taxes or taking tax advantages.

Starting 1 July 2020, intermediaries and, under certain conditions, taxpayers, have to report each cross-border arrangement within 30 days. The reporting obligation generally applies to any intermediary which designs, markets, organises, makes available for implementation or manages the implementation of a reportable cross-border arrangement or provides assistance or advice regarding such activities.

## C. FOREIGN TAX RELIEF

In the absence of a double tax treaty, unilateral relief is provided by way of an ordinary credit for income taxes paid abroad. This credit may not exceed the tax owed in Romania on the same income.

## D. CORPORATE GROUPS

With effect from 1 January 2021, a fiscal consolidation for corporate income tax purposes applies for tax groups (introduced by Law 296/2020).

A tax group for corporate income tax purposes consists of:

- a Romanian legal entity or a legal entity with its registered office in Romania and one or more Romanian legal entities, legal entities with a registered office in Romania in which it holds, directly or indirectly, at least 75% of the value/number of participation titles or voting rights;
- at least two Romanian legal entities in which an individual holds, directly or indirectly, at least 75% of the value/number of participation titles or voting rights;
- at least two Romanian legal entities held, directly or indirectly, for at least 75% of the value/number of participation titles or voting rights, by a legal person or individual, resident in a state with which Romania has concluded a tax treaty or an exchange of information agreement;
- at least a Romanian legal entity held, directly or indirectly, for at least 75% of the value/number of participation titles or voting rights by a legal person resident in a state with which Romania has concluded a tax treaty or an exchange of information agreement, and the Romanian permanent establishment of the non-resident entity.

Other salient features include:

- The fiscal consolidation is optional and applies for 5 years, after which the option may be renewed;
- Each group member must prepare a transfer pricing file;
- The law provides that fiscal consolidation is not possible if it is constituted for tax fraud or tax evasion purposes.
- the fiscal group can effectively be implemented as from the tax year which starts on or after 1 January 2022.

Tax losses recorded by a member of the group during the application of the fiscal consolidation system are recovered from the consolidated fiscal result of the group.

## E. RELATED PARTY TRANSACTIONS

Transactions between related parties should adhere to the arm's-length principle, otherwise the Romanian tax authorities have the right to adjust the income or expenses incurred by the taxpayer in order to reflect market (arm's length) value. Traditional transfer pricing methods as well as any other methods which are in line with OECD Guidelines may be used for setting transfer prices. Starting 1 January 2016 transfer pricing files have become mandatory for large and medium sized companies undertaking operations with related parties exceeding certain thresholds, namely:

a) Yearly for large companies registering related party transactions of:
   - EUR 200,000 for interest received/paid for financial services;
   - EUR 250,000 for services received/rendered;
   - EUR 350,000 euro for transactions concerning the acquisition/sale of tangible or intangible assets.

b) Large taxpayers not fulfilling criterion (a), as well as other taxpayers performing annual transactions with all related parties for amounts greater than or equal to any of the below mentioned thresholds are required to prepare the transfer pricing report at the request of the tax authorities during the course of a tax audit:
   - EUR 50,000 for interest received/paid for financial services;
   - EUR 50,000 for services received/rendered;
   - EUR 100,000 for transactions concerning the acquisition/sale of tangible or intangible assets.

Taxpayers who do not fall into any of the above categories are not required to prepare the transfer pricing report. However, during a tax audit, this category of taxpayers should be able to provide documents that substantiate that the arm's length principle was adhered to.

The Romanian National Tax Office has come up with a new order No. 1721 (gazetted on 3 November 2021) and has thereby updated the list of large taxpayers as of 2022. This list is based on a set of general and specific cumulative criteria that are related to the taxpayer's global financial indicators, tax weight, type of activity, organisational structure, investments made over the last three years, or membership to a group. According to these criteria, there are currently 2,940 taxpayers which are classified as " large" until December 31. Starting from January 2022, the updated list includes 3,364 taxpayers.

## F. WITHHOLDING TAX

As a general rule, non-resident companies are subject to 16% withholding tax on income derived from Romania such as interest, royalties and revenue derived from liquidation of a Romanian legal entity. The applicable tax rate for interest and royalties is 16% unless a lower tax treaty rate applies.

A 5% flat tax is withheld as dividend tax, except where a lower tax is provided by a tax treaty. In order for the latter to apply, all non-resident taxpayers must provide a tax residency certificate.

## G. EXCHANGE CONTROL

The Romanian National Bank manages the exchange control regulations applicable in Romania. A notification to the Romanian National Bank is required 10 days prior to concluding monetary capital operations on a short-time basis, and some limitations to such transactions apply.

## H. PERSONAL TAX

The following categories of taxpayers are subject to personal income tax:

a) Resident individuals, namely any person who meets at least one of the following conditions:
   - Has an address located in Romania;
   - The centre of his vital interests is located in Romania;
   - Resident in Romania for more than 183 days in any 12-month period;

b) Non-resident individuals who perform an independent activity through a permanent establishment in Romania;

c) Non-resident individuals who perform dependent activities in Romania;

d) Non-resident individuals who obtain other income from Romania.

### Individual social contributions

Individuals obtaining revenue from independent activities, agricultural activities and associations without legal personality are considered to be taxpayers to the public pension insurance and public health insurance systems. The general applicable individual social contributions are:

- Social insurance contribution: 25%;
- Health insurance contribution: 10%.

However, effective from 2018, the calculation basis of the abovementioned contributions within a tax year are limited to the equivalent of 12 minimum basic salaries. For 2022, the limit at which the contributions are paid is capped at RON 30,600 (the minimum salary per economy amended by law starting from 1 January 2022 is RON 2,550).

Individuals who carry out independent activities from one or more sources of income are required to pay a CAS pension if they meet one of the following criteria:

- The net income realised in 2022, excluding social security contributions, in relation to the number of months of activity during the year, is at least equal to the minimum basic salary;
- The estimated net monthly income to be achieved is at least equal to the minimum gross salary per country in force in the month in which they start their activity;
- In the case of taxpayers earning intellectual property rights, the net monthly income earned in the previous year, remaining after the deduction of deductible expenses (40% of gross income), in relation to the number of months of activity during the year, is at least equal to the minimum basic salary in the country in force in January of the year for which the contribution is established.

The monthly basis for calculating the social security contributions for persons who earn income from independent activities is the income chosen by the taxpayer, which cannot be lower than the minimum basic salary.

Individuals who owe the health insurance contribution, subject to the condition that they reach an annual cumulative income equal to at least 12 basic minimum wages from one or more sources of income, are persons who obtain income from one of the following categories:

- Net income from independent activities;
- Income from Intellectual Property Rights;
- Income from association with a legal person;
- Net proceeds from the disposal of the use of the goods;
- Investment income;
- Net income from agricultural activities, forestry and fish farming;
- Gross income from other sources, defined according to the Tax Code.

The monthly basis for calculating the social health insurance contribution due by self-employed individuals is the minimum basic salary.

Tax on income derived from self-employment represents:

- 10% of net income, which is calculated as the difference between the income received and the deductible expenses incurred during the fiscal year; or
- 10% of the income rule.

### Tax residency

In the absence of a tax residency certificate, regardless of the existence of a tax treaty between two states, foreign citizens will be taxed as Romanian residents if one of the following criteria is met:

- Has an address located in Romania;
- The centre of their vital interests is located in Romania;
- They spend more than 183 aggregate days in Romania within 12 consecutive months ending in the concerned calendar year.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The rates in the table below contain the withholding tax rates applicable to dividend, interest and royalty payments by Romanian companies to non-residents under the double tax treaties currently in force. In a specific case, where a treaty rate is higher than the domestic rate, the latter will apply.

| | Dividends | | Interest[1] % | Royalties % |
|---|---|---|---|---|
| | Individuals, Companies % | Qualifying Companies[2] % | | |
| **Non-treaty countries** | | | | |
| Companies | 5 | 5 | 0/16/50[21] | 0/16/50[21] |
| Individuals | 5 | 5 | 0/16/50 | 16/50 |
| **Treaty countries** | | | | |
| Albania | 15 | 10 | 10 | 15 |
| Algeria | 15 | 15 | 15 | 15 |
| Armenia | 10 | 5 | 10 | 10 |
| Australia | 15 | 5[3] | 10 | 10 |
| Austria | 5 | 0 | 3 | 3 |
| Azerbaijan | 10 | 5 | 8 | 10 |
| Bangladesh | 15 | 10[3] | 10 | 10 |
| Belarus | 10 | 10 | 10 | 15 |
| Belgium | 15 | 5 | 10 | 5 |
| Bosnia and Herzegovina[4] | 10 | 5 | 7 | 5 |
| Bulgaria | 5 | 5 | 5 | 5 |
| Canada | 15 | 5 | 10 | 10/5 |
| China | 3 | 3 | 3 | 3 |
| Croatia | 5 | 5 | 10 | 10 |
| Cyprus | 10 | 10 | 10 | 5 |
| Czech Republic | 10 | 10 | 7 | 10 |
| Denmark | 15 | 10 | 10 | 10 |
| Ecuador | 15 | 15 | 10 | 10 |
| Egypt | 10 | 10 | 15 | 15 |
| Estonia | 10 | 10 | 10 | 10 |
| Ethiopia | 10 | 10 | 15 | 15 |
| Finland | 5 | 5 | 5 | 2.5/5[5] |
| France | 10 | 10 | 10 | 10 |
| Georgia | 8 | 8 | 10 | 5 |
| Germany | 15 | 5[3] | 0/3[6] | 3 |
| Greece | 25/45 | 25/45 | 10 | 5/7[7] |
| Hong Kong | 5 | 3[22] | 0/3 | 3 |
| Hungary | 15 | 5[8] | 15 | 10 |
| Iceland | 10 | 5 | 3 | 5 |
| India | 10 | 10 | 10 | 10 |
| Indonesia | 15 | 12.5 | 12.5 | 12.5/15 |
| Iran | 10 | 10 | 8 | 10 |
| Ireland | 3 | 3 | 3 | 0/3[9] |
| Israel | 15 | 15 | 5/10[10] | 10 |
| Italy | 5 | 0 | 5 | 5 |
| Japan | 10 | 10 | 10 | 10/15[11] |
| Jordan | 15 | 15 | 12.5 | 15 |
| Kazakhstan | 10 | 10 | 10 | 10 |
| Korea N (DPRK) | 10 | 10 | 10 | 10 |
| Korea S (Rep) | 10 | 7 | 10 | 7/10[12] |
| Kuwait | 1 | 1 | 1 | 20 |
| Latvia | 10 | 10 | 10 | 10 |
| Lebanon | 5 | 5 | 5 | 5 |
| Lithuania | 10 | 10 | 10 | 10 |
| Luxembourg | 15 | 5 | 10 | 10 |
| Malaysia | 10 | 10 | 15 | 12 |
| Malta | 5/30 | 5/30 | 5 | 5 |

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| | Dividends | | Interest[1] % | Royalties % |
|---|---|---|---|---|
| | Individuals, Companies % | Qualifying Companies[2] % | | |
| Mexico | 10 | 10 | 15 | 15 |
| Moldova | 10 | 10 | 10 | 10/15[13] |
| Montenegro | 10 | 10 | 10 | 10 |
| Morocco | 10 | 10 | 10 | 10 |
| Namibia | 15 | 15 | 15 | 15 |
| Netherlands | 15 | 0/5 | 0/3[14, 15] | 0/3[14] |
| Nigeria | 12.5 | 12.5 | 12.5 | 12.5 |
| North Macedonia | 5 | 5 | 10 | 10 |
| Norway | 10 | 5[3] | 5 | 5 |
| Pakistan | 10 | 10 | 10 | 12.5 |
| Philippines | 15 | 10 | 10 | 10/15/25[16] |
| Poland | 15 | 5 | 10 | 10 |
| Portugal | 15 | 10[17] | 10 | 10 |
| Qatar | 3 | 3 | 3 | 5 |
| Russia | 15 | 15 | 15 | 10 |
| San Marino | 10 | 0[23]/5[3] | 3 | 3 |
| Saudi Arabia | 5 | 5 | 5 | 10 |
| Serbia[4] | 10 | 10 | 10 | 10 |
| Singapore | 5 | 5 | 5 | 5 |
| Slovak Republic | 10 | 10 | 10 | 10/15[18] |
| Slovenia | 5 | 5 | 5 | 5 |
| South Africa | 15 | 15 | 15 | 15 |
| Spain[24] | 5 | 0[25] | 3 | 3 |
| Sri Lanka | 12.5 | 12.5 | 10 | 10 |
| Sudan | 15 | 5 | 5 | 5 |
| Sweden | 10 | 10 | 10 | 10 |
| Switzerland | 15 | 15 | 5 | 10 |
| Syria | 15 | 5 | 10 | 12 |
| Tajikistan | 10 | 5 | 10 | 10 |
| Thailand | 20 | 15 | 10/20/25[19] | 15 |
| Tunisia | 12 | 12 | 10 | 12 |
| Turkey | 15 | 15 | 10 | 10 |
| Turkmenistan | 10 | 10 | 10 | 15 |
| Ukraine | 15 | 10 | 10 | 10/15[18] |
| United Arab Emirates | 3 | 3 | 3 | 3 |
| United Kingdom | 15 | 10 | 10 | 15 |
| United States | 10 | 10 | 10 | 10/15[20] |
| Uruguay | 10 | 5 | 10 | 10 |
| Uzbekistan | 10 | 10 | 10 | 10 |
| Vietnam | 15 | 15 | 10 | 15 |
| Zambia | 10 | 10 | 10 | 15 |

NOTES:

1. Many treaties provide for an exemption for certain types of interest, e.g. interest paid to the state local authorities, central bank, export credit institutions or in relation to sales on credit. Such exemptions are not considered in this column.
2. Unless otherwise indicated, recipient companies qualify for the reduced rates if they hold at least 25% of the capital or the voting power in the Romanian company, depending on the applicable treaty.
3. This rate applies to participations of at least 10%.
4. The treaty concluded with the former Yugoslavia.
5. The lower rate applies to royalties for computer software and industrial, commercial or scientific equipment.
6. The lower rate applies if, and as long as, Germany, under its domestic law, does not levy withholding tax on interest paid to a resident Romanian.
7. The higher rate applies to industrial royalties.
8. The rate applies to participations of at least 40%.

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9. The lower rate applies to copyright royalties.
10. The 5% rate applies to interest paid in connection with the sale on credit of any industrial or scientific equipment, or of any merchandise by one enterprise to another enterprise or on a loan granted by banks.
11. The 10% rate applies to cultural royalties and the 15% to industrial royalties.
12. The lower rate applies to industrial royalties, know-how and equipment leasing.
13. The lower rate applies to industrial royalties (excluding patent royalties) and know-how.
14. The lower rate applies if, and as long as, the Netherlands does not levy a withholding tax on interest/royalties paid to a resident of Romania.
15. Interest paid to a bank or financial institution and interest paid on a loan made for a period of more than two years are exempt.
16. The 10% rate applies to royalties paid by companies registered at the Romanian Agency for Development and carrying on specific activities. The 15% rate applies to film royalties.
17. A minimum holding period of 2 years applies.
18. The lower rate applies to industrial royalties.
19. The 10% rate applies to interest paid to financial institutions; the 20% rate applies to interest on credit sales.
20. The lower rate applies to cultural royalties.
21. With effect from 1 January 2013, a 50% withholding tax applies to income paid to a country with which Romania has not signed an exchange of information agreement, to the extent that such payments result from artificial transactions. The following types of income are subject to this withholding tax:
    - revenue from services;
    - income from the liquidation of a Romanian company;
    - interest;
    - royalties; and
    - commissions and income from independent professions carried on in Romania.
22. The reduced 3% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 15% of the capital of the dividend-paying company.
23. The 0% rate applies to a direct participation in capital of at least 50%.
24. The new treaty between Romania and Spain entered into force on 14 January 2021 and generally applies from 1 January 2022, although Articles 23 (Mutual Agreement Procedure), 24 (Exchange of Information), and 25 (Assistance in the Collection of Taxes) apply from the date of the treaty's entry into force, without regard to the taxable period to which the matter relates.
25. The 0% reduced rate applies if the beneficial owner is (i) a company that has directly or indirectly held at least 10% of the dividend-paying company's capital for at least one year, or (ii) a pension fund. (Under the 1979 treaty the general rate is 15% for dividends and a 10% reduced rate applies in case of a 25% holding).

# RUSSIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Moscow | Stefaan De Ceulaer | +44 20 3691 2511<br>stefaan.deceulaer@pkf.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Russian Federation |
| Capital: | Moscow |
| Main languages: | Russian |
| Population: | 146 million (2022 estimate) |
| Monetary unit: | Russian Ruble (RUB) |
| Internet domain: | .ru |
| Int. dialling code: | +7 |

## KEY TAX POINTS

- The taxation system in the Russian Federation is based on a combination of federal, regional, and local taxes and levies.
- Federal taxes and levies include: Value Added Tax (VAT), Excise Duties, Personal Income Tax, Corporate Income Tax, Mineral Extraction Tax, Tax on additional income from hydrocarbon extraction, Water Tax, State Duty, and fees for the use of wildlife resources and aquatic biological resources.
- Regional taxes include: Corporate Property Tax, Gambling Tax and Transport Tax.
- Local taxes and levies include: Land Tax, Individual Property Tax and Sales Tax.
- There are also special tax regimes comprising lower tax rates and some simplifications: for agricultural manufacturers, for product sharing agreements, patent tax regime (for individual entrepreneurs regarding specific activities) and a simplified taxation regime. Professional income tax is introduced as from 2019 for a trial period of 10 years (up to 31 December 2028).
- The tax period is a calendar year or other specified period of time in relation to specific taxes at the end of which the tax base is calculated and the tax payable is assessed. The tax period may cover more than one reporting period.
- The standard corporate income tax rate is currently 20% and this is also the rate of income tax paid by foreign companies deriving income not connected with carrying out their business activities through a permanent establishment in Russia. In some cases other tax rates may apply. As from 1 January 2021 the corporate income tax rate for IT-companies incorporated in Russia

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is 3% subject to meeting the following criteria: (i) IT-company has obtained a special governmental accreditation (ii) 90% of company's income during tax period is derived from activities in IT (development, modification of computer programmes, etc.) (iii) company has at least 7 employees during the tax period.

- Capital gains are treated as ordinary business income and therefore subject to income tax.
- Consolidated group of taxpayers regime may apply under Corporate Income Tax. As from 2019 new consolidated groups are no longer allowed to register.
- Value Added Tax (VAT) is levied at a standard rate of 20% as from 2019 (before 2019 - 18%) and applies to the sale of goods, works and services in Russia and the import of goods into the Russian Federation. In certain cases 10% and 0% rates may apply.
- CFC (Controlled Foreign Companies) rules apply. Since 2021 a specific fixed payment of RUB 5 million may be paid by individuals only instead of the tax calculated on the basis of CFC rules.
- Thin capitalisation rules apply to restrict the deduction of interest where it is paid to a related foreign person that holds directly or indirectly more than 25% of the share capital of a Russian company. These rules also apply in some other situations. As from 2019 there are exemptions for certain investment projects.
- Transfer pricing rules apply to transactions between related parties. Taxpayers need to prove the arm's-length nature of their transactions. For large taxpayers it is possible to enter into Advance Pricing Agreements (APA) with the tax authorities (TA), which are typically for a three-year period. As from 17 March 2021 the procedure for concluding bilateral APAs (with involvement of the foreign tax authorities) was amended.
- Foreign legal entities deriving income in connection with activities within Russia may be subject to withholding taxes on dividends, interest, royalties and some other income. In some cases a withholding tax rate of 30% may apply in respect of income from securities issued by Russian companies.
- There are special preferential rules (e.g. lower tax rates, tax reliefs, etc.) for taxpayers acting within the scope of different kinds of special zones and projects (e.g. Special Economic Zones, regional investment projects, special investment contracts and others).
- Individuals are considered to be resident if they spend more than 183 days in Russia during a continuous 12-month period. Residents are subject to income tax on their worldwide income and non-residents on their Russian-sourced income only.
- Registration (de-registration) with the tax authorities of the foreign company at its place of business in the territory of the Russian Federation:
  - Through an accredited branch or representative office based on the data contained in the state register of accredited branches and representative offices of foreign legal entities;
  - Through other separate subdivisions based on the application for the registration (de-registration) of such company.
- The personal income tax rate for residents and foreign highly skilled specialists is 13%. In case profits of a resident exceed RUB 5 million, such excess is taxed at a rate of RUB 650,000 RUB plus 15% on income exceeding RUB 5 million. A special 35% rate is applied to some types of income, e.g. the cost of some prizes and wins, interest on certain bank deposits. 13% or RUB 650,000 plus 15% on income exceeding RUB 5 million is applied to income in the form of dividends received from shareholdings. All personal income of non-residents, excluding dividends, is taxed at the rate of 30%. General withholding tax rate for dividends received by non-residents is 15%. In some cases tax rates may differ.
- Russia has concluded over 84 double tax treaties. In 2020 Russia started a campaign to amend tax treaties in order to prevent tax avoidance. The tax treaties with Cyprus, Malta and Luxembourg were amended. Russia is also in the process of denouncing (in case amendments are not introduced) the tax treaty with The Netherlands.
- Exchange of financial information: effective 2018, Russia implemented provisions regarding CRS (Common Reporting Standard). Under these provisions Russian financial institutions are obliged to provide the Russian Tax Authorities with certain information regarding different types of accounts opened with such institutions. Information regarding accounts opened in the name of foreign residents (or if the beneficiary owner or controlling person is a foreign resident) will be automatically exchanged with other jurisdictions on an annual basis. The first reporting period is 2017.
- In 2017 Russia along with other jurisdictions signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI"). The MLI offers concrete solutions for governments to close the gaps in existing international tax rules by transposing results from the BEPS Project into bilateral tax treaties worldwide. The MLI modifies the application of thousands of bilateral tax treaties concluded to eliminate double taxation. It also implements agreed minimum standards to counter treaty abuse and to improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies. When the MLI is in force, its provisions should be taken into account when applying a certain tax treaty: depending on the provisions admitted by certain jurisdictions they may significantly change the provisions of a certain tax treaty. As from 1 January 2021 the MLI is applied with respect to 34 tax treaties concluded by Russia
- In 2017 a new provision containing a general anti avoidance rule (GAAR) was implemented. The principle of this GAAR is that a transaction should not have a tax economy as its main purpose.
- As from 2020 a mutual agreement procedure with respect to tax matters was adopted.

## A. TAXES PAYABLE

### CORPORATE INCOME TAX

Corporate taxpayers include:

- Russian companies;
- Foreign companies which operate in the Russian Federation through permanent establishments and/or receiving income from sources in the Russian Federation;
- Foreign companies recognized as tax residents of the Russian Federation are considered to be Russian companies.

Companies which are responsible participants of the consolidated group of taxpayers are considered taxpayers of such consolidated group of taxpayers.

The following companies are considered tax residents of the Russian Federation:

1) Russian companies;
2) Foreign companies recognized as tax residents of the Russian Federation in accordance with international tax treaties - for the purpose of applying this international treaty;
3) Foreign companies actually managed in the Russian Federation unless established otherwise under a double tax treaty.

### Tax base

The tax base for Russian companies is defined as profit, which consists of income from commercial activities, passive income and capital gains. There is some specificity at the level of foreign companies.

### Tax period

The tax period is one calendar year. The reporting periods for tax purposes are the first quarter, a half-year, and nine months of a calendar year. With the exception of foreign legal entities, companies are obliged to make monthly advance payments of their quarterly liabilities. Advance payments are due not later than the 28th day of the corresponding month.

### Tax rates

The standard tax rate is currently 20%, of which 2% is normally paid to the federal budget and 18% to the budgets of constituent entities of the Russian Federation (i.e. regional budgets). For the period 2017-2024 this apportionment between budgets is 3% and 17% respectively. The tax rate of the tax payable to regional budgets may be reduced by the laws of constituent entities of the Russian Federation for specific categories of taxpayers, for example for taxpayers acting within the scope of different kinds of special zones and projects. There are also other tax rates for specific types of income (e.g. 13% for dividends received by a Russian company).

As from 1 January 2021 the corporate income tax rate for IT-companies incorporated in Russia is 3% subject to meeting the following criteria: (i) IT-company has obtained a special governmental accreditation (ii) 90% of company's income during tax period is derived from activities in IT (development, modification of computer programs, etc.) (iii) company has at least 7 employees during tax period.

Foreign companies deriving income which is not connected with carrying out their business activities through a permanent establishment pay income tax at a standard rate of 20%. A rate of 10% applies to foreign companies on income from the use, maintenance or rent (freight) of ships, aircrafts and other moving vehicles or containers (including trailers and ancillary equipment required for traffic) in connection with international traffic. A rate of 15% applies to non-residents receiving dividends. There are also special tax rates for specific interests. In such cases tax is assessed and withheld by a tax agent.

Foreign companies carrying out their business activities in Russia through permanent establishments make quarterly advance payments.

Since 1 January 2022 some amendments have come into effect:

(i) The reference rates currently used in setting safe harbours for foreign currency debt obligations arising in controlled transactions are abolished and replaced as follows:
   - EURIBOR by €STR
   - pound sterling LIBOR by SONIA
   - Swiss franc LIBOR by SARON
   - Japanese yen LIBOR by TONAR
   - USD LIBOR for obligations in other currencies by SOFR
   - Chinese yuan SHIBOR – no change.

(ii) The consolidation of overpayments allows to offset against future payments of insurance contributions, taxes, charges etc. whereas earlier tax overpayments could only be credited against corresponding compulsory payments, for instance, overpaid taxes could only be credited against taxes, and contribution overpayments only against contributions.



### Tax returns

In general, income tax returns must be filed no later than 28 March following the tax year.

The following types of income are tax exempt:

- Income received as payments to the charter capital;
- Income received as special-purpose financing from foreign entities in the form of capital investments for industrial purposes provided that such investments are used during the year;
- Assets received by Russian companies free of charge as assets contribution (certain conditions should be met) or from entities which hold more than 50% of the share capital of the recipient. In the latter case, the assets should not be distributed to a third person within a year of the original transfer (except money) and others.

## CONTROLLED FOREIGN COMPANIES (CFC) AND CONTROLLING PERSONS

A foreign company is considered a controlled foreign company (CFC) if it meets the following conditions:

- The company is not recognised as a tax resident of the Russian Federation;
- The company's controlling parties are companies and (or) individuals recognised as tax residents of the Russian Federation.

A CFC is also a foreign unincorporated entity which is controlled by Russian tax resident(s). CFC profit (loss) is the profit (loss) of such company before taxation as per its annual financial statements, provided that certain conditions are met.

In other cases, CFC profit (loss) is the profit (loss) of such company determined under the regulations established by the Tax Code of the Russian Federation for Russian companies.

Profit (loss) of each CFC should be proved by its financial statements for the corresponding period accompanied by its tax returns or in some cases by other documents.

The tax rate for the tax base defined by controlling companies based on profit of the CFC is 20%, and if defined by controlling individuals – 13% or RUB 650,000 plus 15%.

There are some specific cases when CFC profit is tax exempt.

For tax periods as from 2020 individuals are allowed to pay (at their own discretion) personal income tax calculated on the basis of fixed income of the CFC instead of tax calculated in accordance with CFC rules. Fixed income (irrespective of the number of CFCs) is set at RUB 34 million since 2021. The tax amount paid on the basis of fixed income is therefore RUB 5 million (RUB 650,000 plus 15% applied to income exceeding RUB 5 million).

Payments on the basis of fixed income of CFCs shall be applied by a taxpayer for 5 tax periods after which the taxpayer may revert to tax payments calculated on the basis of CFC rules.

As from 1 January 2021 the fine for failure to submit a notification on CFCs is RUB 500,000 instead of RUB 100,000.

## CAPITAL GAINS TAX

Capital gains are treated as ordinary business income and are therefore subject to income tax according to the general rule.

## BRANCH PROFITS TAX

There is no special branch profits tax in Russia. Branches are not separate taxpayers and their profit is included into the tax base of a company. There is no branch remittance tax in Russia.

## VALUE ADDED TAX (VAT)

VAT is levied on the sale of goods and services in Russia and the import of goods into the Russian Federation. The taxable base is the sale price.

The standard rate of VAT as from 2019 is 20% (before 2019 - 18%). Some supplies are taxed at a reduced rate of 10% (e.g. basic foodstuff, children's clothing and footwear, certain medical goods). Certain sales are subject to a 0% rate (e.g. export of goods, international transportation of goods, etc.). As from 1 July 2020 export of all services and works is subject to a 0% VAT rate. Zero rate sales are entitled to input VAT refund/offset (as well as 20% rate and 10% rate sales).

Some sales are tax exempt (e.g. certain medical goods and services, interests in companies, securities, scientific research (provided specific conditions are met), cultural, educational services, services rendered by attorneys and others).

As from 1 January 2022 the list of exemptions is updated with sales of embryos and juveniles obtained from breeding fish, services provided via public catering establishments such as restaurants, cafes and others as well as their takeaway services subject to certain requirements. Such sales are not entitled to input VAT refund/offset.

Import of certain medicines, medical and technological equipment (including components and spare parts) is exempt from VAT.

The tax period for VAT is a quarter. In general, VAT payments are made in three equal monthly instalments no later than 25th calendar day of each of the three consecutive months following the reporting quarter.

As from 1 January 2017 foreign companies are obliged to charge VAT on the sale of e-services in Russia (to Russian customers).

As from 1 January 2019, foreign companies are obliged to pay VAT themselves both if they provide e-services to Russian individuals and to Russian companies. Foreign companies providing e-services to Russian clients must be registered with the Russian Tax Authority. VAT at the rate of 16.67% must be paid as per the tax rules for electronic services – foreign companies are required to pay on their own. According to the existing VAT regime such foreign companies are obliged to apply for a taxpayer identification number (INN) within 30 days of the licence date, and have to file a VAT return through the Tax Service website or electronically.

Provisions of the RTC set forth the criteria to determine whether foreign companies should register with the Russian tax authorities: a supplier is registered in a foreign jurisdiction with no branches or representative offices in the RF, a customer/buyer is located in the RF, services are provided in an electronic way.

The list of services deemed electronic for VAT purposes is provided in Article 174.2 of the RTC and includes, in particular:

- granting of rights to use computer programs via the Internet
- provision of advertising services on the Internet
- provision of services for the placement of proposals for the acquisition or sale of goods, works, services, or property rights on the Internet
- sale of e-books, graphic images, and music through the Internet, and
- storage and processing of information, provision of domain names, hosting services, etc.

According to the rules electronic services do not include sales of goods, when the order is placed online, but the goods are delivered without using the web, sales of computer software programs on physical media, consulting services via email, and granting of Internet access.

Before 2019, if services were provided directly to a Russian individual, VAT was to be paid by the foreign company (foreign company needed to be registered with the Russian Tax Authority); if services were provided to a Russian legal entity, the buyer of services was obliged to withhold tax as a tax agent. Intermediaries participating in payments were also considered tax agents before 2019 as well as currently. At the same time the Federal Tax Service holds the opinion that it is acceptable for foreign companies to pay VAT under the tax agent mechanism, whereby the Russian company withholds VAT from payments made to the foreign company. However, this option is not provided by current Russian tax legislation which prescribes only the direct payment of said VAT.

As from 1 January 2021 sale and licence of rights on computer programmes and databases are no longer exempt from VAT until such time that programmes and databases are included into a register of Russian computer programmes.

As from 1 January 2022 the acquisition of particular types of electronics and household appliances from individuals (natural persons who normally do not act as taxpayers for VAT purposes under Russian legislation) is subject to VAT.

## IMPLEMENTATION OF GOODS TRACEABILITY SYSTEM

The traceability system became operational on 1 July 2021. In this context art. 169 of the RTC provides for a requirement to include the additional information in VAT invoices and to provide reports on transactions involving goods subject to traceability. Under said system, Batch Registration Numbers are assigned to the imported goods and subsequently indicated in the documents for the further sale of these goods on the Russian market.

The new rules establish the obligation to issue electronic VAT invoices as well as to ensure the receipt of electronic VAT invoices when supplying goods subject to traceability, with the exception of export sales and sales to individuals for private use. The tax authorities are to monitor the turnover of such goods based on the information received from the taxpayers at each stage of such transactions as import, sale and resale of goods to the final customer on the territory of the RF, and cross-border sales.

Companies need to take into account the consequences resulting from the goods traceability system as a new instrument for controlling VAT and other tax and customs payments, including:

- to provide VAT invoices, supporting and other documents if the tax authorities identify inconsistencies related to traceable goods during a desk tax audit;
- to pay additional tax liabilities assessed if the tax authorities identify underpayments of VAT or customs duties.

According to art.169 of the RTC taxpayers would not lose the right to recover input VAT if the new traceability details are represented incorrectly on the VAT invoice.

## OTHER FEDERAL TAXES

State Duty is paid by companies and individuals for legal actions performed by state and local authorities as well as other authorities and officials who are entitled to performing such actions.

Excise Duties are levied on some goods such as alcohol, beer, cigarettes, cars and petrol.

A mineral extraction tax applies to companies engaged in the mineral extraction industry.

Companies and individuals consuming water for specific purposes are subject to water tax. The tax rates are fixed and depend on the water volume used.

Tax on additional income from hydrocarbon extraction is introduced as from 2019.

## SPECIAL TAX REGIMES

### Simplified taxation regime

A simplified taxation regime may be applied if a taxpayer's income does not exceed a specified income threshold per tax period (usually a year). Some taxpayers are not allowed to apply this regime (e.g. banks, companies with affiliated branches, etc.). These taxpayers do not pay profit tax, VAT (except on the importation of goods to the Russian Federation) and partially property tax. The taxpayer can choose the taxable base for this tax, either gross income at a 6% tax rate, or income minus expenses at a 15% tax rate (6% and 15% rates are applied in Moscow). Tax rates may differ depending on the type of activities or region in Russia.

As from 1 January 2022 the maximum income levels for the application of the simplified taxation system have been adjusted:

- RUB 164,400,000 for the rates of 6% and 15%;
- RUB 219,200,000 for the rates of 8% and 20%.

As from 1 January 2022 an entity may be eligible for the simplified taxation system if its income for the first nine months of 2021 did not exceed the threshold level of RUB 123,300,000.

Professional income tax is introduced all over Russia for a trial period up to 31 December 2028 and is applied by individuals and individual entrepreneurs. This regime provides lower tax rates (4% in case a customer is an individual and 6% in case a customer is a legal entity or individual entrepreneur). Legal entities and individual entrepreneurs are not obliged to withhold any taxes or to pay social contributions upon payments to payers of professional income tax.

There are also special tax regimes for agricultural manufacturers, for product (mineral resources) sharing agreements and a patent* tax regime.

* "Patent" does not refer to any inventions and intangibles but means a certificate confirming that an individual entrepreneur conducts specific business activities.

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## UNIFIED TAX PAYEMENT

As from 1 July 2022 a trial will be conducted involving the application of unified tax payment by taxpayers. As a part of the trial enterprises and individual entrepreneurs will be able to voluntarily apply to the Russian tax authorities to operate under a special procedure involving paying taxes, insurance contributions, levies, default interest and fines by making a single tax instalment – the unified tax payment. Taxpayers may thus accumulate and transfer funds to a prescribed account of the Federal Treasury from which funds will be debited as a unified tax instalment for taxes, social contributions, levies, etc according to the documentation and information regarding compulsory payments by taxpayers.

## REGIONAL TAXES

Regional authorities can define certain tax rules but are not allowed to impose taxes not stipulated by federal tax law (Tax Code).

### Corporate property tax

Russian and foreign companies that own property within the territory of the Russian Federation are liable for property tax. The tax rates are set by the regional authorities but cannot exceed 2.2%. In some cases the taxable base is the average annual depreciated value of fixed assets on the balance sheet of the resident company or permanent establishment concerned. In other cases the tax base is the cadastral value (e.g. business and trade centres, etc.). As from 2019 corporate property tax applies only to immovable property (movable property is no longer subject to tax).

Effective January 2022, any property leased will be subject to corporate property tax. As a result of the amendments introduced parties to a leasing agreement will no longer be entitled to determine who will book the leased property on the balance sheet for tax purposes. Henceforth, any leased property will be subject to taxation at the level of the lessor as a result of the implementation of Federal Bookkeeping Standard 25/2018 "The bookkeeping of a lease", which has become mandatory effective from the 2022 accounting records.

### Transport Tax

The owners of transport vehicles (cars, motorcycles, buses etc.) are subject to transport tax. The tax rates depend on the technical specification of the vehicles owned. As from 2021 the Russian tax authorities are the ones determining the taxable base and taxes due so there is no obligation to file a tax return.

### Gambling Tax

Companies operating gambling establishments are subject to a tax on the gambling industry. The taxable objects are defined as specified physical objects (e.g. gambling machine, etc.). The tax rates are fixed and are not related to income/profit.

## LOCAL TAXES

Local authorities can define certain tax rules but are not allowed to impose taxes not stipulated by federal tax law (Tax Code).

### Land tax

Land tax is due at a maximum rate of 0.3% on agricultural and residential land and at a maximum rate of 1.5% on other types of land. The taxable base is the cadastral value of land (as stated in the state land register as at 1 January of the relevant tax year). There are tax incentives for some taxpayers, such as residents of special economic zones, free economic zones, etc. As from 2021 the Russian tax authorities are the ones determining the taxable base and taxes due so and there is no obligation to file a tax return.

Individual property tax

Taxable objects include:

1) Residential building;
2) Residential unit (apartment, room);
3) Garage, parking space;
4) Real estate complex;
5) Construction in progress;
6) Other buildings, constructions, structures or premises.

The tax base is a cadastral value of the object. As from 2020 the special inventory value is no longer used.

Maximum tax rates are 0.1% for certain residential objects, 2% for specified objects (e.g. business and trade centres, etc.) and 0.5% for other objects.

## B. DETERMINATION OF TAXABLE INCOME

Taxable profits are calculated as the difference between taxable income and deductible expenses. In general, companies may deduct all necessary justified documented expenses incurred during the year in their income deriving activity. However, there are some specified restrictions which should be taken into account.

## DEPRECIATION

Depreciation is calculated on a monthly basis and is deductible whether or not a company makes profits in the period. There are two methods of depreciation; straight-line method and non-straight-line method.

In some cases it is allowed to apply accelerated depreciation (with coefficient up to 2 or 3).

From 2018 until 2027 (including), regional authorities may introduce a special investment deduction instead of depreciation. If a certain region introduces this deduction it will apply directly to tax payable, i.e. tax payable may be reduced by costs of newly acquired fixed assets. Conditions for such deduction are to be installed by regional authorities.

59 regions introduced an investment deduction by March of 2021, and almost all of them introduced this deduction for certain categories of taxpayers.

## STOCK/INVENTORY

Inventory is valued at its acquisition cost. The cost of materials transferred to production may be determined by the following valuation methods: average cost, cost of item or FIFO.

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## CAPITAL GAINS AND LOSSES

As mentioned above, capital gains and losses are subject to income tax at regular corporate rates. In certain cases a 0% tax rate may apply.

## DIVIDENDS

Dividends paid by Russian companies are subject to a final withholding tax whether they are paid to resident or non-resident recipients.

As from 2019 liquidation proceeds, i.e. income in excess of what a shareholder actually paid for shares, will be taxed as dividends for both personal income tax and corporate income tax purposes.

Dividends received by resident companies are subject to a 0% withholding tax rate if:

- The recipient holds at least 50% of the capital of the payer; and,
- The participation has been held continuously for the past 365 calendar days.

It should be noted that a 0% rate applies to foreign companies only if they recognised themselves as Russian residents voluntarily.

The tax rate for dividends paid to a non-resident company or individual is 15%. The tax rate for dividends paid to a resident is 13%.

## INTEREST DEDUCTIONS

Thin capitalisation rules apply where interest is paid to a related foreign person that holds directly or indirectly more than 25% of the share capital of a Russian company. These rules also apply in some other situations. If the debt-to-equity ratio exceeds 3:1

(for bank and leasing companies, more than 12.5:1), the amount of deductible interest by the Russian company is restricted. The difference between the real amount of interest and that calculated under Russian tax legislation is treated as a dividend paid out by the Russian entity to its foreign shareholder and is subject to 15% withholding tax.

As from 2019 exemptions for some investment projects have been introduced (thin capitalisation rules will not apply subject to certain conditions).

## LOSSES

Taxpayers who suffered a loss (losses) in the previous tax period(s) have the right to reduce the tax base for the current reporting (tax) period by the total amount of loss or by the part of such amount (to carry forward the loss). From 1 January 2017, losses realised in relation to tax periods starting from 1 January 2007 may be carried forward indefinitely (before 2017, this was limited to 10 years).

Between 1 January 2017 and 31 December 2024, the set-off of ordinary losses may not reduce the taxable base in those periods by more than 50%.

Losses cannot be carried back.

## FOREIGN SOURCED INCOME

Foreign sourced income and gains are subject to income tax at the regular rates.

## C. FOREIGN TAX RELIEF

Russian tax law provides a tax credit for foreign taxes paid on foreign-sourced income subject to a limit which is equal to the amount of Russian tax due on the same income. Any excess foreign tax may not be carried back or forward.

## D. CONSOLIDATED GROUPS

The concept of a consolidated group of taxpayers is applied in Russia from 1 January 2012. The regime is optional and applies only to Russian companies (i.e. no cross-border consolidation is allowed). Banks, insurance companies and some other types of entities are excluded. This regime only applies to Corporate Income Tax. In order to form a group, certain conditions have to be met. The most important are:

- a participation of at least 90% (directly or indirectly) in the capital of another company;
- the total amount of VAT, excise duties, corporate income tax and mineral extraction tax is at least RUB 10 billion per year;
- the combined turnover of the group members is at least RUB 100 billion per year; and
- the combined value of the assets is at least RUB 300 billion as of 31 December.

## E. RELATED PARTY TRANSACTIONS

Inter-company pricing between related parties must be carried out on an arm's length basis. Otherwise the results of transaction of the parties are adjusted for tax purposes. Taxpayers are obliged to provide the tax authorities with transfer pricing documentation regarding controlled transactions. Such documentation is supposed to justify that applied price comply with the arm's length principal. It should contain data about the activities of the taxpayer and other parties to the transaction, description of the transaction (its terms), functions, risks and assets analysis, pricing methods, comparison analysis, etc.

Major taxpayers can conclude Advance Pricing Agreements (APAs) with the tax authorities regarding the determination of prices and application of pricing methods in controlled transactions. Such agreements shall be valid for no longer than three years.

On 17 March 2021 amendments to the process for concluding Bilateral Advance Pricing Agreements (BAPA) have entered into force. These amendments introduce, in particular, an opportunity to apply transfer pricing methods as described in foreign legislation and timeframes providing more certainty for the process of concluding a BAPA (24 months or 27 months in case of extension of the process by the tax authorities).

On 28 November 2017, Russia published Federal Law No. 340-FZ, implementing BEPS Action 13 documentation requirements (i.e., CbC reporting, master file, and local file). The measures entered into force on 27 November 2017 and apply from that date.



**Country-by-Country Reporting**

Russian taxpayers who are members of an international group and whose total revenue for the preceding fiscal year was at least RUB 50 billion are required to submit annual CbC reports to the Russian tax authorities. The CbC reporting requirements apply retroactively from 1 January 2017. Taxpayers are allowed to voluntarily file CbC reports in Russia for the 2016 reporting period.

The following taxpayers must submit a CbC report:

- Parent company of a multinational group (member that directly or indirectly participates in the capital of other group members);
- Authorised participant (authorised by the parent company, referred to as a "surrogate parent" as defined in the BEPS Action 13 final report);
- Member of a multinational group whose parent company is not required under domestic law to submit a CbC report, or which is a tax resident of a jurisdiction that does not have an international agreement with Russia on the automatic exchange of CbC reports.

Federal Law No. 340-FZ defines a "member of an international group" as:

1) An organisation whose financial statements are included in the consolidated financial statements of the international group; or
2) An organisation whose financial statements are not included in the consolidated financial statements of the international group due to size or materiality of data.

"International group" is defined as related companies and includes at least one Russian tax resident entity or an entity that is liable for tax for a permanent establishment in Russia and one non-Russian tax resident entity. Except for CbC reports filed by foreign-parented groups, CbC reports, master files, and local files must be filed in Russian.

### Notification Requirements

MNE taxpayers have to notify the Russian tax authorities of their participation in the group within 8 months from the end of the group's fiscal year. The notice must be filed by the ultimate or surrogate parent if they reside in Russia. Otherwise, each Russian constituent entity (or a designated entity) must submit the notice. Failure to notify or submitting false information will incur a penalty of RUB 50,000. The first reporting period is 2017. The penalty will apply as from the 2020 reporting period.

### CbC Report Content

The CbC report must include the following information for each country in which the group operates:

- Income (revenue) from transactions between related and independent parties.
- Income (loss) before income tax;
- Corporate income tax paid during the reporting period;
- Corporate income tax accrued for the reporting period;
- Share capital;
- Retained profit;
- Number of employees;
- Value of tangible assets, excluding cash and cash equivalents;
- Identification information of each MNE group member.

### Penalties

Failure to submit a CbC report, master file, and local file, or submitting false information, will incur a penalty of RUB 100,000. The penalties discussed above relating notification, CbCR and master file will not apply until the 2020 reporting period.

### CbC Reporting Deadline

Reports must be submitted within 12 months from the end of the relevant financial year (reporting period). CbC reports are to be submitted for financial years starting from 1 January 2017. Reports for 2016 may be submitted on a voluntary basis.

### Master and Local Files

Federal Law No. 340-FZ introduces master and local file requirements for Russian resident entities that are members of a MNE group. The filing threshold for the master and local files is RUB 50 billion.

The master file requirements apply retroactively from 1 January 2017. The local file requirements will apply from 1 January 2018. The master file requirements apply for all Russian constituent entities and the local file must be submitted by all constituent entities located in Russia that have had transactions with foreign related parties.

The local file must list all related-party contracts and transactions (e.g. APAs), unlike the BEPS Action 13 recommendations that require a listing of material related-party contracts and transactions. The local file requirements do not replace current Russian transfer pricing documentation requirements.

The Master file must be filed within 3 months of any request by the Russian tax authority and the Local file within 30 working days of any request by Russian tax authority.

## F. WITHHOLDING TAXES

Foreign legal entities obtaining profits in connection with activities within Russia may be subject to withholding taxes on dividends, interest, royalties and some other specified income. Dividends paid to non-resident companies directly are subject to a 15% final withholding tax on the gross amount, unless an applicable double tax treaty provides otherwise. The same applies to interest that has been re-classified as dividends under the thin capitalisation rules (see above under 'Interest deductions'). Interest not connected to a permanent establishment is subject to a 20% final withholding tax on the gross amount, unless an applicable double tax treaty provides otherwise, subject to certain exceptions. Royalties not connected to a permanent establishment are subject to a 20% final withholding tax on their gross amount, unless an applicable double tax treaty provides otherwise.

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A withholding tax rate of 30% is applied in respect of income from securities issued by Russian companies (except dividends), the rights to which are recorded in the custody account of a foreign nominee holder, foreign authorised holder account and/or foreign depository programs account. This rate applies if information about the person exercising the rights under securities was not provided to the tax agent.

As from 1 January 2022 the list of specific considerations relating to the calculation and payment of tax on income received by a foreign company from sources in the RF is specified. According to the new version of art. 309 of the RTC withholding tax will be levied on interest paid by a private entrepreneur and by a permanent establishment of a foreign organisation if the debt arose in connection with the activities of said permanent establishment.

## G. EXCHANGE CONTROL

Currency operations between currency residents and non-residents are not restricted. But there are a lot of strict requirements and limitations that Russian currency residents are obliged to comply with. Otherwise they will be liable to high fines up to 75% - 100% of the illegal currency operation amount.

As from 2019 Russia initiated the process of liberalisation of the currency legislation.

Currency exchange is allowed only through authorised banks. Currency operations between Russian currency residents are forbidden except for specified operations.

## H. PERSONAL INCOME TAX

Personal income tax is levied on resident and non-resident individuals, whether or not they are citizens of the Russian Federation. Individuals are considered to be resident if they spend more than 183 days in Russia during a continuous 12-month period. Residents are subject to income tax on their worldwide income and non-residents on their Russian-sourced income only.

As from 1 January 2021 the personal income tax rate system has been amended for residents and foreign highly skilled specialists:

- a 13% rate applies when the tax base is RUB 5 million or less;
- when income derived by an individual exceeds RUB 5 million, the tax rate is determined as RUB 650,000 plus 15% applied to income exceeding RUB 5 million;
- a special 35% rate is applied to some types of income, e.g. the cost of prizes and wins received as a result of advertising actions, received interest on certain bank deposits (exceeding specified rates), benefit (economy) on paid interests.

A 13% rate and RUB 650,000 plus 15% on income exceeding RUB 5 million are applied to dividends received by residents and a rate of 15% is applied if the dividend income is received by non-residents. All personal income of non-residents, excluding dividends (and some other specific income), is taxed at the rate of 30%.

As from 1 January 2021 a Russian resident may file a tax return taking into account that dividends paid to a foreign company are to be treated as dividends paid to such Russian resident. The personal income tax due is then reduced by the amount of taxes withheld as a result of dividends being paid to the foreign company.

A 30% tax rate is applied in respect of income from securities issued by Russian companies, the rights to which are recorded in the custody account of a foreign nominee holder, foreign authorised holder and/or foreign depository programs if information about persons exercising rights under securities was not provided to the tax agent.

The following types of income are exempt from tax:

- Welfare payments (except for temporary disability) and compensations paid out in compliance with legislation currently in force;
- All kinds of compensatory payments, prescribed by legislation, relating to labour duties;
- Alimonies received;
- Grants for the purpose of science, education, culture and art, given by international and foreign organisations;
- Scholarships and some others.

Income derived from the sale of real estate is exempt as follows (as from 2019 this exemption also applies to non-residents):

- Full exemption: for real estate that has been held for over five years;
- In a limited number of cases, the personal income tax exemption can be applied after three years of ownership.

Gifts received from individuals are exempt from income tax. However, gifts of immovable property, vehicles and securities are taxable unless these items are received from close relatives. Gifts received from individual entrepreneurs and legal entities are exempt up to RUB 4,000 in a calendar year. The excess is taxable at a rate of 13% for residents and 30% for non-residents.

Inherited property is exempt from tax.

Individuals are entitled to the following statutory deductions:

- Property-related deduction;
- Social deduction (as from 2022 expenses for health and fitness services are added to the list of social tax deductions subject to certain requirements);
- Professional deductions;
- Investment deduction
- Standard deduction
- and some other.

These deductions apply only to residents.

## SOCIAL CONTRIBUTIONS

Subject to social contributions are:

1) Persons paying remunerations to individuals (companies, individual entrepreneurs, individuals not registered as individual entrepreneurs);
2) Individuals who do not pay remunerations to individuals: individual entrepreneurs, lawyers and notaries engaged in private practice, and other persons engaged in private practice.

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The general rates of social contributions for payers who pay remunerations to individuals:

1) Pension Fund of the Russian Federation:
   - 22% within the established limit of social contribution base for compulsory pension insurance;
   - 10% over the established limit of social contribution base for compulsory pension insurance;
2) Social Insurance Fund of the Russian Federation: 2.9% within the established limit of insurance contribution base for compulsory social insurance against temporary disability and in respect of maternity benefit;
3) Federal Compulsory Medical Insurance Fund: 5.1%.

In case of benefits and other remunerations payable to foreign citizens and stateless persons residing temporarily on the territory of the Russian Federation (except for highly qualified specialists), the rate of social contributions to the Social Insurance Fund of the Russian Federation is 1.8%.

Payers who do not pay benefits or do not provide other remuneration to individuals shall pay the corresponding social contributions to the Pension Fund of the Russian Federation and the Federal Compulsory Medical Insurance Fund at the specified fixed amounts depending on their revenue.

Special rates are established for certain groups of employers and professions.

As from 1 January 2021 so-called small and medium-sized enterprises (revenue per annum up to RUB 2 billion (approximately USD 26 million), yearly average number of employees up to 250, shareholder's participation of other small/medium-sized enterprises and/or individuals of at least 51%) may apply the following rates:

I. in respect of remuneration of federal minimum salary (for 2021 about RUB 12,792 (approximately USD 170):

1) Pension Fund of the Russian Federation: 10% within the established limit of social contribution base for compulsory pension insurance;
2) Social Insurance Fund of the Russian Federation: 2.9% within the established limit of insurance contribution base for compulsory social insurance against temporary disability and in respect of maternity benefit;
3) Federal Compulsory Medical Insurance Fund: 5.1%.

II. in respect of remuneration excess of federal minimum salary (for 2021 about RUB 12,792 (approximately USD 170):

1) Pension Fund of the Russian Federation: 10%;
2) Social Insurance Fund of the Russian Federation: not applicable;
3) Federal Compulsory Medical Insurance Fund: 5%.

As from 1 January 2021 social contribution rates for IT-companies incorporated in Russia are 6% (pension insurance), 1.5% (social insurance) and 0.1% (medical insurance) in case such company meets the following criteria: (i) IT-company has obtained a special governmental accreditation (ii) 90% of company's income during tax period is derived from activities in IT (development, modification of computer programmes, etc.) (iii) company has at least 7 employees during the tax period.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The table below shows the withholding tax rates on dividends, interest and royalties under tax treaties concluded by the USSR and the Russian Federation. The Russian Federation has announced that it would honour the international agreements existing between the USSR and other countries. The table is for general guidance only. The relevant treaty should be consulted to confirm the applicable rates in each case.

Special provisions regarding the beneficial owner of the income were introduced in 2015. These provisions put in place the attributes of a beneficial owner. If a foreign person does not meet these attributes he is not allowed to invoke the benefits provided by international tax treaties concluded by the Russian federation.

The provisions of the MLI should also be taken into account. As for Russia the MLI has become applicable as from 1 January 2021. It is currently applied to 34 double tax treaties and overall it is expected that the MLI will cover no less than 71 double tax treaties. In most instances selected provisions comply with the Principle Purpose Test when income is paid out.

In 2020 Russia initiated renegotiation procedures regarding dividend and interest tax rates with countries having low tax rates, among others Cyprus, Malta and Luxembourg, in order to increase withholding tax rates applicable under double tax treaties. The new rate is 15%. As of March 2022 negotiations with The Netherlands have failed and the Russian Federation has initiated the process of DTT denunciation.

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 15 | 15 | 9/15/20[1] | 20[2] |
| Individuals | 15 | -- | 30[3] | 30[3] |
| **Treaty countries:** | | | | |
| Albania | 10 | 10 | 10 | 10 |
| Algeria | 15 | 5[4] | 0/15 | 15 |
| Argentina | 15 | 10[5] | 15 | 15 |
| Armenia | 10 | 5 | 10 | 0 |
| Australia | 15 | 5[6] | 10 | 10 |
| Austria | 15 | 5[7] | 0 | 0 |
| Azerbaijan | 10 | 10 | 10 | 10 |
| Belarus | 15 | 15 | 10 | 10 |
| Belgium | 10 | 10 | 0/10 | 0 |
| Botswana | 10 | 5[8] | 10 | 10 |
| Brazil | 15 | 10[9] | 0/15 | 15 |
| Bulgaria | 15 | 15 | 15 | 15 |
| Canada | 15 | 10[10] | 10 | 0/10 |
| Chile | 10 | 5[8] | 15 | 5/10 |
| China | 10 | 5[11] | 0 | 6 |
| Croatia | 10 | 5[12] | 10 | 10 |
| Cuba | 15 | 5[4] | 10 | 5 |
| Cyprus | 15 | 5[13] | 0/5/15 | 0 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Czech Republic | 10 | 10 | 0 | 10 |
| Denmark | 10 | 10 | 0 | 0 |
| Ecuador | 10 | 5[14] | 10 | 10/15 |
| Egypt | 10 | 10 | 15 | 15 |
| Finland | 12 | 5[15] | 0 | 0 |
| France | 15 | 5/10[16] | 0 | 0 |
| Germany | 15 | 5[17] | 0 | 0 |
| Greece | 10 | 5[4] | 7 | 7 |
| Hong Kong | 10 | 5[18] | 0 | 3 |
| Hungary | 10 | 10 | 0 | 0 |
| Iceland | 15 | 5[19] | 0 | 0 |
| India | 10 | 10 | 10 | 10 |
| Indonesia | 15 | 15 | 15 | 15 |
| Iran | 10 | 5[4] | 7.5 | 5 |
| Ireland | 10 | 10 | 0 | 0 |
| Israel | 10 | 10 | 10 | 10 |
| Italy | 10 | 5[20] | 10 | 0 |
| Japan | 10 | 5[21] | 0/10 | 0 |
| Kazakhstan | 10 | 10 | 10 | 10 |
| Korea (North) | 10 | 10 | 0 | 0 |
| Korea (South) | 10 | 5[22] | 0 | 5 |
| Kuwait | 5 | 0/5[23] | 0 | 10 |
| Kyrgyzstan | 10 | 10 | 10 | 10 |
| Latvia | 10 | 5[24] | 5/10 | 5 |
| Lebanon | 10 | 10 | 5 | 5 |
| Lithuania | 10 | 5[19] | 10 | 5/10 |
| Luxembourg | 15 | 5[25] | 0 | 0 |
| Malaysia | –/15 | –/15[26] | 15 | 10/15 |
| Mali | 15 | 10[27] | 0/15 | 0 |
| Malta | 15 | 0/5[28] | 5/15 | 5 |
| Mexico | 10 | 10 | 0/10 | 10 |
| Moldova | 10 | 10 | 0 | 10 |
| Mongolia | 10 | 10 | 10 | –[46] |
| Montenegro | 15 | 5[19] | 10 | 10 |
| Morocco | 10 | 5[29] | 0/10 | 10 |
| Namibia | 10 | 5[19] | 10 | 5 |
| Netherlands[30] | 15 | 15 | 20 | 20 |
| New Zealand | 15 | 15 | 10 | 10 |
| North Macedonia | 10 | 10 | 10 | 10 |
| Norway | 10 | 10 | 10 | 0 |
| Philippines | 15 | 15 | 0/15 | 15 |
| Poland | 10 | 10 | 10 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Portugal | 15 | 10[31] | 10 | 10 |
| Qatar | 5 | 5 | 5 | 0 |
| Romania | 15 | 15 | 15 | 10 |
| Saudi Arabia | 5 | 0/5[32] | 5 | 10 |
| Serbia | 15 | 5[19] | 10 | 10 |
| Singapore | 10 | 0/5/10[33] | 0 | 5 |
| Slovak Republic | 10 | 10 | 0 | 10 |
| Slovenia | 10 | 10 | 10 | 10 |
| South Africa | 15 | 10[34] | 10 | 0 |
| Spain | 15 | 5/10[35] | 0/5 | 5 |
| Sri Lanka | 15 | 10[5] | 10 | 10 |
| Sweden | 15 | 5[36] | 0 | 0 |
| Switzerland | 15 | 0/5[37] | 0 | 0 |
| Syria | 15 | 15 | 10 | 4.5/13.5/18 |
| Tajikistan | 10 | 5 | 10 | 0 |
| Thailand | 15 | 15 | –/10[47] | 15 |
| Turkey | 10 | 10 | 10 | 10 |
| Turkmenistan | 10 | 10 | 5 | 5 |
| Ukraine | 15 | 5[38] | 10 | 10 |
| United Arab Emirates[39] | –40 | 0[42] | 0[42] | –[41] |
| United Kingdom | 10 | 10 | 0 | 0 |
| United States | 10 | 5[43] | 0 | 0 |
| Uzbekistan | 10 | 10 | 10 | 0 |
| Venezuela | 15 | 10[44] | 0/5/10 | 10/15 |
| Vietnam | 15 | 10[45] | 10 | 15 |

NOTES:

1. Interest not connected to a permanent establishment is subject to a 20% final withholding tax on the gross amount, unless a treaty provides otherwise. However, irrespective of the attribution to a permanent establishment, interest on state and municipal securities is taxed at the general rate of 15%. Interest on mortgage bonds and long-term (at least 3 years) municipal bonds issued prior to 1 January 2007 is taxable at a 9% withholding tax rate.
2. Royalties not connected to a permanent establishment are subject to a 20% final withholding tax on their gross amount, unless a tax treaty provides otherwise.
3. The rate of income tax on dividends paid to non-resident individuals is 15%. All other income derived by non-resident individuals is taxed at a 30% rate.
4. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
5. The 10% reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company.
6. The 5% reduced rate applies to dividends paid out of profits that have borne the normal tax rate to an Australian company holding directly at least 10% of the capital in the Russian company, the Australian company's holding being at least AUD 700,000 and the dividends being exempt from tax in Australia.
7. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
8. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the share capital of the dividend-paying company.
9. The 10% reduced rate applies if the beneficial owner hold directly at least 20% of the total capital of the dividend-paying company.
10. The 10% reduced rate applies if the beneficial owner is a company which owns at least 10% of the voting stock (or in the case of Russia, if there is no voting stock, at least 10% of the statutory capital) of the dividend-paying company.
11. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company and this holding amounts to at least EUR 80,000 or its equivalent in any other currency.
12. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company (this share should be at least USD 100,000 or its equivalent in other currency).

13. As from 1 January 2021 the 5% reduced rate applies if the beneficial owner is an insurance undertaking or a pension fund or if the beneficial owner of the dividends is company whose shares are listed on a registered stock exchange provided that no less than 15% of the voting shares of that company are in free float and which holds directly at least 15% of the capital of the company paying the dividends throughout a 365 day period. Alternatively, the rate applies if the beneficial owner is the Government or a political subdivision or a local authority, or if the beneficial owner of the dividends is the Central Bank.
14. The 5% reduced rate applies if the beneficial owner is a company that owns directly at least 25% of the voting stock of the dividend-paying company.
15. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 30% of the capital of the dividend-paying company, and the foreign capital invested exceeds USD 100,000 or its equivalent in the national currencies of the Contracting States at the moment when the dividends become due and payable.
16. The 5% reduced rate applies if the French company (i) has directly invested at least EUR 76,225 in the Russian company and (ii) is subject to tax in France, but is exempt with respect to the dividends (i.e. participation exemption). The 10% reduced rate applies if only one of the requirements is fulfilled.
17. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company and this holding amounts to at least EUR 80,000 or the same value in roubles.
18. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 15% of the capital of the dividend-paying company.
19. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company and the foreign capital invested exceeds USD 100,000 or its equivalent in Russian national currency.
20. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company (this share should be at least USD 100,000 or its equivalent in other currency).
21. The 0% reduced rate applies if the beneficial owner of the dividends is a pension fund meeting certain conditions;

    The 5% reduced rate applies if the beneficial owner is a company which has owned directly at least 15% of the voting power of the dividend-paying company for the period of 365 days ending on the date on which entitlement to the dividends is determined, provided the payer company is not entitled to a deduction for dividends paid in computing its taxable income

    The 15% rate applies on dividends derived by a resident of a state from shares of a company or comparable interests, such as interests in a partnership, trust or investment fund, if, at any time during the 365 days preceding the payment of the dividends, these shares or comparable interests derived at least 50% of their value directly or indirectly from immovable property situated in that other state.
22. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 30% of the capital of the dividend-paying company and invests not less than USD 100,000 or equivalent amount of local currencies to the dividend-paying company.
23. The 0% reduced rate applies to dividends distributed to governments, state authorities, public financial institutions or public entities where state participation is at least 25%.
24. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company and the capital invested exceeds USD 75,000 or its equivalent in the national currencies of the Contracting States.
25. As from 1 January 2022, the 5% reduced rate applies if the beneficial owner is (i) an insurance undertaking or a pension fund (ii) a company whose shares are listed on a registered stock exchange provided that no less than 15% of the voting shares of that company are in free float and which holds directly at least 15% of the capital of the dividend-paying company throughout a 365-day period that includes the day of the payment of the dividend (iii) the Government or a political subdivision or a local authority thereof (iv) the Central Bank.
26. The 15% rate applies to profits of joint ventures. Otherwise, the domestic rate applies (there is no reduction under the treaty).
27. The 10% reduced rate applies if the value of the holding is at least FRF 1 million.
28. As from 1 January 2021 the 5% reduced applies if the beneficial owner is (i) an insurance undertaking or a pension fund (ii) a company whose shares are listed on a registered stock exchange, provided that no less than 15% of the voting shares of that company are in free float and which holds directly at least 15% of the capital of the dividend-paying company throughout a 365 day period that includes the day of payment of the dividends (iii) the Government of Malta or a political subdivision or a local authority thereof (iv) the Central Bank of Malta.
29. The 5% reduced rate applies if the participation of the Morocco resident in the capital of the Russian dividend-paying company exceeds USD 500,000.
30. On 1 January 2022 the treaty between Russia and Netherlands ceased to be valid. As from 2022 the double taxation relief mechanism is terminated, information exchange ceases to exist, the regulation of CFCs situated in the Netherlands will be toughened and the income of Dutch entities received from sources in Russia is subject to the domestic taxation procedures with no special benefits as a result of such cancellation. The denunciation of the DDT entails a significant increase of tax rates for dividend payments, interest, royalties (other income) as well as a risk of double taxation. Thus 15% domestic withholding tax rate applies to dividend payments; and 20% to royalties, interest, and other income.
31. The 10% reduced rate applies if the beneficial owner is a company that, for an uninterrupted period of two years prior to the payment of the dividend, owns directly at least 25% of the capital of the dividend-paying company.
32. The 0% reduced rate applies to dividends distributed to governments, state authorities, public financial institutions or public entities where state participation is at least 25%.
33. The 0% reduced rate applies to dividends distributed to governments, state authorities, public financial institutions, etc. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 15% of the capital of the dividend-paying company. The 10% rate applies to distributions paid by a real estate investment fund and all other cases.
34. The 10% reduced rate applies if South African residents hold at least 30% of the capital of the dividend-paying company and have directly invested in the equity share capital (authorised fund) of that company an amount of not less than USD 100,000 or the equivalent thereof in Russian currency.
35. The 5% reduced rate applies if (i) the Spanish company (other than a partnership) has invested at least EUR 100,000 or the equivalent amount in any other currency in the Russian company and (ii) the dividends are exempt from tax in Spain. The 10% rate applies if only one of the conditions is met.
36. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company (other than a paying company that is an investment fund) and this holding amounts to at least EUR 80,000 or an equivalent amount in any other currency at the moment of the actual distribution of the dividends.
37. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company and the foreign capital invested exceeds CHF 200,000 its equivalent in any other currency at the moment when the dividends become due. With effect from 1 January 2013, a 0% rate applies if the beneficial owner of the dividends is (i) a pension fund (or similar institution (ii) the government of the other state, any political subdivision or local authority thereof, or (iii) a Central Bank.
38. The 5% reduced rate applies if the value of the holding is at least USD 50,000.

39. The application of the treaty is limited.
40. The treaty is not applicable to individuals receiving dividends.
41. The treaty does not cover royalties.
42. The treaty only applies if the recipient is a financial or investment institution.
43. The 5% reduced rate applies if the beneficial owner is a company which owns at least 10% of the voting stock (or, in the case of Russia, if there is no voting stock, at least 10% of the statutory capital) of the dividend-paying company.
44. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company and has invested in this company not less than the equivalent of USD 100,000.
45. The 10% reduced rate applies if the Vietnam residents have directly invested in the equity share capital of the Russian company not less than USD 10 million.
46. The domestic rate applies. There is no reduction under the treaty.
47. The 10% rate applies to interest paid to financial institutions (as defined). The domestic rate applies in other cases. There is no general reduction under the treaty.

### J. TAX MONITORING REGIME

On 21 February 2020 the Russian Federation approved Government Order the "Concept of amendments to tax monitoring regime" for Russian taxpayers. The Tax Monitoring Regime which has been in effect in Russia since 2016 replaces traditional tax audits by online interaction between the taxpayer and the tax authorities. Within the Tax Monitoring Regime inspectors analyse tax and accounting reports, as well as information on transactions and other business operations of the company in real time. Under the Tax Monitoring Regime businesses shall grant online access to the responsible tax authorities to the documents and other information forming the basis for the calculation of taxes or provide these documents to the authorities through telecommunication channels by themselves.

Following the changes adopted by Federal Law No. 470-FZ on 1 July 2021, taxpayers can join the new Monitoring Regime voluntarily if they meet the following requirements:

- aggregate annual amount of VAT, excise taxes, corporate profits tax and mineral extraction tax payable to the federal budget for the previous calendar year is not less than RUB 100 million;
- aggregate annual income for the previous calendar year according to the accounting records is not less than RUB 1 billion;
- total value of assets as of 31 December of the year preceding the year of application according to the accounting records is not less than RUB 1 billion.

Such cooperative tax compliance can provide greater tax certainty as a result of a relationship with the tax administration based on continuing trust and co-operation. Taxpayers applying the special tax monitoring regime have the opportunity to discuss the tax implications of proposed transactions with the Russian tax authorities and to obtain a tax ruling that is binding for both the taxpayer and the Russian tax authorities. The taxpayer retains the right to challenge the tax ruling by filing an objection with the Russian tax authorities.

Key aspects:

- Switching to the Monitoring Regime provides advantages (reduces tax risks, expenses for tax audits, administrative pressure and increased predictability of tax liabilities);
- The financial and tax authorities are focused on continuing to enhance the group of users of the Monitoring Regime due to the Concept;
- Joining the Monitoring Regime requires some efforts from the side of participating taxpayers with regard to the development of internal control and IT systems.

# RWANDA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Kigali | Erick Mbuthia Njuguna | +250 788 300 428<br>enjuguna@rw.pkfea.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Rwanda |
| Capital: | Kigali |
| Main languages: | Kinyarwanda, French, English |
| Population: | 13.55 million (2022 estimate) |
| Monetary unit: | Rwandan Franc (RWF) |
| Internet domain: | .rw |
| Int. dialling code: | +250 |

## KEY TAX POINTS

- A resident company is subject to income tax on its worldwide income. A non-resident company is subject to tax only on income sourced in Rwanda through a permanent establishment in Rwanda.
- A foreign tax credit is granted for income tax paid on foreign-sourced income.

- The effective corporate income tax rate is 30 % for both domestic companies and branches of foreign companies. However, certain special categories of investors benefit from preferential corporate income tax rates of 0% and 15 %.
- A 15% withholding tax is levied on dividends, interest, royalties and technical and management fees paid by resident entities including tax-exempt entities.
- A new income tax law was introduced in 2018 which brought about some fundamental changes in capital gains tax, withholding tax, taxation of employment fringe benefits, new anti-avoidance rule on payments of management, technical and royalty fees to non-resident entities etc.

## A. TAXES PAYABLE

### CORPORATE INCOME TAX

Rwanda administers two corporate income tax regimes:

a) Real corporate tax regime where companies are subject to a standard tax rate of 30% of taxable profits.

b) Lump sum tax regime – This option is available to businesses with a turnover below RWF 20 million (USD 22,500) at a standard tax rate of 3% of turnover. It is effectively a turnover tax.

Registered investors in priority sectors such as energy, transport, export investments, affordable housing projects, and registered venture capitalists are entitled to preferential income tax rates of either 0% or 15 % subject to meeting certain investment criteria.

Taxpayers are required to declare and pay their taxes not later than 31 March of the following tax period. If the taxpayer uses a tax period that does not coincide with the calendar year, tax is paid not later than the last day of the third month of the following tax period.

### CAPITAL GAINS TAX

Capital gains are taxed at a rate of 5% of the gain calculated as the difference between sales price and purchase price. The Law is not explicit on whether indexation is applicable for long-term investments. However, the following are exempt from capital gains tax:

a) Capital gain on secondary market transaction on listed securities.

b) Capital gain arising from corporate re-organisation.

### BRANCH PROFITS TAX

Branches of a non-resident entity pay tax at the standard corporate income tax rate of 30 %.

### VALUE ADDED TAX (VAT)

Supplies of goods and services for Value Added Tax (VAT) purposes are either exempt, zero rated or standard rated. The standard rate of VAT is 18%.

### EMPLOYMENT BENEFITS TAX

Generally, benefits in kind received by an employee are included in taxable income in consideration of market value for tax purposes. The following specific benefits are valued as follows:

1) Motor vehicles benefit is valued at 10 % of the employment income where the car is company owned. In the case where a company has leased a car for an employee, the fringe benefit is the actual lease cost paid by the employer.
2) Housing benefit is valued at 20 % of the employment income where the residential property is company owned. In the case where a company has rented a residential premise for an employee, the fringe benefit is the actual rent cost paid by the employer.
3) Fringe benefit tax – applies to loans or salary advances exceeding three month's salary granted to employees on interest free or low interest terms. The benefit is valued as the difference between the interest rate offered to commercial banks by the National Bank of Rwanda and the actual rate paid by employees.
4) Benefits provided by an employer to a person related to an employee when there is no service rendered, are treated as if provided to the employee. Benefits provided by a company to one of its members are considered in the same manner as benefits an employer gives to an employee.



### EMPLOYMENT TAXES

Employment income is taxed on a withholding tax basis known as Pay-As-You-Earn (PAYE) at a graduating scale of 0% to 30 %.

### CONTRIBUTION TO SOCIAL SECURITY FUND (RSSB)

Contributions are set at 3 % for employees and 5 % for employers in respect of the employees' monthly income. Total remittance is 8 %. Included in the 5 % contribution by employers is a 2 % contribution for occupational hazard.

### CONTRIBUTION TO MATERNITY LEAVE BENEFIT FUND (RSSB)

Contributions are set at 0.3 % for employees which is matched by employers in respect of the employees' monthly income. Total remittance is 0.6 %.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is accounting income adjusted for non-taxable income and for non-deductible expenses. Expenses are deductible if they are incurred wholly and exclusively for the purpose of the business.

### CAPITAL ALLOWANCES

The rates for wear and tear allowances for business assets deductible from taxable profits are as follows:

| Type of asset | Rate (%) |
|---|---|
| Land, fine arts, antiquities, jewellery and any other assets that are not subject to wear and tear or obsolescence | 0 |
| Cost of acquisition, construction , refining, rehabilitation, or reconstruction of buildings, equipment and heavy plant and machinery (straight line) | 5 |
| Cost of acquisition, development, improvement, rehabilitation or reconstruction of intangible assets, including goodwill that is purchased from a third party (straight line) | 10 |
| Computers and accessories, information and communication systems, software products and data equipment (reducing balance) | 50 |
| All other assets (reducing balance) | 25 |

## INVESTMENT DEDUCTION

Accelerated depreciation of 50 % is granted in the first year of asset use for qualifying new/used assets.

## LIQUIDATION

Proceeds on the sale of any business asset and liquidation proceeds received during the tax period are included in business profit.

## DIVIDENDS

Dividend payments to residents are subject to a final withholding tax at a rate of 15% with the exemption of dividends from collective investment schemes. A preferential withholding tax rate of 5% applies to dividends from shares listed on the stock market where the beneficial owner of the dividends is a resident of Rwanda or the wider East Africa Community (EAC) bloc. Dividends paid to non-resident companies are subject to a 15% withholding tax, subject to provisions of double taxation relief, where applicable.

Foreign-sourced dividend income is included in the taxable income of residents based on the worldwide principle of taxation

## INTEREST DEDUCTIONS

Interest incurred wholly and exclusively in the production of income is allowable. However, interest paid on loans and advances from related entities is not tax deductible to the extent that the loan/advanced amount is more than four times the amount of equity during the tax period. In this case, equity does not include provisions and reserves (thin capitalisation ratio of 4:1). This provision does not apply to commercial banks, microfinance institutions and insurance companies.

## LOSSES

Tax losses may be carried forward over the next 5 tax periods in the determination of taxable profits, earlier losses being deducted before later losses excluding foreign sourced losses. If during a tax period, the direct and indirect ownership of the share capital or the voting rights of an unlisted company, changes by more than 25 % by value or number, the tax losses incurred in that tax period and previous tax periods are forfeited.

A loss carry-back is allowed for long-term contracts.

## FOREIGN SOURCED INCOME

Resident companies are subject to tax on their worldwide income. Therefore, foreign-sourced income is subject to tax in Rwanda. A foreign tax credit is granted for income tax paid on foreign-sourced income to the extent that the foreign tax paid does not exceed the tax that would have been paid had the same income been taxed in Rwanda.

## INVESTMENT INCENTIVES

In addition to preferential corporate income tax rates described above the following are other incentives that are available to registered investors in Rwanda:

- Custom duty exemption/concessions for products used in the Export Processing Zones.
- Capital gains tax exemption excluding income derived from the sale of commercial immovable property which shall be included in the investor's taxable income.
- Seven-year tax holiday on income derived by a registered investor investing at least USD 50 million and contributing at least 30% of such investment in the form of equity.
- Five-year tax holiday on income derived by Microfinance institutions.
- Prompt settlement of VAT refunds within 15 days after request.
- Immigration incentives – three guaranteed work visas for expatriate staff.



## C. FOREIGN TAX RELIEF

Relief for foreign taxes paid is granted in accordance with double tax treaties with other countries. If foreign tax is paid in a country that does not have a double tax treaty with Rwanda, the tax paid may be subtracted from tax payable in Rwanda, subject to certain restrictions.

## D. CORPORATE GROUPS

The income tax law does not provide for filing of consolidated returns, the combining of profits and losses of affiliated companies or the transfer of losses from loss companies to profitable members of the same group of companies. Generally for tax purposes, a corporation tax rate of 30 % applies to all separately incorporated companies irrespective of groups both in Rwanda and outside for profits derived in Rwanda.

## E. RELATED PARTY TRANSACTIONS

Ministerial Order No. 003/20/10/TC of 11/12/2020 Establishing General Rules on Transfer Pricing (TP) came into effect on 14

December 2020 with the publishing of Official Gazette No. 40 of 2020. For the first time, Rwanda now has elaborate TP rules which are consistent with international practice.

**Scope of the new TP rules**

The rules apply to entities in Rwanda which carry out controlled transactions with both domestic and foreign related persons.

By definition, related persons include family relatives up to the third degree, direct or indirect participation in the management, control or capital of another enterprise or a third party who participates directly or indirectly in the management, control or capital of two enterprises.

Dealings involving a permanent establishment located in Rwanda are also covered by these rules. The scope also includes "deemed controlled transactions" which are transactions that may not be carried out between related persons but applies to transactions with third parties who are deemed to operate in a country that is considered to offer beneficial tax regime. A detailed list of features which narrow down which countries are considered as offering such a beneficial tax regimes includes countries that offer a headline corporate income tax rate of 20% or less.

**Threshold for preparation of TP documentation**

A taxpayer with an annual turnover which is less than RWF 600 Million is not required to prepare TP documentation. However, a taxpayer with a turnover less than RWF 600 million may still be required to submit documentation in the following two instances:

- Carries out a single controlled transaction of RWF 10 million or more;
- Carries out aggregated controlled transactions of RWF 100 million or more.

**Deadline for preparation and submission of TP documentation**

Documentation for a relevant tax period must be in place before the deadline of income tax declaration. Consequently, taxpayers with a 31 December 2020 year-end must prepare the Local file for 2020 by 31 March 2021.

Upon request from the Tax Administration, the required documentation must be presented within seven days.

**Documentation requirements**

The rules provide that any person carrying out transactions that are within the scope of TP must have a TP policy and also prepare and maintain TP documentation (local file) that verifies that the conditions of the controlled transactions for a relevant tax period are consistent with the arm's-length principle. The local file format and requirements are mostly consistent with the OECD TP guidelines.

## F. WITHHOLDING TAX

Withholding tax is now levied not only on cash payments but also on other methods of extinguishing an obligation. These methods may include barter-type transactions, debt offsets etc. Withholding tax is applicable if such payments or other methods of extinguishing an obligation are made to either:

- a person not registered with the tax administration
- a person who does not have a recent income tax declaration.

The payments which are subject to withholding tax at the rate of 15% include:

i. Dividends, except for dividends derived from collective investment schemes.
ii. Interest, except interest derived from term deposits with a maturity period exceeding one year, interest on loans from FDIs and interest paid by commercial banks to other financial institutions. Interest derived from treasury bonds with a maturity period of 3 years and above attracts a rate of 5%;
iii. Royalties;
iv. Service fees;
v. Performance payments for sportsmen, musicians etc.;
vi. Gambling activities; and
vii. Goods sold in Rwanda.

A withholding tax of 5% of the value of goods imported for commercial use shall be paid at Customs on the CIF value before the goods are released by Customs.

Withholding tax of 3% on the sum of invoice, excluding the value added tax, is retained on payments by public institutions to the winner of public tenders.

## G. EXCHANGE CONTROL

The currency in Rwanda is the Rwandan franc (RWF). Rwanda does not impose foreign exchange controls.

## H. PERSONAL TAX

Taxable income consists of income from domestic and foreign sources such as employment income, business profits and investment income. The tax rates are as follows:

| Annual taxable income (RWF) | Rate |
|---|---|
| 0 – 360,000 | 0% |
| 360,001 – 1,200,000 | 20% |
| Over 1,200,000 | 30% |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| • Companies | 5[3]/15 | 5/15 | 5[4]/15 | 15 |
| • Individuals | 5/15 | -- | 15 | 15 |
| **Treaty countries** | | | | |
| Belgium | 15 | 0[1] | 10 | 10 |
| Jersey | 10 | 10 | 10 | 10 |
| Mauritius | 10 | 10 | 10 | 10 |
| Singapore | 7.5 | 7.5 | 10 | 10 |
| South Africa | 20 | 10[2] | 10 | 10 |
| Turkey[5] | 10 | 10 | 10 | 10 |

Notes:

1. The 0 % rate applies if the beneficial owner of the dividends is a company which is a resident of the other Contracting State and which at the point of payment of the dividends holds, for an uninterrupted period of at least 12 months, shares representing directly at least 25 % of the capital of the company paying the dividends, and the paying company does not enjoy the benefit of special measures to promote economic development.
2. The 10% reduced rate applies if the beneficial owner is a company which holds at least 25 % of the capital of the dividend-paying company.
3. The 5% rate applies to dividends distributed on securities listed on capital markets when the payer is a resident of the East African Community.
4. The 5% rate applies to interest paid on securities listed on capital markets and interest arising from bonds with a minimum maturity period of 3 years where the payer is a resident of the East African Community.
5. Effective date: 1 January 2021.

# SAINT KITTS AND NEVIS

## SAINT MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Basseterre | Stefaan De Ceulaer | +44 20 3691 2511<br>stefaan.deceulaer@pkf.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Federation of Saint Kitts and Nevis |
| Capital: | Basseterre |
| Main languages: | English |
| Population: | 53,905 (2022 estimate) |
| Monetary unit: | East Caribbean Dollar (XCD) |
| Internet domain: | .kn |
| Int. dialling code: | +1 |

S

## KEY TAX POINTS

- Corporate income tax is levied at 33% on resident companies and branches held by non-resident companies. A branch remittance tax of 10% also applies.
- Capital gains are not taxable except if a capital asset is sold within 1 year from the date of acquisition, in which case a 16.5% capital gains tax is applicable (half of the corporate tax rate of 33%).
- VAT is levied at a standard rate of 17%.
- There is no withholding tax on dividends, interest, royalties and technical services and management fees paid to residents while such payment to non-residents are subject to a 10% withholding tax, which needs to be remitted to the Inland Revenue within 15 days.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

## COMPANY TAX

A resident company is taxed on its worldwide income. A non-resident company is taxed on Saint Kitts and Nevis-sourced income only. A company is deemed to be resident if:

- it is incorporated in St. Kitts;
- it is registered as an external company doing business in Saint Kitts and Nevis;
- it is centrally managed and controlled in Saint Kitts and Nevis.

Corporate income tax is currently imposed at a rate of 33%. The tax return must be filed by the 15th day of the fourth month after the end of the tax year, along with the financial statements.

As a COVID-19 relief measure, for the 6-month period of April to September of 2020 the rate was reduced to 25% if at least 75% of the company's staff is retained.

## CAPITAL GAINS TAX

Capital gains are not taxable except if a capital asset is sold within 1 year from the date of acquisition, in which case a 16.5% capital gains tax is applicable (half of the corporate tax rate of 33%).

## BRANCH PROFITS TAX

Like resident companies, branches are subject to corporate tax at a rate of 33%. A branch remittance tax of 15% also applies.

## SALES TAX / VALUE ADDED TAX (VAT)

VAT was introduced in November 2010 and applies to the sale of goods or the supply of services within Saint Kitts and Nevis and on the import of goods. Persons who have made or are likely to make taxable supplies in excess of XCD 96,000 for certain professional services and XCD 150,000 for other business activities in a continuous period of 12 calendar months must register. The standard VAT rate is 17% while reduced rates of 10% (hotel or holiday accommodation, tour operators and restaurants) and 0% (exports, sale of commercial real property on which stamp duty was paid and fuel) also apply. Returns and payments must be submitted by the 15th day of each calendar month.

## OTHER TAXES

Apart from real property tax, social security and stamp duty, there are no other taxes on companies.

## REAL ESTATE WITHHOLDING TAX

Property is assessed by the Property Valuation Department on the market value of real property and ranges from 0.01% to 0.3%, depending on the use (commercial, accommodation, certified farming or institutional) and location of the property.

## SOCIAL SECURITY

The employer contributes 5% of employee earnings for social security and 1% of employee earnings for employment injury benefits, the contribution ceiling of which is XCD 6,500 per month. The employer contribution to the Social Services Levy and to the Severance Payment Fund are respectively 3% and 1% of chargeable employee income.

## STAMP DUTY

Stamp duty on the transfer of shares is 2%, payable by the vendor and it ranges from 6% to 10% on the transfer of real property, depending on the consideration and/or the location of the property, payable by the vendor.

## CUSTOMS AND EXCISE DUTIES

Customs duties are imposed under the CARICOM Common External Tariff. There is a general exemption from duties with respect to goods imported from other CARICOM member states. Customs import duties and consumption tax is applied at varying rates on imported goods. Saint Kitts and Nevis also imposes a customs service tax of 6% on all imports. Excise duty applies to a small range of goods, such as alcoholic beverages, tobacco products, petroleum products, motor cycles, aerated beverages and firearms and the rate ranges between 5% and 25%.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is calculated as net profit before tax, adjusted for non-deductible expenses and allowable deductions.

## DEPRECIATION

A deduction for wear and tear in respect of buildings or plant and machinery employed in or for the production of income for that income year is mandatory in accordance with the rates applicable according to a published schedule. The allowance is calculated using a reducing balance method. An initial allowance of 20% is granted on industrial buildings or structures and in respect of capital expenditure incurred on plant and machinery by a person carrying on a trade or undertaking. In addition, an annual allowance of between 2% and 5% is allowed on all buildings constructed after 1 March 1994. Concrete buildings are depreciated at a rate of 2%, while the rate varies for other buildings depending on the type of material used in construction. There are no provisions regarding depreciation or amortization of expenditure on intangible property such as patents or goodwill, or pre-incorporation and similar expenses.

## STOCK / INVENTORY

Inventory is generally stated at the lower of cost or net realisable value. The first in first out (FIFO) and average cost methods of valuation are generally used. However, the tax authorities will generally accept a method of valuation that conforms to standard accounting practice in the trade concerned. The last in first out (LIFO) method is not allowed.

## CAPITAL GAINS AND LOSSES

Capital gains are generally (however, see higher) not taxable and capital losses are therefore not allowed.

## DIVIDENDS

Dividends received by a company resident in Saint Kitts and Nevis from another company resident in Saint Kitts and Nevis are taxed at source at the corporate income tax rate of 33%. Credit is given to the recipient for the tax on the dividend when computing the tax liability.

### INTEREST DEDUCTIONS

Interest is only deductible to the extent that it was incurred in producing chargeable income. There are no thin capitalisation rules.

### LOSSES

Losses can be carried forward for up to 5 years while losses cannot be carried back. Losses may only offset 50% of chargeable income in an income year.

### FOREIGN SOURCE INCOME

Resident companies are taxable on their worldwide income. Foreign business income is net income from business, trade, profession or vocation activities, dividends, interest, rents and royalties.

### TAX INCENTIVES

Various incentives are available for offshore companies, the hotel industry, pioneer manufacturers, approved enterprises to manufacture certain approved products, small businesses and the development and use of alternative energy technologies.

## C. FOREIGN TAX RELIEF

Foreign tax credits are normally not granted, with the exception of taxes paid in a British Commonwealth country that grants similar relief for taxes paid in Saint Kitts and Nevis or where a double tax treaty permits. The credit for an eligible Commonwealth income tax is maximum half the Saint Kitts and Nevis rate (16.5%). Unilateral relief is granted on a per-country basis while treaty relief is optional. Foreign taxes for which no tax credit is available are generally not deductible in computing taxable income.

## D. CORPORATE GROUPS

Group taxation is not permitted in Saint Kitts and Nevis.

## E. RELATED PARTY TRANSACTIONS

There are no transfer pricing regulations as such, nor are there rules on Controlled Foreign Companies (CFC).

## F. WITHHOLDING TAX

There is no withholding tax on dividends, interest, royalties and technical services and management fees paid to residents while such payment to non-residents are subject to a 15% withholding tax, which needs to be remitted to the Inland Revenue within 15 days.

## G. EXCHANGE CONTROL

There are no limits on foreign exchange transactions.

## H. PERSONAL TAX

There is no personal income tax in Saint Kitts and Nevis.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 15 | 15 | 15 | 15 |
| Individuals | 15 | -- | 15 | 15 |
| **Treaty countries** | | | | |
| Caricom[1] | 0/15[2] | 0/15[2] | 15 | 15 |
| Monaco | 0/5[3] | 5 | 0 | 0 |
| San Marino | 10 | 5/7.5[4] | 0 | 0 |
| Switzerland | --[5] | --[5] | --[5] | 0 |
| United Kingdom | 0 | 0 | --[6] | 0 |

Notes:

1. Multilateral treaty ratified by Antigua, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago.
2. The higher rate applies to dividends distributed from preference shares.
3. Higher rate applies to dividends paid to companies, lower rate to dividends paid to individuals or a partnership held by individuals and beneficial owners who are resident of either contracting state.
4. The 5% rate applies if the beneficial owner is a company which has held directly at least 25% of the capital of the dividend-paying company for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends. The 7.5% rate applies if the beneficial owner is a company which has held directly at least 10% but less than 25% of the capital of the dividend-paying company for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends.
5. Dividends and interest are not covered under the treaty, thus the domestic rates apply.
6. Interest is not covered under the treaty, thus the domestic rate applies.

# SAINT LUCIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Castries | Richard Surage | +1 758 450 7777<br>rsurage@pkf.lc |

## BASIC FACTS

| | |
|---|---|
| Full name: | Saint Lucia |
| Capital: | Castries |
| Main languages: | English |
| Population: | 185,099 (2022 estimate) |
| Monetary unit: | East Caribbean Dollar (XCD) |
| Internet domain: | .lc |
| Int. dialling code: | 1+758 |

## KEY TAX POINTS

- A resident company is taxed on worldwide income. A non-resident company is taxed on income derived or sourced from St. Lucia. The current standard corporate tax rate is 30%.
- The standard rate for Value Added Tax (VAT) is 12.5% and a reduced rate of 10% applies to goods and services supplied by hotels and restaurants.
- Taxes are required to be withheld from payments made to non-residents of an income nature and from payments to residents for labour contracts and certain services. For Caricom persons, the rate is 15%, for non-Caricom persons 25% and for residents 10%.
- Where an individual is a resident but is not ordinarily resident, his or her assessable income shall include income accrued from sources out of Saint Lucia but only to the extent that such income is received in Saint Lucia.
- For non-residents, taxable income means income generated in St. Lucia and income from activities performed in St. Lucia.

## A. TAXES PAYABLE

### COMPANY TAX

A company is deemed to be resident if it is either incorporated in St. Lucia or is centrally managed and controlled in St. Lucia. A resident company is taxed on worldwide income. A non-resident company is taxed on income derived or sourced from St. Lucia. The tax year is based on the company's fiscal year. The current corporation tax rate is 30%, however, a rate of 33% is imposed on companies that are non-compliant.

Corporate tax returns must be filed within three months of the end of the financial year and must be accompanied by the financial statements in local currency and payment of any tax due. A tax return filing extension may be granted once requested within a reasonable period prior to the year end.

Tax instalments are to be paid quarterly by 25 March, 25 June, and 25 September of each year. Instalments are based on 1/3 of the tax liability as per the last tax return filed. Late filing penalties are levied at 5% of the tax liability and late payment penalties at 10% of the tax unpaid. Interest of 1.04 % per month or part thereof is applicable to the taxes unpaid. Interest on unpaid Instalments is 1.06% per month or part thereof.

### CAPITAL GAINS TAX

Gains from the sale of capital assets are not subject to tax in St Lucia.

### BRANCH PROFITS TAX

The tax on profits and earnings of a foreign corporation's branch is the same as the standard corporate tax rate.

### VALUE ADDED TAX (VAT)

VAT is imposed on the sale of goods (including commercial real estate) and supply of services (financial services are exempt) in St. Lucia and the importation of goods and services into St. Lucia. The standard rate is 12.5%. Certain goods and services are zero-rated or exempt. The registration threshold is a total value of taxable (vatable) supplies exceeding XCD 400,000 per year. Voluntary registration is also available. Monthly returns and payments must be submitted by the 21st day of the following month.

Effective 1 December 2020, the VAT rate for tourism accommodation service providers was reduced from 10% to 7%.

### OTHER TAXES ON CORPORATIONS

### PROPERTY TAX

A rate of 0.4% of the market value is imposed on commercial property.

### SOCIAL SECURITY CONTRIBUTIONS

Employers contribute at a rate of 5% of each employee's earnings. The contributions ceiling is XCD 250 per month.

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## STAMP DUTY

Stamp duty is charged on any document that evidences a legal or contractual relationship between two or more parties.

## TRANSFER TAX

Transfer (vendor's) tax on the sale of real property is 2.5% to 5% for a resident company, 10% for a non-resident company and 2% for the purchaser. The first XCD 50,000 of the transfer is exempt. Non-resident purchasers must obtain an alien landholding licence, the cost of which is 7.5% of the value of the property being purchased. The transfer of shares is subject to 0.5% transfer tax. However, if 75% or more of the company's assets consist of property, the transfer is deemed to be of real property and attracts the vendor's tax rate stated above.

## CUSTOMS DUTIES

Importation of goods are subject to Customs duties according to the CARICOM Common External Tariff.

## B. DETERMINATION OF TAXABLE INCOME

Corporate taxable income is determined by ascertaining assessable gross income which is then reduced by allowable deductions.

## DEPRECIATION

Deductions are allowed for the cost of commercial buildings, plant and machinery and vehicles as follows:

| | |
|---|---|
| Initial allowance: | 20%; |
| Annual allowance: | 2.5% - 33 1/3% on the reducing balance. |

## DIVIDENDS

Dividends paid to residents and non-residents are not subject to income tax nor withholding tax.

## INTEREST DEDUCTIONS

Interest expense is tax deductible to the extent the loan was used for producing assessable income.

## FOREIGN SOURCE INCOME

A resident company is taxed on worldwide income.

## INCENTIVES

### International Business Companies Act

Regional headquarters located in St. Lucia and registered as an IBC are granted concessions on income tax for their employees' salaries and on customs duties for materials articles and equipment used.

Effective 1 July 2021, St. Lucia's IBCs are now subject to the Income Tax Act and deemed resident companies. Foreign-sourced income for IBCs is not taxable.

## OTHER

Under the Fiscal Incentives Act, approved enterprises engaged in the manufacture of an approved product are granted tax holidays and exemption from import duties. Under the Tourism Incentive Act, an approved Tourism product is granted certain tax and import duty exemptions.

## LOSSES

Losses can be carried forward up to 6 years. Losses utilised may only reduce the taxable income by 50%. The carry-back of losses is not permitted. There are no anti-avoidance rules in respect of thin capitalisation, transfer pricing and controlled foreign companies.

## C. FOREIGN TAX RELIEF

Tax credits are granted at the lesser of the tax charged in St. Lucia on the foreign source income and the tax payable in the other country.



## D. CORPORATE GROUPS

Corporate tax returns are based only on separate and not on consolidated financial statements.

## E. RELATED PARTY TRANSACTIONS

Related party transactions negotiated at arm's length are treated the same as non-related party transactions. The Inland Revenue Department may make any adjustments necessary where a transaction is deemed to be for the purpose of tax avoidance.

## F. WITHHOLDING TAX

Taxes are required to be withheld from payments made to non-residents of an income nature and from payments to residents for certain services. See section I below for applicable rates. Payments to residents for labour contracts are taxed at 10%.

## G. EXCHANGE CONTROLS

There are no foreign exchange controls in St Lucia.

## H. PERSONAL TAX

Resident individuals are taxed on worldwide income. However, only to the extent received in St. Lucia if they are not ordinarily resident in St. Lucia. For non-residents, taxable income means income generated in St. Lucia and income from activities performed in St. Lucia. An individual is considered resident if physically present in St. Lucia for at least 183 days in a year. The tax year is the calendar year.

Taxable income includes employment and business income less allowable deductions and allowances such as the personal allowance and the pension/old age exemption (XCD 18,000 for non-pensioners and XCD 24,000 for pensioners and persons above 60 years old) and unlimited medical expenses, with supporting documentary evidence. Capital gains are not subject to tax.

Chargeable income is taxed at the following progressive rates as follows:

| Chargeable Income (XCD) | Rate (%) |
|---|---|
| Up to 10,000 | 10 |
| 10,001 – 20,000 | 15 |
| 20,001 – 30,000 | 20 |
| Over 30,00 | 30 |

A Pay-As-You-Earn (PAYE) system is used to deduct tax from the salaries of employees. Individuals who have paid income tax (PAYE) and those with a liability must file an income tax return by 31 March together with a payment of any tax due. Individuals whose allowances exceed the income tax threshold with no PAYE deductions or tax deductions are not obligated to file an income tax return. Penalties of 5% are applied to the tax liability for filing a tax return late and 10% of the unpaid tax balance plus interest at the rate of 1.04% per month (for late payment of tax due).

## OTHER TAXES ON INDIVIDUALS

### STAMP DUTY

Same as for corporations.

### PROPERTY TAX

A rate of 0.25% of market value is imposed on residential property.

### SOCIAL SECURITY CONTRIBUTIONS

Employees contribute at a rate of 5% of earnings. The contributions ceiling is XCD 250 per month.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Treaties are in force with CARICOM1.

| | Local | Caricom | Non-Caricom |
|---|---|---|---|
| Dividends | NIL | NIL | NIL |
| Interest | Taxable at chargeable income tax rate | 15% | 15% |
| Royalties | Taxable at chargeable income tax rate | 15% | 25% |
| Management fees | Taxable at chargeable income tax rate | 15% | 25% |
| Branch remittance tax | N/A | NIL | NIL |

Notes:

The CARICOM treaty is a multilateral treaty between the member states of the Caribbean Community (CARICOM). It has been ratified by the following member states: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago. The treaty entered into force on 30 November 1994.

# SAUDI ARABIA



## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Riyadh / Jeddah / Alkhobar | Ebraheim Hajjarah | +966 50 3845248<br>ehajjara@pkf.com |
| Riyadh / Jeddah / Alkhobar | Mohamed Gamal | +966 544653333<br>mohamed.gamal@pkf.com |
| Riyadh / Jeddah / Alkhobar | Victor Abdalla Youssef | +966 50 9644114<br>victor.youssef@pkf.com |
| Madinah | Khaled Shaaban | +966 12 652 5333<br>khaled.shaaban@pkf.com |

| | | |
|---|---|---|
| Qassim | Zahir Alhajaj | +966 11 206 5333<br>zahir.alhajaj@pkf.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Kingdom of Saudi Arabia |
| Capital: | Riyadh |
| Main languages: | Arabic |
| Population: | 35.78 million (2022 estimate) |
| Monetary unit: | Saudi Riyal (SAR) |
| Internet domain: | .sa |
| Int. dialling code: | +966 |

## KEY TAX POINTS

- Saudi-Arabian resident companies, permanent establishments of non-resident companies in Saudi Arabia and non-resident companies with income subject to tax from sources within the Kingdom are chargeable to tax. The applicable income tax rate is 20%, with the exception of tax rates for the Oil & Gas industries.
- Non-resident companies are taxed in Saudi Arabia in so far as they carry on an activity through a permanent establishment (PE) or derive an income in Saudi Arabia. Taxable income of a permanent establishment (branch) is subject to tax at a rate of 20%.
- Capital gains on transferable securities are exempt from tax if the securities are acquired on or after 30 July 2004 and the transfer is effected in accordance with the provisions of the Saudi stock market regulations. Capital gains or losses on non-depreciable assets are taxable or deductible under the standard rules as the case may be.
- There is no tax on employment income in Saudi Arabia.
- The standard rate of Value Added Tax (VAT) is 15% and applies to all supplies of goods and services, except for specific items taxed at a 0% rate or those that are exempt.
- Excise Tax: tax levied on goods having an adverse impact on public health or the environment or on luxury goods in varying proportions, which include soft drinks, energy drinks, tobacco and its derivatives, sugar sweetened beverages and electronic devices and equipment used for smoking, as well as the liquids used in electronic devices and equipment used for smoking.
- A 5% RETT applies to the value of any real estate that is disposed of at the time of disposal. Real estate includes land constructions. Disposal includes sale, netting, gift, will, barter and leasing, financial leasing and transfer of shares in real estate companies.
- Zakat is payable by individual Saudis and other GCC nationals. Zakat is calculated at the rate of 2.5% of Zakat base for respective Hijri year and is chargeable on the total of the taxpayer's capital resources and income that are not invested in fixed assets. Only resources (including income) which have been held for at least 12 months are subject to zakat.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

## COMPANY TAX

The following are chargeable to income tax:

- Saudi-Arabian resident companies;
- Non-resident companies who do business in the Kingdom through a permanent establishment; and,
- Non-resident companies with income subject to tax from sources within the Kingdom.

A company is considered to be a resident company if it meets either of the following two conditions:

- It is formed under the Kingdom of Saudi Arabian Companies Regulations; and,
- Its place of central control and management is situated within the Kingdom of Saudi Arabia.

A permanent establishment of a non-resident in the Kingdom, unless otherwise provided by the Income Tax Regulation, arises where a non-resident has a permanent place through which it carries out business, in full or in part, including business carried out through an agent. The applicable income tax rate is 20%, with the exception of tax rates for the Oil & Gas industries. The income tax rate applicable to companies engaged in natural gas investment activities is 30% (such companies are subject to a higher tax rate from 30% to 85% based upon the cumulative rate of return). The income tax rate applicable to companies engaged in the production of oil and other hydrocarbons is 85%.

Income tax can be paid in instalments throughout the tax fiscal year and is payable within 120 days of the fiscal year end. Previous years' approved tax losses may be carried forward until fully recovered (using up to 25% of a year's taxable profit to offset approved losses). Heavy penalties, levies and the seizure of taxpayer's property may be imposed for the non-payment of tax and/or for tax evasion.

## CAPITAL GAINS TAX

Capital gains on transferable securities are exempt from tax if the securities are acquired on or after 30 July 2004 and the transfer is effected in accordance with the provisions of the Saudi stock market regulations. Capital gains or losses on non-depreciable assets are taxable or deductible under the standard rules as the case may be. Capital gains and losses on depreciable assets are not taken into consideration in determining the tax base. The effect of such gains or losses on the tax base is (partly) reflected by the depreciation method provided for in the Decree and regulations.

## BRANCH PROFITS TAX

Non-resident companies are taxed in Saudi Arabia in so far as they carry on an activity through a permanent establishment (PE) or derive an income in Saudi Arabia. Taxable income of a permanent establishment (branch) is subject to tax at a rate of 20%. The following are considered to constitute a permanent establishment:

- Construction sites and assembly facilities;
- Installations and sites used for surveying for natural resources, drilling equipment, and ships used for surveying for natural resource;
- A fixed base where a non-resident natural person carries out business; and,
- A branch of a non-resident entity which is licensed to carry on business in the Kingdom.

A place is not considered a permanent establishment of a non-resident in the Kingdom if it is used in the Kingdom only to do the following:

1. Store, display, or deliver goods or products belonging to the non-resident;
2. Hold a stock of goods or products belonging to the non-resident only for the purposes of processing by another person;
3. Purchasing goods or products only for the collection of information for the non-resident;
4. Performance of any other activities that is preparatory or auxiliary in nature to the interests of the non-resident;
5. Drawing up contracts for signature with regard to credits (loans), delivery of goods, or provision of technical services; or,
6. Execution of any combination of the activities indicated in subparagraphs 1 to 5 above.

As far as capital gains are concerned, non-residents are taxed in the same way as residents.

## VALUE ADDED TAX (VAT)

- A taxable person in the Kingdom: a person who conducts an economic activity independently in order to generate income with an annual turnover of at least SAR 375,000 must register for VAT purposes (taxable supplies do not include exempt supplies, supplies falling outside the scope of VAT and revenues derived from the sale of capital assets).
- Non-resident persons are required to pay VAT in respect of supplies made or received by them in the KSA and to register for VAT irrespective of the value of the supplies for which they are obliged to collect and pay VAT.

The standard rate of Value Added Tax (VAT) was introduced at 5% in 2018. However, the KSA has decided to triple the VAT rate from 5% to 15% as from 1 July 2020.

There are three categories of supplies:

1) Standard rate: All supplies of goods or services and imports in the KSA unless they are exempt or zero-rated.
2) Zero rated supplies: is applicable to the following goods and services:
   - Exports of goods from the KSA;
   - Services provided to non-GCC;
   - Transportation services for goods or passengers outside the KSA;
   - Medicines and medical equipment (shall be considered as qualifying medicines and medical goods in accordance with such classifications as issued by the Ministry of Health or any other competent authority in the KSA);
   - The first supply of qualifying metal by its producer or refiner. Qualifying metal includes gold, silver and platinum at a purity level of no less than 99%.
3) Exempt supplies: is applicable to:
   - Life insurances;
   - Real estate exempt supplies:
     - o Supply of real estate - residential, commercial, agricultural developed/undeveloped land - by transfer of ownership or giving the right to use/dispose as owner;
     - o Supply by way of lease or licence of Residential Real Estate.
   - Financial services (financial products based on profit margin; operation of current accounts; deposits and savings; interest or lending charges charged with an implicit profit margin for any form of lending including credit cards; interest or lending charges charged with an implicit profit margin for financing including lease financing and issuing or transferring bonds and securities).

With effect from 4 December 2021 Electronic Invoicing (a tax invoice that is generated in a structured electronic format through electronic means) is mandatory for all taxpayers subject to VAT except for non-residents in the KSA that are subject to VAT in addition to any other parties that issue tax invoices on behalf of suppliers subject to tax.

### INPUT TAX DEDUCTION:

A person who is VAT registered may deduct input VAT charged on goods it purchases or receives and in the course of carrying out an economic activity. Input VAT may be deducted on:

- VAT charged by a VAT-registered supplier in the KSA;
- Self-accounted VAT by the VAT-registered person under the reverse charge mechanism; or
- Import VAT paid to the customs department on the importation of goods.

As a general rule, input VAT which is related to the taxpayer's VAT exempt activities is not deductible. In addition, input VAT may not be deducted on any costs incurred that do not relate to the economic activity of the taxable person (including some blocked expenditure types such as entertainment and motor vehicles), or on any costs which relate to making exempt supplies. This input VAT is a credit entered on the VAT return which is offset against the VAT charged on supplies (output VAT) made during that period.

Companies with annual income in excess of SAR 40 million must file returns on a monthly basis, while companies under this threshold must file returns on a quarterly basis, with payments required to be made within a month of the end of the relevant period.

## EXCISE TAX

Excise tax is imposed on products that are likely to cause health problems and subsequently increase medical expenses, which include the following:

- Soft drinks and sugar sweetened beverages subject to 50%.
- Energy drinks, tobacco and its derivatives, and electronic devices and equipment used for smoking, as well as the liquids used in electronic devices and equipment used for smoking subject to 100%.

Excise taxpayers are importers, producers and distributors of excisable goods. The producer must submit a tax declaration every two months for the fiscal year and pay the tax 15 days following the submission date of the tax declaration. Importers pay the tax on selective goods for each customs declaration with the Customs Authority.

## FRINGE BENEFITS TAX

There is no tax on employment income in Saudi Arabia.

## LOCAL TAXES

There are no local duties payable in Saudi Arabia.

## REAL ESTATE TAX

Base on Royal Decree No. A/84 (published on 2 October 2020), the Ministry of Finance announced the introduction of a 5% real estate transaction tax (RETT) effective as from 4 October 2020, and exempting most supplies of real estate from value added tax (VAT). RETT is generally due on the date of disposal of real estate.

A 5% RETT applies to the value of any real estate that is disposed of at the time of disposal. Real estate includes land constructions. Disposal includes sale, netting, gift, will, barter and leasing, financial leasing and transfer of shares in real estate companies.

## ZAKAT

Zakat is payable by individual Saudis and other GCC nationals. Zakat is calculated at a rate of 2.5% of Zakat-base for respective Hijri year unless the Zakat base is the net adjusted profit. The Zakat rate is 2.5% regardless of the fiscal period's duration, and is chargeable on the total of the taxpayer's capital resources and income that are not invested in fixed assets. These include the company's capital, net profits, retained earnings and reserves not created for specific liabilities.

Only resources (including income) which have been held for at least 12 months are subject to zakat. Except for financing activities, the zakat base is calculated based on sources of a zakat payer's Zakatable finance, which is used to finance Zakatable assets. Zakat base is calculated based on the ratio of zakatable assets to total assets. Zakat would be limited to between four times and eight times the amount of net profit while in case of a net loss, Zakat would be limited to between four times and eight times the amount of gross profit.

## B. DETERMINATION OF TAXABLE INCOME

Income is from a source in the Kingdom of Saudi Arabia if it is:

- Derived from an activity that occurs in Saudi Arabia;
- Derived from immovable property located in Saudi Arabia, including gains from the disposal of an interest in such immovable property and from the disposal of shares or partnership interests in a company, the property of which consists, directly or indirectly, principally of interests in such property;
- Derived from the disposal of shares or a partnership interest in a resident company;
- Derived from the rental of movable property used in Saudi Arabia;
- Derived from the sale or license of industrial or intellectual property in Saudi Arabia;
- Shares' profits, management fee, or director's fee paid by a resident entity;
- Payments for services made by a resident entity to its head office or to an affiliated company;
- Payments made by a resident for services performed in whole or in part in Saudi Arabia;
- Amounts for exploitation of a natural resource in Saudi Arabia;
- Attributable to a permanent establishment of a non-resident located in Saudi Arabia.

Tax rates apply to net profits, which are defined as the difference between:

- The gross income, i.e. the sum of all profits, earnings or compensations (regardless of their nature or mode of payment) received in relation to the business activity, including capital gains on fixed assets and occasional profits but excluding exempt income; and,
- Deductible expenses.

The regulations specify that proceeds from the following are part of gross income: buying and selling, financial and commercial transactions, activities pertaining to the dealing in or development of oil or other mineral resources, and transactions concerning movable or immovable property. In addition, commissions, profits on shares and securities and, in general, proceeds from any business transaction the object of which is profit or from any source of wealth are included in gross income. Exempt income includes capital gains related to the alienation of negotiable securities on the stock market (subject to conditions) and capital gains on the sale of properties which are not part of business assets.

## DEDUCTIBLE EXPENSES

All costs and expenses paid or incurred during the tax year to earn taxable income such as salaries and wages, travel expenses which are connected with the business or enterprise, and rent on properties used in the business, are deductible from the tax base.

As a general rule, however, expenses are only deductible if they satisfy the following conditions:

- They are actual/real;
- They are related to taxable income (which means that costs related to exempt income will not be deductible);
- They are related to the tax year during which they were incurred;
- They do not increase the value of fixed assets.

The regulations provide for a certain number of other expenses which may be deducted from the tax base. Specifically, the regulations provide for the deduction of:

- Employers' contributions paid for the employees to retirement funds (as defined by the applicable regulations) and to (appropriate) savings funds. The deduction is limited to a maximum of 25% of the employee's income;
- Research and development (R&D) expenses incurred in Saudi Arabia during the tax year. The deduction does not apply to the cost of land and other fixed assets acquired for the purposes of R&D activities. These assets remain depreciable under the standard rules;
- Costs of repair, maintenance and improvement of (depreciable) fixed assets. These costs are deductible from the tax base in the year in which they are incurred. The deduction is limited to 4% of the residual value of the group of assets concerned at the end of the tax year. Any excess over this amount is added to the residual value and depreciated accordingly.

## NON-DEDUCTIBLE EXPENSES

The following expenses are not deductible:

- Salaries, wages and the like paid to an entrepreneur, partner or shareholder or to their dependents or relatives, except in the case of stock companies;
- Any amount paid in excess of the actual value of a transaction made with one of the abovementioned persons;
- Leisure expenses such as costs of parties, sports events, travelling expenses, etc.;
- Income tax and related penalties whether due in Saudi Arabia or elsewhere;
- Penalties and fines due to the infringement of applicable regulations;
- Bribes;
- Commissions paid to insurance agents in excess of 3% of the premiums collected by the insurance company in Saudi Arabia;
- Payments made by Saudi branches to headquarters that are wholly owned by foreign companies for:
  - Royalties;
  - Interest or other financial costs;
  - General administrative costs determined by apportionment on a lump-sum basis (see indirect expenses below);
- Amounts paid in excess of normal market prices for transactions made between associated enterprises.

## DEPRECIATION

All fixed assets, whether tangible or intangible (except land) are depreciable using the straight-line method of depreciation only. Depreciation is normally calculated on a full-year (12 months) basis. However, where a depreciable asset is brought into the taxpayer's business part way through a fiscal year, the amount of depreciation must reflect the date on which the asset was first put into use. Normally, a monthly pro-rata basis is acceptable.

For tax purposes, the depreciation allowances are calculated for groups of assets (and not individually for each asset) at the following rates:

- Buildings: 5%;
- Movable industrial and agricultural facilities: 10%;
- Machinery, factories and equipment, including computer programmes and means of transport: 25%;
- Costs of geological studies, exploring and drilling expenses and costs of preparatory operations for the exploitation and development of natural resources: 20%;
- All other fixed assets, whether tangible or intangible, not covered by the above (including ships, aircraft, trains, furniture, etc.): 10%.

Goodwill may not normally be depreciated whilst the business is run as a going concern. Where goodwill has been purchased for value, it may be treated as a depreciable asset if an individual ruling to that effect is obtained from the General Authority of Zakat and Tax (GAZT).

## STOCK/INVENTORY

The cost of inventory is calculated using the absorption cost method. Taxpayers using cash-based accounting may use the direct (or prime) cost method. Closing stock is valued at the book value or the market value whichever is lower. Book value is determined by using the weighted average method. However, the taxpayer may use another method, after obtaining written permission from the GAZT. He may not change this method without the prior approval of the GAZT.

## DIVIDENDS

Saudi Arabia resident companies are taxable on dividends receivable whether or not those dividends are received from other Saudi Arabian companies or from overseas.

## INTEREST DEDUCTIONS

Interest expenses are deductible up to the following limit (except for banks): (Income from loans + 50% x other income) – Deductible expenses (other than interest).

## LOSSES

Operational losses of a business may be carried forward indefinitely. However, the annual deduction is limited to 25% of the profits as shown in the annual return. Losses related to exempt activities may not be deducted or carried forward.

## FOREIGN SOURCED INCOME

Resident companies are taxed on their worldwide income, i.e. including income from transactions carried on, or branches situated, abroad. This means that all forms of overseas income are subject to tax under standard rules.

## INCENTIVES

Incentives are contained in the Investment Law and its implementing regulations which are:

- 50% of the annual training costs for the Saudi labour; and,
- 50% of their annual wages paid to the Saudis.

## C. FOREIGN TAX RELIEF

No relief for foreign taxes is granted under Saudi tax regulations.

## D. CORPORATE GROUPS

There is no group tax regime in Saudi Arabia.

## E. RELATED PARTY TRANSACTIONS (TRANSFER PRICING)

Transactions with affiliated companies include the transfer of goods, services, loans, capital and intangibles. The prices are based on five methods: Comparable Uncontrolled Price, Resale Price, Cost Plus, Transactional Net Margin and Transactional Profit Split.

Each taxable person is required to maintain and make available upon request by the GAZT a Master File containing information on the global business operations and transfer pricing policies of the Multinational Enterprise Group to which the taxable person belongs.

A taxable person shall be required to maintain at all times and, when requested in writing, provide the GAZT with all or any part of a Local File containing detailed information on all controlled transactions of the taxable person.

Each Ultimate Parent Entity or, when applicable, each Surrogate Parent Entity of a Multinational Enterprise Group (MNE Group) that is a tax resident in KSA and whose economic group has generated consolidated revenue exceeding SR 3.2 billion in the tax year prior to the tax year of the report will be required to file a Country-by-Country (CbC) Report.

The taxpayer must disclose transfer pricing methods in its annual tax return and eventually prove that the corresponding costs, expenses and charges that exceed the elected transfer pricing method must be added back as taxable income.

The Transfer Pricing disclosure form is a mandatory part of the tax return and required to be submitted along with a certificate from a chartered accountant certifying that the TP policy of the Group has been applied consistently by the taxable entity in the kingdom of Saudi Arabia

## F. WITHHOLDING TAX

Distributed income (including dividends) paid to non-residents is subject to a 5% withholding tax. However, the withholding tax does not apply to distributions made by companies operating in the Oil & Gas sectors. The regulations define distributed income as any distribution made by a resident company to a non-resident shareholder. Distributed income is also deemed to include profits transferred by a PE to a related entity.

Income from loans paid to a non-resident is subject to a 5% withholding tax. Royalties paid to non-residents are subject to a final 15% withholding tax. Other withholding taxes are as follows:

- Management fees: 20%;
- Payments made to head office or an associated entity against services: 15%;
- Rent, technical and consultancy services, payments made for air tickets, air freight or marine freight, international telecommunication, dividend, loans fees (interest) and insurance or reinsurance premiums: 5%;
- Any other payments: 15%.

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## G. EXCHANGE CONTROL

There is no exchange control in operation in Saudi Arabia.

## H. PERSONAL INCOME TAX

The following persons are subject to taxation:

- A resident Saudi individual who does business in the Kingdom;
- A non-resident who does business in the Kingdom through a permanent establishment;
- A non-resident with income subject to tax from sources within the Kingdom.

A natural person is resident in the Kingdom for a tax year if he meets either of the following two conditions:

1) He or she has a permanent place of abode in the Kingdom and physically resides in the Kingdom for a period in aggregate of not less than 30 days during the taxable year; or
2) He or she physically resides in the Kingdom for a period of not less than 183 days in the taxable year.

For the purpose of this paragraph, presence in the Kingdom for part of a day is considered presence for the whole day. Presence in case of transit between two points outside the Kingdom is not included. Only business income earned by individuals is taxable. There is no tax on employment income. Business and professional income is taxed in the same way and under the same rules as corporate profits. Individuals not carrying on a business or professional activity are not taxed on interest and dividend income. Individuals carrying on a business or professional activity are taxed at the same rate (i.e. 20%) and under the same rules as corporate entities. Income tax can be paid by instalments throughout the tax fiscal year. Income tax is payable within 120 days of fiscal year end.

## SOCIAL SECURITY CONTRIBUTIONS

With effect from 26 March 2001, employees pay a contribution of 9% for insurance relating to old age, disability and death. Certain employees such as civil servants, artisans, farmers, seamen, domestic servants, etc. are excluded from the insurance scheme. Note, however, that the three latter categories of persons may be covered by the scheme on the basis of a ministerial decision. Furthermore, persons carrying on independent business activities such as professionals, tradesmen, artisans, etc. and employer's family members employed in a family-run enterprise where no other workers are employed may request to be covered by the scheme.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | **Individuals, companies (%)** | **Qualifying companies (%)** | | |
| **Domestic rates** | | | | |
| Companies | 0/5[1] | 0/5[1] | 0/5 | 15 |
| Individuals | 5 | -- | 5 | 15 |
| **Treaty countries:** | | | | |
| Albania | 5 | 5 | 6 | 5/8[21] |
| Algeria | 0 | 0 | 0 | 7 |
| Austria | 5 | 5 | 5 | 10 |
| Azerbaijan | 5/7 | 5[2] | 7 | 10 |
| Bangladesh | 10 | 10 | 7.5 | 10 |
| Belarus | 5 | 5 | 5 | 10 |
| Bulgaria | 5 | 5 | 5 | 5/10[21] |
| China | 5 | 5 | 10 | 10 |
| Chinese Taipei | 12.5 | 12.5 | 10 | 4/10[21] |
| Cyprus | 5 | 0[3] | 0 | 5/8[21] |
| Czech Republic | 5 | 5 | 0 | 10 |
| Egypt | 10 | 5[4] | 10 | 10 |
| Ethiopia | 5 | 5 | 5 | 7.5 |
| France | 0 | 0 | 0 | -- |
| Gabon | 5 | 5 | 7.5 | 10 |
| Georgia | 5 | 5 | 5 | 5/8[21] |
| Greece | 5 | 5 | 5 | 10 |
| Hong Kong | 5 | 5 | 0 | 5/8[21] |
| Hungary | 5 | 5 | 0 | 5/8[21] |
| India | 5 | 5 | 10 | 10 |
| Ireland | 5 | 0[5] | 0 | 5/8[21] |
| Italy | 10 | 5[6] | 5 | 10 |
| Japan | 10 | 5[7] | 10 | 5/10[21] |
| Jordan | 5 | 0 | 5 | 7 |
| Kazakhstan | 5 | 5 | 10 | 10 |
| Korea (Rep.) | 10 | 5[5] | 5 | 5/10[21] |
| Kosovo | 5 | 5 | 5 | 5/10[21] |
| Kyrgyzstan | 0 | 0 | 0 | 7.5 |
| Luxembourg | 5 | 5 | 0 | 5/721 |
| Malaysia | 5 | 5 | 5 | 8 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Malta | 5 | 5 | 0 | 5/7[21] |
| Mexico | 5 | 5 | 5/10[17] | 10 |
| Netherlands | 10 | 5[8] | 5 | 7 |
| North Macedonia | 5 | 5 | 5 | 10 |
| Pakistan | 10 | 5[9] | 10 | 10 |
| Poland | 5 | 5 | 5 | 10 |
| Portugal | 10 | 5[10] | 10 | 8 |
| Romania | 5 | 5 | 5 | 10 |
| Russia | 5 | 5 | 5 | 10 |
| Singapore | 5 | 5 | 5 | 8 |
| South Africa | 10 | 5[8] | 5 | 10 |
| Spain | 5 | 0[5] | 5 | 8 |
| Sweden | 10 | 5[11] | 0 | 5/7[21] |
| Switzerland[18] | 15 | 5[12] | 0/5[19] | 5/7[21] |
| Syria | 0 | 0 | 7.5 | 15 |
| Tajikistan | 10 | 5[5] | 8 | 8 |
| Tunisia | 5 | 5 | 2.5/5[20] | 5 |
| Turkey | 10 | 5[13] | 10 | 10 |
| Turkmenistan | 10 | 10 | 10 | 10 |
| Ukraine | 15 | 5[14] | 10 | 10 |
| United Arab Emirates | 5 | 5 | 0 | 10 |
| United Kingdom | 5/15 | 5/15[15] | 0 | 5/8[21] |
| Uzbekistan | 7 | 7 | 7 | 10 |
| Venezuela | 5 | 5 | 5 | 8 |
| Vietnam | 12.5 | 5[16] | 10 | 7.5/10[22] |

Notes:

1. The 0% rate applies to distributions made by companies operating in the Oil & Gas sector.
2. The reduced 5% rate applies if the beneficial owner of the dividends (i) is the Government of Azerbaijan, the Azerbaijan Central Bank or any entity wholly owned by the Azerbaijan Government (ii) has invested at least USD 300,000 or its equivalent in any other currency in the capital of the dividend-paying company.
3. The 0% rate applies if the Cyprus company (other than a partnership) holds directly or indirectly at least 25% of the capital of the dividend-paying company.
4. The reduced 5% rate applies if the beneficial owner is a company (other than a partnership) that holds directly at least 20% of the capital of the dividend-paying company.
5. The reduced rate applies if the beneficial owner is a company (other than a partnership) that holds directly at least 25% of the capital of the dividend-paying company.
6. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) that has owned directly or indirectly at least 25% of the capital of the dividend-paying company for a period of at least 12 months preceding the date the dividends were declared.
7. The 5% reduced rate applies if the beneficial owner is a company that holds directly or indirectly, during the period of 183 days ending on the date on which entitlement to the dividends is determined, at least 10% of the voting shares or of the total issued shares of the dividend-paying company.
8. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) that holds directly at least 10% of the capital of the dividend-paying company.
9. The 5% reduced rate applies if the beneficial owner is (i) a company or (ii) an entity wholly owned by the Pakistan Government.
10. The 5% reduced rate applies if the beneficial owner is (i) a company (other than a partnership) that holds directly at least 10% of the capital of the dividend-paying company or (ii) the Portuguese State, a political or administrative subdivision or a local authority thereof, or the Central Bank of Portugal.
11. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) that holds at least 10% of the voting power or voting shares of the dividend-paying company.
12. The 5% reduced rate applies if the beneficial owner is (i) a company that holds directly at least 10% of the capital of the dividend-paying company or (ii) the Swiss Central Bank, or an institution or fund, wholly owned by Switzerland, or a Swiss resident pension scheme.
13. The 5% reduced rate applies if the beneficial owner is (i) a company (other than a partnership) that holds directly at least 20% of the capital of the dividend-paying company or (ii) the Turkish Central Bank or an entity that is wholly owned by the Turkish Government.

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14. The reduced 5% rate applies if the beneficial owner holds directly at least 20% of the capital of the dividend-paying company.
15. The 15% rate applies if qualifying dividends are paid by a property investment vehicle. The 5% rate applies in all other cases.
16. The reduced 5% rate applies if the beneficial owner is a company (other than a partnership) that holds directly at least 50% of the capital of the dividend-paying company, or has invested USD 20 million or more, or any equivalent currency, in the capital of the dividend-paying company.
17. The 5% reduced rate applies to interest paid to financial entities or pension funds.
18. Effective date: 1 January 2022.
19. The 0% rate applies if the interest is paid (i) to the Swiss Government (including its administrative subdivisions or local authorities) (ii) to the Swiss Central Bank (iii) to a Swiss pension scheme (iv) with respect to indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or services (v) on any loan of whatever kind granted by a financial institution or (vi) on loans between companies.
20. The 2.5% reduced rate applies to interest paid to banks.
21. The lower rate applies to royalties paid for the use of, or the right to use industrial, commercial or scientific equipment.
22. The 7.5% rate applies to royalties paid for rendering of any services or assistance of a technical or managerial nature. The 10% rate applies in all other cases.

# SENEGAL

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Dakar | PKF Rubiks | +221 33 832 8545<br>queries@pkfrubiks.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Senegal |
| Capital: | Dakar |
| Main languages: | French |
| Population: | 17.6 million (2022 estimate) |
| Monetary unit: | West African CFA Franc (XOF) |
| Internet domain: | .sn |
| Int. dialling code: | +221 |

## KEY TAX POINTS

- The standard corporate income tax rate is 30%.
- VAT is levied at a standard rate of 18%.
- Losses may generally be carried forward for up to 3 years. Loss carry-back is not allowed.
- Dividends paid to non-resident companies are subject to a 10% final withholding tax on the gross amount.
- Interest derived by a non-resident company is subject to a final withholding tax on the gross amount ranging from 6% to 20%, depending on the underlying instrument.
- Royalties and technical assistance fees paid to non-resident companies are subject to a 20% final withholding tax rate on the gross amount.
- Management fees, technical service fees and rental fees payments to non-resident companies are subject to a 20% effective withholding tax rate (25% on 80% of the gross amount).

## A. TAXES PAYABLE

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### COMPANY TAX

Companies incorporated in Senegal, and those running their business or performing transactions within the country are considered resident for corporate income tax purposes.

The standard corporate income tax rate is 30%.

A lump-sum minimum tax (*impôt minimum forfaitaire*) is levied on the annual turnover (excluding taxes) realised during the previous tax year at the rate of 0.5%. This tax cannot exceed FCFA 5 million. New small and medium-sized companies are exempted from this tax for a period of 3 years from their registration date.

A simplified regime (*régime du réel simplifié*) is applicable to companies with an annual turnover (including taxes) of less than FCFA 100 million. Said companies are eligible for a reduction of 15% of their taxable profits if they register with a chartered management centre (centre de gestion agréé). These centres, duly recognised by the DGID, provide technical assistance to members (small and medium-sized companies) in accounting, management, training, information and taxation.

### CAPITAL GAINS TAX

Capital gains are generally subject to the standard corporate income tax rate.

### BRANCH PROFITS TAX

In addition to corporate income tax, a branch profits tax is levied on the after-tax profits of a foreign company's PE located in Senegal. PEs in Senegal are deemed to remit 50% of non-reinvested after-tax profits to their foreign head office. The branch profits tax rate is 20%, which makes the effective branch profits tax rate 10%.

Branch profits tax is payable even when the PE's profits are exempt from corporate income tax.

However, branch profits tax does not apply if the PE's profits are re-invested subject to specific conditions.

## VALUE ADDED TAX (VAT)

VAT is levied on business related to an economic activity. Agricultural and employment activities are excluded from the scope of VAT.

The following activities are subject to VAT:

- supplies of goods made in Senegal;
- building and construction activities;
- importation transactions; and
- the supply of services.

The standard VAT rate in Senegal is 18%. A reduced VAT rate of 10% applies on room rentals and on catering services by hotel businesses.

The tax code does not expressly provide for the zero-rating of exports. However, export operations are eligible for input VAT deduction.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income is the total income from all transactions carried out by the company, including capital gains on business assets but excluding exempt income, less allowable deductions.

## DISALLOWED EXPENSES

Expenses incurred for the purpose of generating taxable income generally are deductible, although certain items (e.g. taxes and fines, dividends paid) are non-deductible.

The following expenses are non-deductible:

- Corporate income tax, the minimum tax (IMF), personal income tax, company tax on vehicles;
- Dividends;
- Expenses not directly linked to the production of taxable income;
- Fines and penalties resulting from the infringement of legal provisions;
- Any amount in excess of FCFA 400,000 per month paid out by an employer for an employee's living accommodation;
- Expenses incurred on providing gifts and food to employees.

## DEPRECIATION

Depreciation of capital assets is deductible within the customary limits applicable to a particular type of industry, trade or exploitation. The GTC does therefore not prescribe specific rates of depreciation but rather gives general indicators for determining, and methods used to calculate, the deductible depreciation expense.

Depreciation may be computed using the straight-line method or the declining balance method.

Land and intangible assets cannot be depreciated.

## INTEREST DEDUCTIONS

Interest expenses are deductible subject to the following conditions:

- Interest paid to shareholders or related companies is deductible only if the rate does not exceed the BCEAO rate, increased by 3 percentage points. Additionally, the amount of debt on which the interest is computed must not exceed:
  - 1.5 of the company's fully paid-up share capital; and
  - 15% of earnings from ordinary activities plus such interest, depreciation and provisions.

  However, said limitation rule does not apply to interest paid by companies not subject to corporate income tax to their shareholders if the shareholders are subject to income tax in Senegal in respect of such interest.
- Interest paid to individuals is deductible if the amount of the debt on which interest is computed does not exceed their share capital.

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## LOSSES

Losses from operations may generally be carried forward for up to 3 years. The portion of losses stemming from depreciation expenses are carried forward indefinitely. Loss carry-back is not allowed.

## C. FOREIGN TAX RELIEF

Senegal tax law does not provide for unilateral tax relief. However, bilateral relief may be available under an applicable double tax treaty. Treaty relief is mandatory and cannot be postponed.

## D. CORPORATE GROUPS

There is no specific tax regime applicable to a group of companies. However, a participation exemption applies.

## E. RELATED PARTY TRANSACTIONS

Transfer pricing documentation requirements apply to companies located in Senegal that meet any of the following criteria:

- annual turnover (excluding taxes) of at least FCFA 5 billion for either the local entity or the parent company;
- direct or indirect holding of more than 50% of the capital or voting rights of a company meeting the aforementioned annual turnover criterion; or

- companies that are more than 50% owned, directly or indirectly, by a legal entity meeting the aforementioned annual turnover criterion.

## F. PERSONAL TAX

With effect from 1 January 2013, the progressive personal income tax rates are as follows:

| Annual taxable income (FCFA) | Rate (%) |
|---|---|
| Up to 630,000 | 0 |
| 630,001 – 1,500,000 | 20 |
| 1,500,001 – 4,000,000 | 30 |
| 4,000,001 – 8,000,000 | 35 |
| 8,000,001 – 13,500,000 | 37 |
| Over 13,500,000 | 40 |

## G. WITHHOLDING TAX

- Dividends paid to non-resident companies are subject to a 10% final withholding tax on the gross amount.
- Interest derived by a non-resident company is subject to a final withholding tax on the gross amount ranging from 6% to 20%, depending on the underlying instrument.
- Royalties and technical assistance fees paid to non-resident companies are subject to a 20% final withholding tax rate on the gross amount.
- Management fees, technical service fees and rental fees payments to non-resident companies are subject to a 20% effective withholding tax rate (25% on 80% of the gross amount).

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 10 | 10 | 6/8/13/16/20[7] | 20 |
| Individuals | 10 | -- | 6/8/13/16/20 | 20 |
| **Treaty countries:** | | | | |
| Belgium | 15 | 15 | 15 | 10 |
| Canada | 16 | 16 | 16/20[6] | 15 |
| France | 15 | 15 | 15 | 15 |
| Italy | 15 | 15 | 15 | 15 |
| Lebanon | 10 | 10 | 10 | 10 |
| Luxembourg | 15 | 5[2] | 10 | 6/10[5] |
| Mauritania | --[1] | --[1] | --[1] | 0 |
| Morocco | 10 | 10 | 10 | 10 |
| Norway | 16 | 16 | 16 | 16 |
| Portugal | 10 | 5[3] | 10 | 10 |
| Qatar | --[1] | --[1] | --[1] | --[1] |
| Spain | 10 | 10 | 10 | 10 |
| Taiwan | 10 | 10 | 15 | 12.5 |
| Tunisia | --[1] | --[1] | --[1] | --[1] |
| United Arab Emirates | 5 | 5 | 5 | 5 |
| United Kingdom | 10 | 5/8[4] | 10 | 10 |

Notes:

1. No reduction under the treaty, the domestic rate applies.
2. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company.
3. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
4. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company. The 8% reduced rate applies if the beneficial owner is a pension scheme established in the United Kingdom.
5. The 6% rate applies to remuneration of any kind paid for the use of, or the right to use, industrial, commercial or scientific equipment. The 10% rate applies in all other cases.
6. The 20% rate applies to interest on "bons de caisse" (time deposit certificates) and 16% in all other cases.
7. Interest on deposit bank accounts held in Senegal paid to non-resident companies is subject to an 8% withholding tax. Interest on time deposit certificates ("bons de caisse") is subject to a final 20% withholding tax. Interest on government bonds with a maturity period of at least five years is subject to a 6% final withholding tax. Other types of interest payments from Senegal to non-resident companies are subject to a 16% final withholding tax.

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# SERBIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Belgrade | Petar Grubor | +381 11 3018 445<br>petar.grubor@pkf.rs |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Serbia |
| Capital: | Belgrade |
| Main languages: | Serbian |
| Population: | 6.98 million (2018 without Kosovo) |
| Monetary unit: | Serbian Dinar (RSD) |
| Internet domain: | .rs |
| Int. dialling code: | +381 |

## KEY TAX POINTS

- Corporate income tax is payable by a resident who is a legal entity established or has its place of effective management and control in the territory of the Republic of Serbia. Non-residents are taxed only on their income sourced through a permanent establishment in Serbia. Corporate income tax is levied at a flat rate of 15%.
- The standard rate of Value Added Tax is 20%. A reduced rate of 10% applies to certain hospitality-related and other goods and services.
- A 20% withholding tax is applicable to various forms of payments to non-residents including: interest, dividends, royalties, rental fees, capital gains and certain service fees.
- Income tax is chargeable on all Serbian residents in respect of income generated in Serbia and other countries and non-residents on income sourced in the Republic of Serbia.

## A. TAXES PAYABLE

### CORPORATE TAX

Corporate income tax is payable by the following:

- Resident who is a legal entity established or has its place of effective management and control in the territory of the Republic of Serbia. Residents are taxed on their income generated in the territory of the Republic, as well as on worldwide income.
- Non-residents are taxed only on their income sourced through a permanent establishment in Serbia. A permanent establishment is any permanent place of business through which a non-resident conducts his business.

A taxable entity includes a company registered as a joint stock company, a limited liability company, a general partnership, limited partnership, a socially owned company or a public enterprise, co-operative, branch office or any other legal entity generating income from the sale of goods or rendering services to the market. The tax year is the same as the calendar year, although a different tax year may be used if approved by the tax authorities. A tax period may not exceed 12 months in length and may only be changed once every five years. A tax return must be filed with the tax authorities within 180 days after the end of the tax year. A monthly instalment payment system is applicable during the year and it is based on profit computed in the previous period. All profits and gains are subject to a flat corporate income tax rate of 15%.

### BRANCH PROFITS TAX

Branch profits are treated as ordinary income and taxed accordingly.

### CAPITAL GAINS TAX

Gains from the sale of capital assets are included in a company's taxable income and taxed at the same rate as other profits. Capital losses may be offset against capital gains in the year they arose. Capital losses may be carried forward for five years but may not be carried back.

### VALUE ADDED TAX (VAT)

According to the VAT law, a taxpayer is an entity that independently trades in goods and services as a producer, trader or provider of services for the purpose of profit. The VAT rules also apply to the following:

- Tax representative of foreign entities;
- Recipients of goods and services if a foreign entity does not assign a tax representative;
- Entities that account for VAT in their invoices but are not obliged to pay tax according to the Law on VAT;
- Entities that import goods;
- Recipient of construction services;
- Recipient of electrical energy and natural gas if they are purchased for resale;
- Recipient of secondary raw materials.

Taxpayers whose total turnover did not exceed RSD 8,000,000 in the preceding calendar year are not obliged to register as VAT taxpayers. The taxable amount tor domestic goods and services is the sales price, including excise and duty costs and all

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secondary expenses charged to the recipient of the goods and services. The standard rate is 20%. A reduced rate of 10% applies to certain hospitality-related and other goods and services.

## CUSTOMS DUTIES

Goods imported into Serbia are subject to customs duty rates provided in the Law on Customs Tariff. These rates are ad valorem (the only exception is related to the importation of other cigarettes containing tobacco, where a combined ad valorem and specific customs duty rate is prescribed) and apply to goods originating in countries that have a most favoured nation (MFN) status in trading with Serbia.

Goods originating in other countries are subject to MFN duty rates increased by 70%. At the moment, the only trading partner with Serbia that does not have MFN status is Taiwan. Customs duty rates in Serbia range from 0% to 57.6%, with most being under 30%. The 57.6% rate currently only applies to cigarettes containing tobacco.

## EXCISE DUTIES

Special excise duties apply to the following:

- Oil derivatives;
- Biofuels and bio liquids;
- Tobacco products, including tobacco products which are heated but not burned;
- Alcoholic beverages;
- Coffee;
- Fluids for filling electronic cigarettes and
- Electricity for final consumption.

Excise duty in Serbia is specific (for oil derivatives, alcoholic beverages, cigars, cigarillos, and coffee), ad valorem (for pipe tobacco), and combined (specific + ad valorem on retail price for cigarettes). Excise duties stated in Serbian currency are adjusted on a current year basis according to variations in the consumer price index (CPI) declared for the previous year by the relevant government body in charge of statistics. For oil derivatives, the government can modify the specific excise duty amounts during the year according to changes in market prices of crude oil.

## REAL ESTATE TRANSFER TAX

This is payable by the person or entity acquiring the real estate. The tax rate is 2.5%. The tax base is the contract value unless it is lower than market value on the date of acquisition.

## INCENTIVES

A taxpayer who invests at least RSD 1 billion in fixed assets and additionally employs at least 100 employees is entitled to tax relief for the next ten years in respect of the invested asset. Every non-profit organisation with excess income up to RSD 400,000 is tax exempt if it fulfils several conditions.

A taxpayer who makes monetary investments in the capital of a newly created company performing innovative activities shall be entitled to a tax credit of 30% of the completed investment. This tax credit cannot be used before the expiration of 3 years from the completed investment.

The law details the conditions that must be fulfilled for the entitlement to the tax credit, as well as the manner of its use. The tax credit cannot exceed RSD 100 million.

## LOCAL TAXES

There are no local taxes on income in Serbia.

## PROPERTY TAX

Property tax is payable in Serbia by all legal entities and individuals who own or have rights over real estate located in the Republic of Serbia such as:

- Rights to usufruct;
- Right to use and inhabit;
- Tenancy right of one year or for an indefinite period; and,
- Urban usage right (municipal, public and other state-owned land) exceeding 1,000 square meters in area.

If the legal owner of real estate is not known or cannot be determined, the property tax is levied on the person with beneficial ownership of the property (e.g. a tenant). Where the taxpayer keeps books, the property tax on real estate is levied at a flat rate of 0.40%. Where the taxpayers do not keep books, the maximum property tax on land is 0.30%. If the taxpayer is an individual or entrepreneur who is taxed on the so-called lump-sum income basis, the rates of property tax on real estate are progressive, as shown in the following table:

| Number | Tax Base (RSD) | Tax Liability (% and RSD) |
|---|---|---|
| 1. | Up to 10,000,000 | Until 0.40% |
| 2. | 10,000,000 - 25,000,000 | Tax from point 1 plus 0.6% on amount over 10,000,000 |
| 3. | 25,000,000 - 50,000,000 | Tax from point 2 plus 1.0% on amount over 25,000,000 |
| 4. | Over 50,000,000 | Tax from point 3 plus 2.0% on amount over 50,000,000 |

The tax base of immovable property is determined by evaluation of two elements:

1) Useful area; and
2) The average price of a square meter of immovable property in the corresponding zone in which the real property is located. The

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average price is determined every year by act of the municipality. If a legal entity prepares financial statements in accordance with IFRS, the tax base of property will be the fair value measured in accordance with IFRS.

A taxpayer does not pay property tax on the ownership of real estate with a total value not exceeding RSD 400,000. Property tax is assessed based on the facts reported in the tax return in the first taxable year applicable to that property. In subsequent years, the tax return should only be submitted if the facts relevant to the liability have changed. A taxpayers who keeps books is obliged to submit a tax return annually by 31st March of the current year. Property tax is paid quarterly within 45 days from the beginning of the three-month period.

## TRADE NAME TAX

This is payable by individuals and legal entities which are liable to pay corporate income tax or personal income tax and are registered for the performance of a business activity.

## PAYROLL TAXES

Employers are liable to withhold personal income tax (PIT) and social security contributions on payment of salaries to employees, at the following rates:

- 10% PIT;
- 19.85% social security contributions payable by the employee;
- 16.65% social security contributions payable by the employer.

The tax and contributions base is gross salary. The social security contributions base is limited to five average monthly salaries in Serbia. The personal income tax base is reduced by a non-taxable part of RSD 19,300 (approximately EUR 164).

## B. DETERMINATION OF TAXABLE INCOME

Taxable profits are those calculated under the accounting regulations, adjusted in accordance with the provisions of the Corporate Income Tax Law.

## OPERATIONAL EXPENSES

Expenses which are not recognised as expenses for corporate income tax purposes and lead to significant adjustments include:

- Expenses which cannot be documented;
- Bad debt provisions for receivables to entities that are also creditors, to the liability amount;
- Gift and contributions to political organizations;
- Gifts if the recipient is a related entity;
- Interest payable for untimely payment of interests between related parties;
- Interest payable for untimely payment of taxes, contributions and other public charges;
- Cost of forced collection of tax and other debts and cost of tax offence proceedings and other proceedings conducted by competent authorities;
- Fines levied by competent authorities, penalty clauses and penalties;
- Expenses incurred other than for the purpose of conducting business activities.

Expenditure recognised for corporate income tax purposes up to certain amounts including:

- Depreciation computed in accordance with tax depreciation rules;
- Bad debt provisions, write-off of receivables and general provisions;
- Expenses for health care, scientific, educational, humanitarian, religious, ecological and sport-related purposes are tax-deductible up to 5% of total revenue;
- Expenses for cultural purposes are tax-deductible up to 5% of total revenue;
- Membership fees paid to chambers of commerce and other associations (except political parties) are deductible up to 0.1% of gross revenue;
- Business entertainment expenses are tax deductible up to 0.5% of total revenue.

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## FIXED ASSETS

According to the Corporate Income Tax Law, fixed assets are tangible and intangible assets of which the service life is longer than a year and recognised in the records as fixed assets except natural resources and goodwill. Fixed assets are divided into five groups with depreciation rates prescribed for each as follows:

| Depreciation Group | Depreciation Rate |
|---|---|
| I | 2.5% |
| II | 10.0% |
| III | 15.0% |
| IV | 20.0% |
| V | 30.0% |

The straight-line depreciation method is prescribed for all groups. Detailed regulations of the division of fixed assets into groups, and the method of determining depreciation, are prescribed under the special Rulebook issued by the Ministry of Finance. If the accounting depreciation of a mentioned group of fixed assets is lower than the depreciation obtained by application of the tax depreciation rates then the accounting depreciation will be recognised for tax purposes.

Accounting depreciation of intangible assets is tax deductible.

## VALUATION OF INVENTORY

Cost of materials and the purchase value of merchandise are tax deductible up to the amount calculated by applying the average weighted cost method or FIFO method. If another method is used, an adjustment for tax purposes should be made.

## PROVISIONS AND RESERVES

Provisions for bad and doubtful debts are tax deductible if at least 60 days have expired from the due date. A provision has to be made individually for each debt. A write-off of an individual debt, (except for those from debtors which are also creditors) is recognised as an expense subject to the following conditions:

- The debt has been written off as uncollectible;
- Related revenue has already been recognised except for debt which is not recognised as revenue in accordance with IFRS or IFRS for SMEs;
- The taxpayer has initiated a court procedure to collect debt or duly reported the receivables in case of liquidation or bankruptcy procedure over the debtor.

Long-term reserves are recognised for tax purposes if they are made for the renewal of natural resources, warranty period costs and retained caution money and deposits.

## DIVIDENDS

Dividends received by a Serbian company from another Serbian company are not subject to CIT.

Dividends received from a non-resident will be treated as taxable income at the level of a Serbian company and is subject to 15% CIT. However, a Serbian company has the right to decrease its tax liability by taking a tax credit for the withholding and underlying corporate income tax paid in a subsidiary's foreign country, provided that the Serbian taxpayer holds at least 10% of the shares in the subsidiary. If the Serbian taxpayer holds less than 10% of the shares in the foreign subsidiary, the tax credit cannot exceed the amount of tax that would be paid in Serbia on that income, where the tax basis represents 40% of the received gross income.

## INTEREST DEDUCTIONS

Interest payable is generally tax deductible except for interest payable on taxes, contributions and other public charges, fines and penalties. However, thin capitalisation rules restrict deductions for interest on any loan owed to related parties if the loan is more than four times the net asset value of the company.

## R&D EXPENSES

R&D expenses that fulfil certain conditions as prescribed by the government are tax deductible at double of the value. In exceptional cases this incentive cannot be granted for research costs incurred for the purpose of finding and developing oil, gas or mineral resources in the extractive industry.

A special rulebook will regulate more in detail the manner in which the provisions in question will apply.

## LOSSES

Ordinary losses may be carried forward for five years but may not be carried back.

## C. FOREIGN-SOURCED INCOME

Companies resident in Serbia are taxed on their worldwide income. When profit generated in another country is taxed in the foreign country, a company has the right to decrease its tax liability by claiming a tax credit from the tax authorities in Serbia. There are no provisions that provide for the possibility that taxation of income earned abroad may be deferred.

## D. FOREIGN TAX RELIEF

Double tax relief is available under the provisions of various double tax treaties with other territories. Unilateral relief is available in other cases by means of a credit for overseas taxes against the Serbian tax payable on the same income.

## E. CORPORATE GROUPS

Parent and subsidiary companies are recognised as a group for tax consolidation purposes if the parent has direct or indirect control of at least 75% of the subsidiary's share capital. All members of the group must be resident companies. Once approved, tax consolidation must be applied for the next five years.



## F. RELATED PARTY TRANSACTIONS

A transfer price is the price of transactions between related parties. Related parties exist if there is a possibility of control or influence over business decisions between them. Ownership of 25% or more, or a majority of shares, is considered as potential control. Influence over business decisions exists when an associated party holds 25% or more, or individually holds the greatest portion, of votes in the taxpayer's management bodies. If the same persons participate in management or control of both companies, a connection between them will be deemed to exist.

Close family members are also regarded as related parties. Non-resident entities from tax havens are considered as related parties of resident entities. The Serbian Ministry of Finance prescribed the list of countries that are to be considered as tax havens for the application of relevant CIT Law provisions. A company should disclose transactions with related parties separately at transfer prices and at arm's length prices in its CIT calculation. Positive difference between these prices (adjustments of expenses) and negative difference (adjustments of revenues) are included in taxable profit.

Serbian CIT Law recognises the following methods for determining at arm's length prices:

- Comparable uncontrolled price (CUP);
- Cost plus;
- Resale minus;

- Transactional net margin (TNMM);
- Profit split;
- Any other method that allows determination of at arm's length prices if none of the above methods can be applied.

It is mandatory to prepare and submit transfer pricing documentation together with the CIT return for periods starting from 1 January 2013.

**Transfer pricing rules for intra-group loans**

Any interest incurred on related party loans exceeding the at arm's length interest rate is not tax deductible. At arm's length interest is deemed to be the:

- weighted average key policy rate for the tax period, for loans denominated in dinars, and
- weighted average interest rate at which domestic banks borrowed from foreign lenders in related tax period, for foreign currency loans.

These indicators are determined by the National Bank of Serbia and published by the Ministry of Finance. However, taxpayers are entitled to determine market interest rates by using all general methods for determining at arm's length interest rates. In case the taxpayer decides to determine interest rates by applying general methods, he will have to apply such interest rates for the assessment of all related party loans.

Transfer pricing rules in this respect are applied up to the amount of tax-deductible interest determined in accordance with the thin capitalisation threshold.

**Thin capitalisation**

The interest and related costs will be fully deductible if the loans from related parties do not exceed four times the taxpayer's net equity, i.e. a debt-to-equity ratio of 4:1 (ten times for banks and leasing companies). The amount of a taxpayer's net equity for this purpose is calculated as the average of the total assets less total liabilities at the beginning and the end of the year, while the amount of loans from related parties is calculated as a daily average for the year. In cases where the loans from related parties exceed the prescribed threshold, the amount of non-deductible interest will be calculated as proportional to the amount of loans exceeding the 4:1 (10:1) threshold.

## G. WITHHOLDING TAX

- Dividends, interest and royalties paid to non-resident companies are subject to a 20% final withholding tax.
- A 25% increased withholding tax rate applies to royalties, interest, rental income from (im)movable property and service fees paid by resident entities to entities resident in a jurisdiction with a preferential tax regime (published by the Ministry of Finance).
- If a resident taxpayer pays authorship fees, interest, rental income from (im)movable property and service fees to a PE of a non-resident entity from a jurisdiction with a preferential tax regime, such income is also subject to a 25% increased withholding tax rate.

## H. EXCHANGE CONTROL

There are no exchange controls in Serbia.

## I. PERSONAL TAX

### Income tax

Income tax is chargeable on all Serbian residents in respect of income generated in Serbia and other countries and non-residents on income sourced in the Republic of Serbia.

A Resident of the Republic of Serbia (hereinafter referred to as "resident') is each person who:

- Has a personal residence or his centre of interests in Serbia;
- Resides in Serbia for at least 183 days, whether or not consecutively, within a period of 12 months beginning or ending in the respective taxation year.

Serbian residents are taxed on their worldwide income including:

- Income from wages (tax rate -10%);
- Income from agricultural activity and forestry (tax rate - 10%);
- Income from independent personal activities (tax rate - 10%);
- Income from royalties etc. (tax rate - 20%);
- Income from capital (tax rate - 15%);
- Income from property and property rights (tax rate - 15% and 20% on rental fees);
- Capital gains (tax rate - 15%); and,
- Other income (tax rate - 20%).

Annual personal tax is paid under a withholding tax system. Tax credits are available for overseas taxes up to the amount of tax suffered in Serbia on the income concerned.

### Income from wages

Income from wages represents earnings based on the full and part-time employment based on contracts concluded with the employer, or with the Youth Cooperative, until the age of 26. Income from wages is tax chargeable either earned in cash or cash equivalents, shares (except the shares assigned in process of privatization) and similar.

The taxable person is the employee, but the employer is responsible for calculating and withholding personal income tax on behalf of his employees. The tax rate is currently 10%. Specified types of income, up to the prescribed amounts, are tax exempt. They include public transportation cost for home to office travel and daily allowances for business trips. In certain cases, non-residents working for diplomatic and consular missions or international organizations in Serbia are not taxable.

### Annual income tax

Annual income tax is also payable on any amount exceeding three times the annual average wage. It is payable based on the following rates:

- Any amount up to six times the average annual salary - 10%;
- Any amount higher than six times the average annual salary - 10% of six times the average annual salary + 15% on the amount which exceeds six times the average annual salary.

### Social security contributions

Social security contributions are calculated and withheld by the employer from the salary paid to an employee, up to a specific threshold, and are payable by the employer on top of the employee's gross salary. The amount borne by the employer is treated as an operating cost, while the portion payable by the employee is taken from gross salary. The rates are as follows.

- At the level of the employee:
  - Unemployment insurance: 0.75%;
  - Pension and disability insurance: 14%;
  - Health insurance: 5.15%.
- At the level of the employer:
  - Pension and disability insurance: 11.5%;
  - Health insurance: 5.15%.

The minimum tax base for social security contributions represents 35% of the average monthly salary (for 2021 the minimum SSC base amounts to RSD 30,880 (approximately EUR 262)), while the maximum tax base for social security contributions is limited to five times the average monthly salary (for 2021: RSD 441,140 (approximately EUR 3,738)).

## J. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 20 | 20 | 0/20/25 | 20/25 |
| Individuals | 15 | -- | 0/15 | 20 |
| **Treaty countries:** | | | | |
| Albania | 15 | 5 | 10 | 10 |
| Armenia | 8 | 8 | 8 | 8 |
| Austria | 15 | 5 | 10 | 5/10 |
| Azerbaijan | 10 | 10 | 10 | 10 |
| Belarus | 15 | 5 | 8 | 10 |
| Belgium | 15 | 10 | 15 | 10 |
| Bosnia and Herzegovina | 10 | 5 | 10 | 10 |
| Bulgaria | 15 | 5 | 10 | 10 |
| Canada | 15 | 5 | 5 | 10 |
| China | 5 | 5 | 10 | 10 |
| Croatia | 10 | 5 | 10 | 10 |
| Cyprus | 10 | 10 | 10 | 10 |
| Czech Republic | 10 | 10 | 10 | 5/10 |
| Denmark | 15 | 5 | 10 | 10 |
| Egypt | 15 | 5 | 15 | 15 |
| Estonia | 10 | 5 | 10 | 5/10 |
| Finland | 15 | 5 | 0 | 10 |
| France | 15 | 5 | 0 | 0 |
| Germany | 15 | 15 | 0 | 10 |
| Georgia | 10 | 5 | 10 | 10 |
| Greece | 15 | 5 | 10 | 10 |
| Hong Kong | 10 | 5 | 10 | 5/10 |
| Hungary | 15 | 5 | 10 | 10 |
| India | 15 | 5 | 10 | 10 |
| Indonesia | 15 | 15 | 10 | 15 |
| Iran | 10 | 10 | 10 | 10 |
| Ireland | 10 | 5 | 10 | 5/10 |

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| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Israel | 15 | 5 | 10 | 10 |
| Italy | 10 | 10 | 10 | 10 |
| Japan[1] | 10 | 5 | 10 | 5/10 |
| Kazakhstan | 15 | 10[2] | 10 | 10 |
| Korea (North) | 10 | 10 | 10 | 10 |
| Korea (South) | 10 | 5 | 10 | 5/10 |
| Kuwait | 10 | 5 | 10 | 10 |
| Latvia | 10 | 5 | 10 | 5/10 |
| Libya | 10 | 5 | 10 | 10 |
| Lithuania | 10 | 5 | 10 | 10 |
| Luxembourg | 10 | 5 | 10 | 5/10 |
| Malta | 10 | 5 | 10 | 5/10 |
| Moldova | 15 | 5 | 10 | 10 |
| Montenegro | 10 | 10 | 10 | 5/10 |
| Netherlands | 15 | 5 | 0 | 10 |
| North Macedonia | 15 | 5 | 10 | 10 |
| Norway | 15 | 5 | 10 | 5/10 |
| Pakistan | 10 | 10 | 10 | 10 |
| Poland | 15 | 5 | 10 | 10 |
| Qatar | 10 | 5 | 10 | 10 |
| Romania | 10 | 10 | 10 | 10 |
| Russia | 15 | 5 | 10 | 10 |
| San Marino | 10 | 5 | 10 | 10 |
| Singapore[1] | 10 | 5 | 10 | 5/10 |
| Slovak Republic | 15 | 5 | 10 | 10 |
| Slovenia | 10 | 5 | 10 | 5/10 |
| Spain | 10 | 5 | 10 | 5/10 |
| Sri Lanka | 12.5 | 12.5 | 10 | 10 |
| Sweden | 15 | 5 | 0 | 0 |
| Switzerland | 15 | 5 | 10 | 0/10 |
| Tunisia | 10 | 10 | 10 | 10 |
| Turkey | 15 | 5 | 10 | 10 |
| Ukraine | 10 | 5 | 10 | 10 |
| United Arab Emirates | 10 | 5 | 10 | 10 |
| United Kingdom | 15 | 5 | 10 | 10 |
| Vietnam | 15 | 10 | 10 | 10 |

Notes:
1. Effective date: 1 January 2022.

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## SEYCHELLES

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Mahe | Nico Ackermann | +248 252 3075<br>nico.ackermann@pkf.com |

### BASIC FACTS

| | |
|---|---|
| Full name: | Seychelles |
| Capital: | Victoria |
| Main languages: | Seychellois Creole, English, French |

| | |
|---|---|
| Population: | 99,415 (2022 estimate) |
| Monetary unit: | Seychellois Rupee (SCR) |
| Internet domain: | .sc |
| Int. dialling code: | +248 |

## KEY TAX POINTS

- For companies, the standard Business Tax rate is 15% on the first SCR 1,000,000 of taxable income and 25% on the remainder.
- There is no capital gains tax in the Seychelles.

## A. TAXES PAYABLE

### PROFITS TAX

For sole traders and partnerships, the Business Tax rate is 0% on the first SCR 102,666 of taxable income, 15% on the next SCR 897,334 of taxable income and 25% on the remainder.

For companies, the Business Tax rate is 15% on the first SCR 1,000,000 of taxable income and 25% on the remainder.

Businesses with a turnover of less than SCR 1,000,000 are eligible for the Presumptive Tax system and their turnover is taxed at a flat rate of 1.5%.

| TAX TYPE | RATE OF TAX |
|---|---|
| Business Tax | FIRST SCHEDULE |
| Individual and Partnership | 0% of the first SCR 102,666 of taxable income,<br>15% between SCR102,666 and 1,000,000 of taxable income and 25% on the remainder |
| Company, government body or a trustee | 15% on the first SCR 1,000,000 of taxable income, and 25% on the remainder |
| Telecommunications service providers, banks, | 25% on the first SCR 1,000,000 of taxable income and 33% on the remainder |
| Insurance companies, alcohol and tobacco manufacturers | 25 on the first SCR 1,000,000 of taxable income and 33% on the remainder |
| Non-resident Person operating a ship or aircraft for the carriage of passenger, mail, merchandise, etc.<br>Or goods embarked in Seychelles | 3% of the gross amount with respect to passengers, livestock, mail, merchandise or goods embarked from the Seychelles |
| Offshore Banking | 3% of the taxable business income generated by and sources from a non-resident person or an entity incorporated or registered in Seychelles which has personal and economic relations or place of effective management outside Seychelles |
| Presumptive Tax | TENTH SCHEDULE |
| A small business with the turnover of less than SCR1,000,000 and not registered for VAT | 1.5% on the annual turnover |
| Business tax | EIGHT SCHEDULE |
| Tourism Sector and Agriculture & Fisheries Sector | The incentives include reduced tax rates, tax credits and special deductions.<br>Exempted from the payment of business tax on any income derived from fishing or fishing related activity in the case of a fisher, or any farming activity involving the production of agricultural products in the case of a farmer.<br>This order shall cease to have effect on 31 December 2023. |
| Business Tax | SEVENTH SCHEDULE |
| (Was repealed in the seventh Schedule) | |
| Companies Special Licence (CSL) | 1.5% on global taxable income |
| Offshore Dredging, reclamation and Related Marine work | 3% on total turnover |
| Residential Dwelling | 15% of the gross rental income |
| Licensees under the Mutual Fund and Hedge Fund Act, 2008 | 10% of fees in respect of new mutual fund licence and all other fees under that Act |
| Licensees under the Securities Act 2007 | 1.5% in respect of the assessable income |
| (Was repealed in the seventh Schedule) | |
| Private Educational Institution | 15% on the taxable income |
| Private Medical Service provider | 15% on the taxable income |

| TAX TYPE | RATE OF TAX |
|---|---|
| Business Tax | FOURTH SCHEDULE-PAY-SPECIFIED BUSINESS |
| Building Contractor<br>Maintenance contractor<br>Mechanic (motor vehicle, marine or refrigeration)<br>Hirer or operator of plant, equipment including sea vessels, motor vehicle used for the transportation of goods and towing<br>Hirer of Public omnibus | Person making payment to a specified business shall withhold 5% tax from the gross payment |

A Business Tax year is a period of 12 months beginning 1st January and ending on 31st December each year. An annual tax return needs to be filed by 31st of March each year. There are two types of returns to choose from: A Presumptive Tax Return or Business Tax Return.

## PRESUMPTIVE TAX RETURN

A one-page Presumptive Tax return if the income earned is less than SCR 1 million or even if the business has been in operation for less than a year.

## BUSINESS TAX RETURN

A five-page Business Tax return which is required to be completed by all business with income received in excess of SCR 1 million. A set of accounts are not required to be submitted with the Tax return. They must however be submitted on request. Lodge a nil return if the business is dormant/not operational and lodge a Business Tax Return even when the business has been in operation for less than a year.

## CAPITAL GAINS TAX

Capital gains are exempt from tax in the Seychelles.

## BRANCH PROFITS TAX

There is no distinction between branch profits tax and corporation profits tax.

## SALES TAX / VALUE ADDED TAX (VAT)

VAT is compulsory for businesses with annual taxable supplies made or expected of SCR 2,000,000 or more and on a voluntary basis for supplies less than SCR 2,000,000. The standard rate of VAT is 15% and 0% for zero rated supplies.

## DIVIDENDS

Dividends paid to resident persons are not subject to withholding tax. Dividends paid to non-residents are subject to withholding tax of 15%. Dividends received from non-resident companies are non-taxable.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a business for a tax year is the amount remaining after deducting from the assessable income of the business for the year all allowable deductions.

## DEPRECIATION

Depreciable assets costing SCR 10,000 or less: 100%;

Computers, research and development expenditure, data handling equipment, and approved environmental machinery: 40%;

Hotels: 20% in first tax year and 10% for each subsequent tax year;

Business buildings, ships and aircraft: 4%;

Other: 20%.

| ASSET | RATE |
|---|---|
| Plant & Machinery | 20% |
| Office Equipment | 20% |
| Vehicles | 20% |

## STOCK / INVENTORY

For tax purposes, inventory may be valued at the lower of cost or market value, or at replacement cost.

## PROVISIONS

Provisions are non-deductible.

## INTEREST DEDUCTIONS

A business is allowed a deduction for any interest expense incurred by the business in a tax year to the extent to which the business has used the funds or benefit of the debt or other instrument or agreement giving rise to the interest to derive taxable business income.

## LOSSES

If the total amount of deductions allowed to a business for a tax year exceeds the total assessable income of the business for the year, the amount of the excess is the net loss of the business for the year. If a business has a net loss for a tax year, the amount of the loss is carried forward to the following tax year and allowed as a deduction in computing the taxable income of the business for that following year. Losses can be carried forward for 5 years.

## FOREIGN SOURCE INCOME

Foreign-sourced income is untaxed in the Seychelles.

## TAX INCENTIVES

To further encourage investment in the Seychelles, certain businesses have been granted various tax incentives. Some of these businesses include farming entities, fisheries, boat owners, hotels and guesthouses. The incentives include reduced tax rates, tax credits and special deductions. Businesses that fall under the category of an individual fisher and an individual farmer shall be exempted from the payment of business tax on any income derived from any fishing activity or fishing related activity in the case of a fisher, or any farming activity involving the production of agricultural products in the case of a farmer. This order shall cease to have effect on 31 December 2023.

## C. FOREIGN TAX RELIEF

Since foreign-sourced income is untaxed in the Seychelles, it does not grant relief for foreign taxes paid.

## D. CORPORATE GROUPS

Consolidated returns are not allowed. Each company has to submit its own tax return.

## E. RELATED PARTY TRANSACTIONS

Transactions between related parties must be at arm's length.

## F. WITHHOLDING TAX

Withholding tax in the Seychelles:

- 15% on dividends paid to non-residents;
- 15% on interests paid to non-residents other than financial institutions (for whom a nil rate applies);
- 15% on royalties paid to residents;
- 15% on certain types of royalties paid to non-residents (copyright, patent, design and trademark royalties are exempt);
- 15% on technical service fees paid to a non-resident company in respect of the supply of scientific, technical, industrial or commercial knowledge.

## G. EXCHANGE CONTROL

No exchange controls exist in the Seychelles.

## H. PERSONAL TAX

Income Tax is a tax deducted from the income of each employee on a monthly basis. The employer is liable to deduct this tax and remit to SRC. Income tax is due on the emolument of the employee when the salary is paid.

| Amount (SCR) | Rate (citizen) | Rate (non-Citizen) |
|---|---|---|
| Up to 8,555.50 | 0% | 15% on the amount up to SCR 10,000 |
| 8,555.51 – 10,000 | 15% on amounts over SCR 8,555.50 | |
| 10,000.01 – 83,333 | SCR 216.68 + 20% on amounts over SCR 10,000 | SCR 1,500 + 20% on amounts over SCR 10,000 |
| Over 83,333 | SCR 14,883.28 + 30% on amounts over SCR 83,333 | SCR 16,166.60 + 30% on amounts over SCR 83,333 |

The due date for payment is 21st of each month. All income tax deduction must be recorded on a payroll and attached to a Business Activity Statement every month. The payroll must contain the details of each employee, the taxable and non-taxable salary and allowances and the tax applicable.

Employees are encouraged to verify whether their employer is remitting the tax deducted from their salary every month. Late payment of income tax is liable to a penalty of 10% per annum.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Non-treaty countries | 15 | 15 | 15 |
| **Treaty countries:** | | | |
| Bahrain | 0 | 0 | 5 |
| Barbados | 5 | 5 | 5 |
| Belgium | 0/5/15[8] | 5/10 | 5 |
| Bermuda | 0 | 0/5 | 5 |

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| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Botswana | 5/10[1] | 7.5 | 10 |
| China | 5 | 10 | 10 |
| Cyprus | 0 | 0 | 5 |
| Eswatini (formerly Swaziland) | 7.5/10[1] | 7.5 | 10 |
| Ethiopia | 5 | 5 | 5 |
| Guernsey | 0 | 0 | 5 |
| Indonesia | 10 | 10 | 10 |
| Isle of Man | 0 | 0 | 5 |
| Jersey | 0 | 0 | 0 |
| Kenya | 5 | 10 | 10 |
| Luxembourg | 0/10[2] | 5 | 5 |
| Malaysia | 10 | 10 | 10 |
| Mauritius | 0 | 0 | 0 |
| Monaco | 7.5 | 5 | 10 |
| Oman | 0/5[3] | 5 | 10 |
| Qatar | 0 | 0 | 5 |
| San Marino | 0/5[4] | 0/5[6] | 0 |
| Singapore | 0 | 12 | 8 |
| South Africa | 5/10[5] | 0 | 0 |
| Sri Lanka | 7.5/10[1] | 10 | 10 |
| Thailand | 10 | 10/15[7] | 15 |
| United Arab Emirates | 0 | 0 | 5 |
| Vietnam | 10 | 10 | 10 |
| Zambia | 5/10[1] | 5 | 10 |

Notes:
1. The reduced rate applies if the beneficial owner is a company which holds at least 25% of the capital of the dividend-paying company.
2. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the paying company.
3. The 0% rate applies to dividends paid to the Government, including local authorities thereof, a political subdivision, the Central Bank or any financial institution controlled by the Government.
4. The 5% rate applies if the beneficial owner is a company which has held directly at least 10% of the capital of the paying company for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends. The 0% rate applies in all other cases.
5. The reduced rate applies if the beneficial owner is a company which holds at least 10% of the capital of the paying company.
6. The 0% rate applies to interest on debt-claims or loans paid to banks and financial institutions and on deposits made with banking or financial institutions while the 5% rate applies in all other cases.
7. The reduced 10% rate applies to interest paid to financial institutions (including insurance companies).
8. The 0% rate applies if the beneficial owner of the dividends is a resident company of the other state and which at the moment of the payment of the dividends holds, for at least 12 months (uninterrupted), shares representing directly at least 25% of the capital of the company paying the dividends. The 5% rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company.

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## SIERRA LEONE

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Freetown | Madonna Thompson | +232 76 294 555<br>madonna.thompson@pkfmasonhill.com |

### BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Sierra Leone |
| Capital: | Freetown |
| Main languages: | English |
| Population: | 8.28 million (2022 estimate) |
| Monetary unit: | Sierra Leone Leones (SLL) |
| Internet domain: | .sl |
| Int. dialling code: | +232 |

## KEY TAX POINTS

- The standard corporate income tax rate is 25%.
- Dividends paid to a non-resident corporate shareholder are subject to a final 10% withholding tax.
- Interest paid to a non-resident company is subject to a final 15% withholding tax.
- Royalties paid to a non-resident company are subject to a final 25% withholding tax.
- Losses can be carried forward for up to ten years, subject to a limit of 50% of chargeable income for the respective year of assessment. Losses cannot be carried back.
- The standard GST rate is 15%.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

The National Revenue Authority (NRA) in Sierra Leone administers most of the taxes payable including the major revenue contributors. The Domestic Taxes Department (DTD) of the NRA was established as a 'one-stop shop' for the administration of all Sierra Leone's domestic taxes – namely the Goods and Services Tax, Pay-As-You-Earn (PAYE), Income Tax, Withholding Tax and Payroll Tax. The tax year of assessment is 1 January to 31 December. The 2022 Finance Act, which came into law in January 2022, brought in some key changes to the existing tax regulations.

## RESIDENTS AND NON-RESIDENTS

**Resident individual**

1. An individual shall be treated as resident in Sierra Leone for the entire year of assessment if that individual:
   - Has a normal place of abode in Sierra Leone and is present in Sierra Leone at any time during the year of assessment;
   - Is present in Sierra Leone on more than 182 days in a twelve-month period that commences or ends during the year of assessment; or
   - Is an official of the Government of Sierra Leone posted overseas during the year of assessment.
2. An individual who was not a resident in the preceding year of assessment shall not be treated as a resident for the period preceding the day the individual was first present in Sierra Leone during the year of assessment.
3. An individual who is not a resident in the following year of assessment shall not be treated as a resident for the period following the last day on which the individual was present in Sierra Leone during the year of assessment if during that period the individual had a closer connection to a foreign country than to Sierra Leone.
4. For the purposes of this section an individual shall not be treated as present in Sierra Leone on any day when:
   - The individual crosses the border to Sierra Leone to perform services as an employee in Sierra Leone;
   - The individual is in transit between two points outside Sierra Leone;
   - The individual is present in Sierra Leone for the purpose of medical treatment or full-time study; or
   - The individual is present in Sierra Leone by of diplomatic status or being dependant of a person with diplomatic status.

**Temporarily resident individual**

An individual treated as resident, shall be treated as temporarily resident in Sierra Leone for the entire year of assessment if that individual:

- Is not a citizen of or domiciled in Sierra Leone;
- Does not intend, during the year of assessment, to reside in Sierra Leone for a total period of more than four years, and
- As of the end of the year, has not been resident in Sierra Leone for more than four years.

A company is a resident company if it (a) is incorporated or formed under the laws of Sierra Leone (b) has its effective management and control in Sierra Leone or undertakes the majority of its operations in Sierra Leone. A branch in Sierra Leone of a non-resident company is deemed to be a separate person, which is a resident company.

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## COMPANY TAX

The Corporate Income Tax (CIT) rate remains at 25% for all entities except manufacturing companies. The amendment reduced the CIT rate from 25% to 15% for manufacturing entities or factories whose management and functional activities are exclusively set up outside the Western Area.

The main objective of this amendment is to encourage Manufacturing Companies to establish outside of the Western Area. Manufacturing entities that are not companies are not qualified for CIT rate reduction. It means qualifying Manufacturing Companies will now pay tax on their chargeable income at a lower rate of 15% instead of 25% paid by companies not exclusively operating outside the Western Area.

**Temporarily resident taxpayer**

The calculation of the chargeable income of a temporarily resident taxpayer is similar to that for a resident taxpayer except assessable income includes only Sierra Leone source income and income from other sources that is remitted to Sierra Leone.

A company is considered a resident if it satisfies the three alternative tests of residence; place of incorporation; place of management and control; and place of majority of operations. Subject to subsection (2), a company that does not satisfy any of these tests is a non-resident person for the year of assessment.

Non-resident companies pay tax at the rate of 25% on income sourced in Sierra Leone. A permanent establishment of a non-resident person in Sierra Leone shall be treated as a resident person separate from but associated with its non-resident owner.

**Partial corporate income tax exemption**

There is a 25% partial corporate income tax exemption for a taxpayer who undertakes Corporate Social Responsibility (CSR) projects in the normal course of business in government priority areas such as free quality education, children's right and teenage pregnancy, infant mortality and health care, agriculture (food and cash crop).

**Minimum turnover tax for online and digital transactions**

There is a 1.5% tax on the turnover of all digital and electronic transactions and sales on the universal income derived by a resident taxpayer in Sierra Leone.

**Allowable deduction for losses of group members – Intergroup loss relief**

The regulation now allows group members of a company fully registered in Sierra Leone with a minimum of 25% holding in the group, to recoup losses of members in the same group up to ten years, provided that ownership and control are tested by reference to the ordinary share capital, voting rights, dividend rights and rights to distributions on liquidation.

**Allowable deduction for interest expense**

The tax regulation has further placed a limit on the interest expense allowable for deduction from 50% to 30% of the person's chargeable business Income, plus financial gains derived, which means that in ascertaining a person's chargeable income for a year of assessment, the total deduction for financial costs shall not exceed 30% of the person's chargeable business income, plus financial gains derived by the person.

## CAPITAL GAINS TAX

Capital gains tax shall be payable by a chargeable person at the rate of 25% (decrease from 30%) of the capital gain accruing to or derived by that chargeable person from the disposal of a chargeable asset owned by a chargeable person. Chargeable asset includes land and sea, property attached and integrated equipment, fixtures, improvements including leases, anything growing on the land and all interest in the property including sea which may be right to future ownership, right to occupy as tenant, life estate, the right to explore, develop, extract or produce oil, and other minerals, the right to shares, stocks and other investment opportunities in an entity, business or company, intellectual property rights, reversion of property , if it is not used for its current purpose, an easement across another person's property and any other privileges relating to the property, business and business asset including goodwill wherever situated;

Chargeable disposal means the sale, realization or change of hands of a chargeable asset other than those specifically exempt from capital gain and chargeable person means a person, individual, corporation and related organizations including permanent establishment, associates, affiliates and joint ventures which have made chargeable disposal of a chargeable asset during a year of assessment.

**Exemption from capital gains**

- capital gain of a person that is up to and under the minimum chargeable income of SLL 6,000,000 per annum or per transaction;
- capital gain accruing to or derived by a company out of a merger, amalgamation or re-organisation of the company where there is continuity of underlying ownership in the asset of at least one quarter;
- capital gain resulting from a transfer of ownership of the asset by a person to that person's spouse, children, parent, brother or sister;
- capital gain resulting from a transfer of ownership of the asset between former spouses as part of a divorce settlement or a genuine separation agreement;
- capital gain where the amount received on realisation is, within one year of realisation, used to acquire a chargeable asset of the same nature (referred to as "replacement asset"); and
- Where part only of the amount received or realised is used in the manner referred to in the preceding paragraph, any part of the capital gain represented by the amount used to acquire the replacement asset is less than the cost base of the asset realised at the time of realisation.

**Withholding tax exemption on dividend pay to company within a Group**

According to the amendment, a company including a company within a group which received dividend from another resident company is now exempt from paying Withholding Tax. The key change is the inclusion of a company within a group.

**Reduction of deemed dividend tax rate**

The amendment reduces tax paid on Retained Earnings from 30% to 10% when it is in excess of 50% post-tax profit in a current year of assessment for all cooperate entities including parastatals.

## BRANCH PROFITS TAX

A branch in Sierra Leone of a non-resident company shall be subject to tax on repatriated income at the rate of 10% as though such income were a dividend taxable under section 118, this tax being in addition to income tax on the chargeable income of the branch. Repatriated income is the higher of:

- Funds repatriated in the year out of accumulated profits; and
- The chargeable income of the branch minus Sierra Leone income tax paid on that chargeable income and any profit reinvested or retained in the branch.

## SALES TAX / GOODS AND SERVICES TAX

The Goods and Service Tax (GST) is a form of Value Added Tax (VAT) with a tax rate of 15%:

- It is a general tax on consumption expenditure;
- It is collected by GST registered businesses on behalf of the tax authorities;

- It is charged as an addition to the price of goods and services at importation, wholesale and retail stages;
- At each stage in the chain of production and distribution of goods and services, GST is effectively charged on the value added generated.

Export will be zero-rated and imports will be levied the same taxes as domestic goods and services adhering to the destination principle. Turnover threshold for supplies over a 12-month period is SLL 350,000,000. GST applies to each of the following (with some exceptions):

- All goods subject to customs duty;
- All goods subject to excise duty;
- All goods listed in the First Schedule of the GST Act 2009. These include foods and beverages, wines and spirits, hydrocarbons, tobacco, cement, medicines, paints, perfume and toiletries, soaps, detergents, candles, matches, plastics, paper and paper articles, ammunition and weapons, furniture, motor vehicle bodies, structures and parts of structures for building, bridges, etc.

Zero Rated Supplies: (a) Exports of goods including rutile and its by-products, iron ore, bauxite, gold, diamonds and other minerals (b) Goods shipped as stores on vessels and aircraft leaving Sierra Leone.

Exempted Supplies: **The Second Schedule of The Goods and Services Tax Act 2009 Is Amended as Follows:**

by repealing and replacing paragraph (13) with the following new paragraph:

**Supply**- Plant, equipment and machinery Description - Plant, equipment, machinery, apparatus and appliances designed for use exclusively in

  - Agriculture, veterinary, fishing and horticulture;
  - Manufacturing; and
  - Mining.

This paragraph shall be classified as exempt under the harmonised systems commodity classification code (b) by inserting the following new paragraphs immediately after paragraph (29)

**Supply:** Materials for the conduct of national elections. Description: All materials imported by Government or development partners on behalf of the Government for the conduct of elections by the National Electoral Commission.

Arms, ammunition, and security equipment

**Description:** Arms, ammunition, specialised security vehicles, public order and communication equipment imported by the Government or by a person authorised by Government to do such for and on its behalf.

**Supply:** Medals and Medallions

**Description:** items of medals, medallions and other decorations imported directly by or for the Government for awards by the President and for the use of the Ministries of Defence and Internal Affairs.

**Amendment to the Goods and Services Tax Act [GST] 2009**

**Section 37 of The Goods and Services Tax Act 2009 Is Amended By:**

inserting the following new subsections immediately after subsection (3)

A taxpayer who fails to file a return-

- within 30 days after the due date shall be termed a late filer;
- after 30 days of the due date shall be termed a non-filer.

The following penalties shall apply to a late filer of an annual tax return who files after the due date without good course:

- large taxpayer -SLL 50,000,000
- Medium taxpayer – SLL 25,000,000

A taxpayer who without good course fails to file an income tax return and any other return required by this Act within the stipulated period shall be liable to the following penalties:

- Large taxpayer – SLL 100,000,000
- Medium taxpayer – SLL 50,000,000

repealing and replacing that section with the following new section:

**Section 58 of The Goods and Services Tax Act 2009 Is amended by:**

"A person who fails to pay GST on or before the date due for payment is liable to a penalty equal to one-twelfth of the 364-day treasury bill rate for each month in which the GST remains outstanding until the payment is made".

**Section 99 of The Goods and Services Tax Act 2009 Is amended by:**

"The Commissioner- General shall issue to a resident person and a non-resident person with no permanent establishment in Sierra Leone but whose income source is from Sierra Leone, a unique Taxpayer Identification Number (TIN), which number may be the same used to identify the person for the purposes of income tax, customs duty, Goods and Services Tax or non-tax revenue or any other transaction with the National Revenue Authority".

**Taxable Supply**

The 2021 Finance Act introduced a new paragraph which includes the following supplies as part of a taxable supply:

(h) digital market supply or digital services through a digital marketplace, refers to e-platforms, whether e-medium, e-commerce, peer-to-peer (P2P), advertising-based, agency or subscription-based that include:

- downloadable digital contents, subscription-based media; software programs; electronic data management; supply of music, film, and games electronically; online sale of goods; and any online betting activity;
- search engines and automated help desk services, online tickets, e-learning platforms, audio, vision or digital media, transport hailing platforms, among others.

**Upfront payment of GST by tax exempt persons and organisations**

The Act clarifies what is required of GST relieved persons as follows:

- To pay GST on goods and services as charged by suppliers;
- Request for refunds of those GST input credits to be paid 90 days after submission of claims;
- Present evidence of payment of GST on the particular goods and services upon filing of their requests for refunds.

**Issuance of GST Invoice and the use of Electronic Cash Register System**

The Act encourages consumers who buy or receive services from GST-registered suppliers to request for GST invoice. It also requires GST-registered businesses to maintain an electronic cash register to invoice and record all transactions, and issue to the customer an original GST receipt or invoice generated from the electronic cash register system or any automated system of the National Revenue Authority in respect of all supplies of goods and services made, whether such GST receipt or invoice is requested by the customer or not.

**Registration on Integrated Tax Administration System [ITAS]**

Full roll-out of the Integrated Tax Administration System (ITAS) was introduced in the last quarter of 2021 and is now in full operation in 2022. All tax payers – small, medium and large – are mandated to formally register with the National Revenue Authority via the ITAS online system in order to process all tax returns. A new tax number (TIN) will then be generated by the Tax portal. All previous TIN numbers are no longer valid. All tax submissions must be made through the new online ITAS portal.

## FRINGE BENEFITS TAX

Non-cash benefits given by employers to employees are included in employment income on the basis of the higher of the cost to the employer or the market value.

**Non-cash benefit**

| | |
|---|---|
| Motor vehicle | Value to be added for tax purposes P×(R+20%C) where C is the purchase cost or full lease cost of the vehicle; P is the proportion of the employee's non business use; R is the employer portion of the running cost of the vehicle in the year. |
| Accommodation | Market rent of accommodation reduced by payment made by employee toward the benefit |
| Discharge/reimbursement of employee utility expenditure | Amount paid or reimbursed |
| Provision of domestic assistants | Employer's contributions towards the total emoluments paid to domestic assistant |
| Provision of meal, refreshment or entertainment | Actual cost to employer of providing the benefits |
| Waiver of an obligation | Amount of payment or repayment waived |

## LOCAL TAXES

The City/Town Councils in the 14 Districts administer local taxes.

## OTHER TAXES

1. **National Social Security and Insurance Trust (Nassit)**

The National Social Security and Insurance Trust (NASSIT) is a Statutory Public Trust set up by the National Social Security and Insurance Trust Act No. 5 of 2001 to administer Sierra Leone's National Pension Scheme. The primary responsibility of the Trust is the part replacement of income lost as a result of the contingencies of old age, invalidity and death. Employers and employees contribute 10% and 5% respectively of the employees' employment income.

2. **Small, Micro, Medium and Large Tax Payer - New Definition of Taxpayer Categories**

   **AMENDMENT TO THE INC0ME TAX ACT 2000**

**Section 2 of the Income Tax Act 2000 is amended by:**

Deleting the definition of "gross income", "large tax payer ", "medium taxpayer", "small taxpayer" , and "micro taxpayer" and inserting the following new definitions:

- **Gross income;** In relation to any year of assessment for any person means the total amount in cash or otherwise, received by or accrued to or in favour of such person from all sources during the year or period of assessment excluding receipts and accruals of a capital nature.
- **Large taxpayer;** Means a taxpayer with an annual turnover of an amount above SLL 5,000,000,000 or other additional requirements as may be prescribed by the Commissioner-General.
- **Medium taxpayer;** Means a taxpayer with an annual turnover of an amount above SLL 100,000,000 and up to SLL 5,000,000,000.
- **Small taxpayer;** Means a taxpayer with an annual turnover of an amount above SLL 10,000,000 and up to SLL 100,000,000.
- **Micro taxpayer;** Means a taxpayer with an annual turnover of less than SLL 10,000,000.

The Act provides tax relief for SMEs on income derived in the first year of business operations from 1 January 2021 to 31 December 2023. This is to help reduce start-up costs for SMEs.

**Section 100 of the Income Tax Act 2000** is amended by repealing and replacing subsection (1) with the following new subsection ''Upon application in writing by a taxpayer who files tax returns by the due date, the Commissioner-General may extend the period within which the return of income is to be made by a maximum period of sixty days upon payment of the following fees:

(a) large taxpayer – SLL 20,000,000

(b) medium taxpayer – SLL 10,000,000

(c) small taxpayer – SLL 1,000,000"

3. **Payroll Tax**

Non-resident individuals are subject to a 25% income tax rate on personal income derived from activities and employment in Sierra Leone.

All employers are obliged to make a yearly payroll tax return for all non-citizens (foreign national) employees they hire, as follows:

- ECOWAS Nationals: SLL 1,500,000 per employee per year;
- Non-ECOWAS Nationals: SLL 5,000,000 per employee per year.

The amount payable, together with the completed Return, must be submitted to the DTD on or before 31st January of the year in which they apply. Where a non-citizen is employed in the course of the year, a subsequent return and payment must be filed within 14 days from the date of the employment.

4. **Business Registration**

The Corporate Affairs Commission (CAC) is tasked with the registration of all Companies, both locally incorporated business and branch registration in accordance with the Companies Act 2009.

5. **Inheritance / Estate duty**

A tax duty of 10% of the value of the entire estate is payable.

6. **Stamp and Transfer Duty**

Stamp duty rates vary from 1% to 12.5%. This applies to agreements, bills of exchange, promissory notes, bills of lading, bonds, leases and conveyances.

## B. DETERMINATION OF TAXABLE INCOME

Deductions for income tax assessment purposes include expenses incurred necessarily to obtain, maintain and preserve such income. The Income Tax Act 2000 lists specific regulations for dealing with fixed assets, real estate, products, shares or securities sold, as well as deductible property plant and equipment, depreciation, bad and doubtful debts and meals, refreshment and entertainment.

## CAPITAL ALLOWANCES

Depreciable assets are classified into groups with depreciation rates as follows:

1. Plant, machinery and equipment, including automobiles and trucks: 40%
2. All other tangible depreciable assets except buildings & intangible depreciable assets: 10%
3. Buildings used to house industrial, manufacturing, or agricultural activities: 15%
4. Buildings used to house commercial activities other than those described in group 3: 10%
5. Buildings other than those described in groups 3 and 4: 5%
6. Expenditure on start-up costs on mineral and petroleum prospecting and exploration: 100%
7. Production rights and other expenditure incurred on mineral and petroleum development
8. Shall be as follows:
   - Initial allowance: 40%
   - Annual allowance: 20%.

## INVESTMENT ALLOWANCES

The amount of investment allowance to be deducted from business income is 5% of the cost of the relevant asset.

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## BUSINESS INVESTMENT RELIEF

The maximum relevant amount of business investment relief available to an individual is fifty percent of qualifying investments totalling not more than SLL 3, 000,000 in any year of assessment.

New businesses that invest at least USD 10 million and existing businesses that invest USD 5 million in the expansion of their business will be granted duty free importation of 3 years for the imports of plants, machinery excluding spare parts and general-purpose vehicles (vehicles for personal use are excluded) for use in their business operations.

Public Private Partnership (PPP) infrastructural projects get 15 years relief from corporation tax.

## DEPRECIATION

Depreciation is not allowed. However, capital allowances deduction for depreciation of a taxpayer's depreciable assets are allowed.

## STOCK/INVENTORY

Trading stock:

- A taxpayer who maintains trading stock shall establish and maintain inventories of such stock.
- A deduction shall be allowed for the cost of trading stock sold during the year of assessment.
- The cost of trading stock sold in a year of assessment shall be determined by adding to the value of opening trading stock the cost of goods acquired during the year and subtracting the value of closing trading stock.

- A cash-basis taxpayer may calculate the cost of trading stock on the prime-cost or absorption-cost method and an accrual-basis taxpayer shall calculate the cost of trading stock on the absorption-cost method.
- The value of trading stock on hand at the end of the year of assessment shall be the lower of its cost or market value at that date.
- Where particular items of trading stock are not readily identifiable, a taxpayer may account for the trading stock on the first-in-first-out method or the average-cost method, but once chosen, a stock valuation method may only be changed with the written permission of the Commissioner, and a taxpayer using the last-in-first-out method shall change to the first-in-first-out or the average stock method within five years from the date of commencement of this Act.

## CAPITAL GAINS AND LOSSES

- The gain realised or the loss incurred on the disposal of a business or investment asset is taken into account in determining chargeable income.
- The gain from the disposal of an asset is the excess of the consideration received over the adjusted cost base of the asset.
- The loss from the disposal of an asset is the excess of the adjusted cost base over the consideration received.
- The gain or loss on disposal of an asset which is not a business or investment asset is not taken into account in determining chargeable income.

## DIVIDENDS

Dividends received from an investment in Sierra Leone by a resident and a non-resident person is subject to a final withholding tax at 10%. The withholding tax on dividend does not apply to a dividend paid by a resident company to another resident company or to a complying retirement fund resident in Sierra Leone. Under certain conditions, payments other than distributions out of profits may be treated as dividends.

## INTEREST DEDUCTIONS

A taxpayer that is not a bank is entitled to a deduction of eighty percent of the interest expenses paid in respect of a debt obligation incurred by the taxpayer to produce assessable income.

## LOSSES

Losses can be carried forward. Any allowable loss suffered by the taxpayer to the extent that the loss has not been deducted in a previous year of assessment in-so-far as the tax payable each year will be less than 50% of the tax due if such loss is not carried forward.

## FOREIGN SOURCED INCOME

Income is from a foreign-source if it is derived from an activity which occurs outside of Sierra Leone. Any income which is not from a source in Sierra Leone is foreign-source income.

## THIN CAPITALISATION

The limitation of the deductibility of interest expenses that are borne on a loan from a shareholder or his associate is restricted to 50% of the excess of that loan over the shareholder's paid-up shares

Furthermore, the standard gearing ratio applicable to mining companies is 3:1. Excess interest is deemed a dividend.

## PROFESSIONAL SERVICE PROVIDERS

The 2021 amendment exempts a professional service provider whose income is already subject to 10% withholding tax per transaction from paying further 5.5% on its service fee. This is regarded as double taxation of the same income. The clarity provided by the Act now means that professional service providers (i.e., doctors, lawyers, accountants, engineers, and management consultants) are now excluded from the Withholding Tax rate of 5.5% chargeable on payments made to contractors. Thus, payments made to professional service providers should now only attract 10% WHT.

## EMPLOYMENT OF FEMALE MANAGERS

The regulation provides a tax rebate (tax credit) to a business that employs a female employee in a management position between 1st day of January 2021 and 31st day of December 2023. That business shall be eligible to a tax credit at a rate of 6.5% on the PAYE of that female employee. However, such tax credit is not automatic, as it will have to be approved under a Utilisation Plan with the National Revenue Authority (NRA) as stated under section 19 of the same Act.



## INCENTIVES

### Importation of plants, machinery or equipment

The following shall be entitled to duty free import for a period of three years from the date of first registration:

- New and existing businesses importing plants, machinery or equipment excluding vehicles;
- New business if it invests at least USD 10,000,000; and
- An existing business if it invests at least USD 5,000,000 in expanding the business.

### Petroleum refinery

A petroleum refinery investing a minimum of USD 20,000,000 and employing at least fifty Sierra Leonean citizens shall be eligible for the following relief:

- A corporate tax relief not exceeding five years; and
- Equipment and machinery for establishing the refinery shall be imported free of duty for a period of five years.

A new business investing a minimum of USD 2,000,000 and employing at least twenty Sierra Leonean citizens shall be eligible for the following relief:

- A corporate tax relief not exceeding five years; and
- Equipment and machinery for establishing a new business shall be imported duty free for a period of five years.

**Agriculture**

(1) Entities engaged in agricultural production shall be entitled to duty-free import of agricultural inputs for a period of five (5) years from the date of first registration.

(2) For the purpose of this section "agricultural inputs" means:

 (a) Fertilizers;

 (b) Pesticides;

 (c) Insecticides;

 (d) Seeds and seedlings;

 (e) Hybrid tree seeds;

 (f) Seed animal for feeding purpose;

 (g) Day-old-chicks; and

 (h) Animal segment

(3) The income derived from investment in poultry business shall be exempt from income tax for a period of three (3) years:

 (a) (a) In the case of a Sierra Leonean citizen if the investment is at least USD 50,000; and

 (b) (b) In the case of a non-citizen, if the investment is at least USD 500,000.

(4) Import of feeds, vaccine and veterinary drugs for poultry and livestock shall attract duty free import for a period of five years from the date of commencement of business.

**Research and Development**

For the purposes of income tax, any expenses incurred on research and development by an investor, shall be eligible for deduction from profits of 100% of the cost incurred up to the extent of profits of the same year the expenditure is made but any unclaimed amount shall not be available for future deductions.

**Training**

For the purposes of income tax, any expenses incurred on training of local staff in an approved training programme, shall be eligible for deduction from profits of 100% of the cost incurred up to the extent of profits of the same year the expenditure is made but any unclaimed amount shall not be available for future deductions.

## C. FOREIGN TAX RELIEF

- A resident taxpayer is entitled to an allowable tax credit in respect of foreign income tax borne by the taxpayer on assessable income derived from a foreign source.
- The allowable tax credit in respect of any foreign-source income may not exceed the Sierra Leone income tax on that foreign-source income, calculated by applying the average rate of Sierra Leone income tax to the foreign-source income reduced by any deduction properly allocated to that income.
- The allowable tax credit in respect of foreign-source income and the Sierra Leone income tax imposed on that income are calculated separately for each amount of foreign-source income derived by a taxpayer.
- Foreign-source income derived by a foreign branch of a resident company is aggregated and considered a single receipt of income.

**Foreign Employment Income of Residents**

Foreign-source employment income derived by a resident individual during a year of assessment from employment in a foreign country shall be exempt from income tax if the income is chargeable to tax in the foreign country.



## D. CORPORATE GROUPS

There are no special rules existing for the taxation of groups.

## E. RELATED PARTY TRANSACTIONS

Expenses incurred in these transactions are allowable. But the Commissioner General has power to re-characterise a transaction entered into as part of a tax avoidance scheme.

In line with paving the way for the enactment of Transfer Pricing regulations, the 2016 Finance Act requires transactions with a related party during the assessment year to disclose:

- The relationship with the related party;
- The volume and value of the transaction;
- The price charged and the basis or method of ascertaining that price;
- The comparative price for a similar transaction made with non-controlled entities or charged by non-controlled entities.

In light of the above, there will be increased scrutiny from the tax authorities on transactions between related parties

## F. EXCHANGE CONTROL

Exchange controls are under the direct supervision of the Corporate Affairs Commission (CAC) and the Bank of Sierra Leone (BoSL). Application must be made in first instance to the CAC for approval before proceeding to the BoSL for concurrence and granting of an Exchange Control Permit (ECP).

## DIAMOND EXPORTING

- Residents and non-residents are allowed to finance their diamond operations in Sierra Leone in United States Dollars, in notes, drafts or bank transfers.
- Diamond Exporters should ensure that moneys brought into Sierra Leone for their transactions are channelled through the banking system. Foreign exchange could be brought into Sierra Leone in any of the following ways:
  a) Letter of Credit
  b) Telegraphic Transfer
  c) Cash Dollar Notes
- For b) and c) above, Diamond Exporters will be allowed to export up to the amount of funds confirmed by the commercial banks as brought in.
- On a quarterly basis, commercial banks will be required to submit to the Bank of Sierra Leone returns on the inflows and outflows in respect of each licensed exporter.
- The list of commercial banks in Sierra Leone at any point in time would be obtained from the Bank of Sierra Leone.

## G. PERSONAL TAX

Pay-As-You-Earn [PAYE] Rates of Tax Applicable to Individual Resident in Sierra Leone

The minimum monthly wage is SLL 600,000 and non-taxable monthly allowance is SLL 600,000. PAYE tax calculation is done on a graduating scale as follows:

| If Annual chargeable income is (SLL) | The Tax Rate is |
|---|---|
| Less than or equal to 7,200,000 | Nil |
| >7,200,000 but up to 14,400,000 | 15% |
| >14,400,000 but up to 21,600,000 | 20% |
| >21,600,000 but up to 28,800,000 | 25% |
| Over 28,800,000 | 30% |

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 10 | 10 | 15 | 25 |
| Individuals | 10 | -- | 15 | 25 |
| **Treaty countries:** | | | | |
| Norway | --[1] | --[1] | 0 | 0 |
| South Africa | --[1] | --[1] | --[1] | --[1] |
| United Kingdom | 0 | 0 | --[1] | 0 |

Notes:

1. No reduction under the treaty, the domestic withholding tax rate applies.

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## WITHHOLDING TAX RATES

(a) **Rates of Tax to be withheld from Payments made to Residents:**

**Types of Payment Rates**

Payments to contractors: 5.5%

Dividends: 10%

Interests: 15%

Rents: 10%

Royalties: 25%

Pensions and annuities: 15%

Natural resource payments: 25%

Winnings of SLL 500,000 and above from any lottery: 10%

(b) **Rates of Tax to be withheld from Payments made to Non-Residents:**

Employment income: 25%

Payments to contractors: 10.5%

Dividends: 10%

Interest: 15%

Rents: 10%

Royalties: 25%

Pensions and annuities: 25%

Natural resource payments: 25%

Payments to or applications for the benefit of non-resident beneficiaries: 25%

## INVESTMENT INFORMATION

The Investment Promotions Act 2004 was enacted to promote and attract both domestic and foreign private investment for the development of production and value adding opportunities, to improve export and employment opportunities. The Act provides for several incentives for investors (Sections 8-10):

- Expatriate personnel with work permits shall be permitted to make remittances abroad through their commercial banks, subject to such withholding tax obligations as are contained in the Income Tax Act 2000;
- The remittance of profits, after taxes, earned by a foreign investor from a business enterprise, is guaranteed as constituting current international transactions in respect of which payments transferred abroad shall be allowed without restriction;
- An investor may freely repatriate proceeds received from the liquidation of a business enterprise and awards resulting from any settlement of disputes in respect of such business enterprise;
- There shall be no restriction on the transfer of repayments of principal and interest on an arms-length third party loan contracted outside Sierra Leone and registered with the Bank of Sierra Leone but interest payments due on such loans may be subject to the withholding tax obligations in the Income Tax Act, 2000.

## RESIDENCE AND WORK PERMIT

All foreign citizens are required to obtain a work permit from the Ministry of Labour.

## OTHER PROVISIONS

### Tax exemption for mini-grids

Businesses engaging in the provision or supply of renewable energy from solar mini-grids in Sierra Leone shall be eligible for a five-year corporate tax relief, commencing from the date of registering first commercial production or 1 January 2021, whichever comes later.

However, the exemption can only be granted provided the relief is fully reflected in the tariff price negotiated between the government and the business concerned.

### Common External Tariff

Section 26 of the 2018 Finance Act states that the ECOWAS Common External Tariff (CET) shall come into force on the date ECOWAS accepts Sierra Leone’s 3% ECOWAS preferential rates.

### Rental tax Amendment

Section 120 of the Income Tax Act,2000 (as amended in the Finance Act, 2018) is repealed and replaced with new sub-paragraphs which increase the non-taxable threshold in the aggregate from SLL 6,000,000 to SLL 7,200,000.

### Import duty amendment

The Schedule to the Customs Tariff Act, 1978 is amended in Part II by inserting the following-

- All raw materials, semi-processed and finished products, properly labelled for use as input into the production of goods by manufacturing companies will attract an import duty of 5% instead of 20%;
- Products imported by Packaging Industries will attract an import duty of 10%.

This should encourage manufacturing and reduce Sierra Leone’s dependency on imports. This is also good for the “Made in Sierra Leone” product initiative.

# SINGAPORE



## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Singapore | Bun Hiong Goh | +65 6500 9359<br>bunhiong@pkf.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Singapore |
| Capital: | Singapore |
| Main languages: | English, Malay, Mandarin, Tamil |
| Population: | 5.93 million (2022 estimate) |
| Monetary unit: | Singapore Dollar (SGD) |
| Internet domain: | .sg |
| Int. dialling code: | +65 |

## KEY TAX POINTS

- Resident and non-resident companies are liable for corporate income tax on income accruing or derived in Singapore, or income received in Singapore from outside Singapore. Companies and individuals are taxed on a preceding year basis.
- Goods and Services Tax, a value added tax, is levied on taxable goods and services in Singapore and on imports into the territory.
- Subject to certain conditions, foreign branch profits and certain foreign-sourced income remitted into Singapore by any resident person are exempt from tax.
- Dividends received from Singapore-resident companies are exempt from tax.
- Capital gains are not taxable, although transactions may be categorised as being trading in nature, and thus taxable.
- There are various tax exemptions and incentives to encourage trading and investment in Singapore.
- Related party transactions are expected to be carried out at arm's length while additional documentation is expected in situations of substantial related party transactions. There are no thin capitalisation nor controlled foreign company (CFC) provisions.
- Payments between resident companies do not attract withholding tax. Interest, royalty and certain other payments by Singaporean companies to non-resident companies are, however, subject to withholding tax.
- Individual residents are subject to tax on income accruing in or derived from Singapore, or received in Singapore. Foreign income received by residents is otherwise generally exempt from tax. Non-residents are generally subject to tax on income accruing in or derived from Singapore, but not on foreign income remitted to Singapore.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

### COMPANY TAX

Resident and non-resident companies are taxed on income accruing in or derived from Singapore as well as on foreign income received (actual or deemed) in Singapore. Remittance of foreign income (dividends, branch profits, services income) may be tax exempt when remitted by a resident company under certain conditions. A company is tax resident in Singapore if the management and control of its business is exercised in Singapore.

The standard corporate tax rate is 17%. A partial tax exemption is given for the first SGD 200,000 of chargeable income (CI). Under this scheme, 75% of the first SGD 10,000 of CI is tax exempt and 50% of the next SGD 190,000 of CI is tax exempt. The balance of chargeable income is fully taxable at the standard rate of 17%. This exemption does not apply to income of a non-resident company subject to the final withholding tax regime. Qualifying newly incorporated Singaporean companies may enjoy a separate tax exemption scheme for their first three consecutive years of assessment.

The tax year, referred to as the year of assessment (YA), runs from 1 January to 31 December of each year. Income for the YA is computed based on the income derived in the preceding calendar year (known as the basis year) from all sources. For a trade, business, profession or vocation with a non-31 December accounting year-end, the Inland Revenue Authority of Singapore (IRAS) normally accepts the accounting year as the basis year instead of the calendar year. Under such circumstances, tax is assessed for each YA on the income for the accounting year preceding that YA.

A company is generally required to provide an estimate of its chargeable income (ECI) within three months after the end of its financial year. However, companies are not required to file an ECI if their annual revenue is not more than SGD 5 million for the financial year and if their ECI is nil. The estimated tax payable can be paid via instalments. The number of instalments available depends on when the estimated CI is filed within the three month window period and on the method of filing.

The annual corporate income tax return must be filed by 30 November of the YA. No extension of time to file the return is allowed. After the submission of the tax return, IRAS will issue a notice of assessment to collect any tax shortfall. The tax shortfall has to be paid within one month after the date of issue of the notice of assessment in the absence of an instalment plan. A late payment penalty of 5% of the tax due is imposed if the tax is not paid by the due date. If the tax is not paid within 60 days of the imposition of the 5% penalty, an additional penalty of 1% of the tax is levied for each complete month that the tax remains outstanding, up to a maximum of 12%.

### GOODS AND SERVICES TAX (GST)

GST is a broad-based consumption tax aimed at taxing the final consumer of the goods and services. The supply of goods and services made in the ordinary course of business in Singapore by a GST registered person is subject to GST. The importation of goods into Singapore is also subject to GST. Persons carrying on businesses that make taxable supplies are required to register for GST if their annual turnover (retroactive or prospective) is more than SGD 1 million. A GST registered person (GST taxpayer) has to charge GST on their supplies (output GST) and pay GST on their purchases (input GST). The GST taxpayer has to file a monthly or quarterly GST return to declare the Output GST collected and the Input GST incurred. They will pay (or claim) the difference (after netting the Output GST against the Input GST) together with the GST return.

The current standard GST rate is 7%. The export of goods and the provision of international services are zero-rated. The sale and rental of residential properties and specified financial services are exempt from GST.

The standard GST rate will be increased to 8% from 1 January 2023 and to 9% from 1 January 2024.

### STAMP DUTY

Stamp Duty is levied on legal instruments relating to the sale, mortgage or lease of immovable property and the sale or mortgage of stocks and shares. The rate of ad valorem duty imposed depends on the nature of the documents.

## B. DETERMINATION OF TAXABLE INCOME

Singapore-incorporated companies are required to prepare their financial accounts according to Singapore Financial Reporting Standards (FRSs). The FRSs are closely modelled after the International Accounting Standards (IAS) and International Financial Reporting Standards (FRS) issued by the International Accounting Standards Board (IASB). The accounting profits are adjusted in accordance with Singapore tax rules to arrive at the taxable income.

Companies are required under FRSs to prepare their financial accounts according to their functional currency. Those with non-Singapore dollar functional currency accounts are required to furnish their tax computations to the IRAS in that functional currency. Expenses must be incurred wholly and exclusively for the production of income in order to be tax deductible unless specifically disallowed or restricted (e.g. non-commercial motor vehicles, medical expenses, expenses of a capital nature). Special rules apply to expenses incurred by investment holding companies, companies that commence business activities during the financial year and expenses incurred in respect of foreign-sourced income.

## INTEREST DEDUCTIONS

Interest expenses are tax deductible unless they are incurred in respect of non-taxable income or are regarded to be of a capital nature. There are no thin capitalisation rules in Singapore.

## STOCK / INVENTORY

There are no prescribed valuation methodologies under domestic income tax law. As such, the IRAS will generally accept the valuation methodology under the FRSs.

## CAPITAL GAINS AND LOSSES

There is no separate capital gains tax regime in Singapore. Gains of a capital nature are not subject to income tax. Similarly, expenses of a capital nature are not deductible for income tax purposes. The IRAS will look at the facts and circumstances of each transaction to determine whether the gain is capital in nature or a trading gain which is subject to income tax.

Under the current safe harbour rule, gains derived by a company from the disposal of ordinary share investments (held for at least 24 months, minimum 20% shareholding prior to disposal) during the period 1 June 2012 to 31 May 2027 are exempt from tax, provided certain conditions are met.

## DIVIDENDS

Singapore adopts a one-tier corporate tax system, under which tax at the corporate level is the final tax. Accordingly, dividends paid by Singapore tax resident companies are exempt from further tax in the hands of the shareholder. Foreign-sourced dividends remitted into Singapore may be tax-exempt under certain circumstances. No withholding tax is imposed on dividends.

## CAPITAL ALLOWANCE

Capital allowances, instead of accounting depreciation, are granted for plant and machinery acquired and used in a trade or business. Most plant and machinery qualify for three-year straight line tax depreciation. Low cost items (costing not more than SGD 5,000 per item) may be tax depreciated in full, subject to a total claim of SGD 30,000 for each YA. Certain equipment (such as computers, automation equipment, pollution-control equipment and energy-saving equipment) may qualify for 100% tax depreciation in the year of acquisition.

Current year unutilised capital allowances can be carried back (up to a total of SGD 100,000 for both unutilised capital allowances and unutilised tax losses) to the YA immediately preceding the YA in which the capital allowance arose. The unutilised capital allowances can also be carried forward indefinitely. The utilisation of unutilised capital allowances carried back or carried forward is subject to the business continuity test and the shareholding test.

The business continuity test requires the business/trade for which the capital allowances were granted to continue. The shareholding test requires that there is no substantial change (no more than 50%) in the ultimate shareholders and their respective shareholdings as at the stipulated relevant dates.

## TAX LOSSES

Current year unutilised trade losses can be carried back (up to a total of SGD 100,000 for both unutilised capital allowances and unutilised tax losses) to the YA immediately preceding the YA in which the trade losses were incurred. The unutilised tax losses can also be carried forward indefinitely. The carry back/forward of tax losses is subject to the same shareholding test as for the carry back/forward of unutilised capital allowances.

## TAX INCENTIVES

Singapore has a comprehensive list of tax incentives and development schemes to attract investments and to assist investors in expanding their businesses. Highlights of key incentives and schemes are summarised below.

The Regional and International Headquarters Awards encourages companies to use Singapore as a regional or global base. A customised package of tax incentives (such as Pioneer Certificate Incentive, Development and Expansion Incentive and Investment Allowances) and grants will be given to qualifying companies.

The Pioneer Certificate Incentive encourages the introduction and growth of new industries in Singapore. A pioneer enterprise is granted full income tax exemption on its qualifying profits for up to 15 years.

Investors undertaking projects that will generate significant economic benefits for Singapore may apply for the Development and Expansion Incentive (DEI). DEI companies enjoy a concessionary tax rate of 5% or 10% on their incremental income derived from the performance of qualifying activities for a set period.

To encourage international trading companies to choose Singapore as a base for their global trading activities, International Enterprise Singapore launched the Global Trader Programme (GTP). Under the programme, approved companies enjoy a concessionary tax rate of 5% or 10% on qualifying transactions for a period of 3 (entry-level award) or 5 years (renewable, subject to approval) conducted in prescribed commodities and products.

Other than the above, Singapore also offers a range of tax incentives with respect to the banking, finance and shipping industries. In addition, companies investing into new equipment that introduces new technology to the industry or contributes to its efficiency can apply for Investment Allowances. This is a capital allowance given to partially offset the costs of acquiring qualifying equipment within a set period and is in addition to the normal tax depreciation.

The Approved Royalties Incentive encourages companies to transfer their cutting edge technology and know-how to Singapore by providing full or partial withholding tax exemptions for royalty payments or technical assistance fees payable to non-residents.

Grants are also available with respect to productivity/process improvement projects, staff training, new product development, business capabilities improvements, R&D, intellectual property protection initiatives and overseas ventures.

## C. FOREIGN TAX RELIEF

Under Singapore's large network of comprehensive tax treaties, Singapore tax residents are eligible to claim foreign tax credit in the form of Double Taxation Relief (DTR) or Unilateral Tax Credit (UTC) for foreign tax suffered in the treaty country. The foreign tax credit granted is limited to the lower of the foreign tax paid or the Singapore tax payable that would have been payable on that foreign income.

To claim DTR, the amount of foreign tax credit to be claimed is subject to the specific terms and conditions as specified in the Double Taxation Agreement (DTA) with the relevant treaty partner. A UTC is granted on all foreign-sourced income derived from countries that have not entered into a DTA with Singapore.

## D. CORPORATE GROUPS

Under group relief measures, a corporate group (comprising of a Singapore-incorporated holding company and its Singapore-incorporated subsidiaries) can transfer current-year unutilised losses, unutilised capital allowances and unutilised donations within companies in the corporate group. There is a 75% ownership requirement that needs to be maintained to remain within the corporate group while the companies should also share the same financial year end.

## E. RELATED PARTY TRANSACTIONS

Taxpayers are expected to adopt arm's-length pricing for their related party transactions. IRAS audits taxpayers' compliance with transfer pricing documentation and arm's-length pricing requirements as part of its compliance programme.

Taxpayers whose related party transaction exceeds SGD 15 million are required to complete a Form for Reporting of Related Party Transactions ("RPT Form").

Specific legislation governs the arm's-length principle that is applicable to all related party transactions of goods, services and intangible properties. Taxpayers with annual revenue of more than SGD 10 million are required to prepare contemporaneous transfer pricing documentation. The transfer pricing documentation does not need to be submitted together with the tax returns but taxpayers have 30 days to submit the documents upon the IRAS's request. To reinforce the importance of transfer pricing, the IRAS is empowered to transfer pricing adjustments to raise additional tax or disallow any taxpayer-initiated unilateral downward adjustment to income if it is of the opinion that the arm's-length principle is not applied appropriately by the taxpayer.

## F. WITHHOLDING TAX

Withholding tax is payable if the following payments are made to non-residents:

| | | |
|---|---|---|
| 1. | Interest, commission, fees in connection with any loan or indebtedness | 15% |
| 2. | Royalty or other payments for the use of or right to use any movable property | 10% |
| 3. | Payments for the use or right to use scientific, technical, industrial or commercial knowledge or information | 10% |
| 4. | Technical assistance, service fees and management fees | Prevailing corporate tax rate currently 17% (22% for individuals, to be increased to 24% from 2023) |
| 5. | Rent or other payments for the use of movable properties | 15% |
| 6. | Time charter fees and voyage charter fees, bareboat charter fees | Nil to 2% |
| 7. | Directors' remuneration/directors' fees | 22%, to be increased to 24% in 2023 |
| 8. | Distributions of taxable income made by a REIT ("Real Estate Investment Trust") to a unit holder who is a qualifying non-resident non-individual | 10% |

Dividends are not subject to withholding tax whether paid to a resident or non-resident.

The withholding tax rate on the above-mentioned payments may be reduced in accordance with the provisions of the respective tax treaties.

## G. EXCHANGE CONTROLS

There are no exchange controls in Singapore.

## H. PERSONAL TAXATION

Income tax rates depend on an individual's tax residency status. Resident individuals deriving employment income and rental income is subject to income tax based on the following progressive rates. Various personal reliefs are available to resident individuals.

| Taxable Income (SGD) | (%) |
|---|---|
| Up to 20,000 | 0 |
| 20,001 – 30,000 | 2 |
| 30,001 – 40,000 | 3.5 |
| 40,001 – 80,000 | 7 |
| 80,001 – 120,000 | 11.5 |
| 120,001 – 160,000 | 15 |

| Taxable Income (SGD) | (%) |
|---|---|
| 160,001 – 200,000 | 18 |
| 200,001 – 240,000 | 19 |
| 240,001 – 280,000 | 19.5 |
| 280,001 – 320,000 | 20 |
| Over 320,000 | 22 |

From 2023 onwards, the rates will be as follows:

| Taxable Income (SGD) | (%) |
|---|---|
| Up to 20,000 | 0 |
| 20,001 – 30,000 | 2 |
| 30,001 – 40,000 | 3.5 |
| 40,001 – 80,000 | 7 |
| 80,001 – 120,000 | 11.5 |
| 120,001 – 160,000 | 15 |
| 160,001 – 200,000 | 18 |
| 200,001 – 240,000 | 19 |
| 240,001 – 280,000 | 19.5 |
| 280,001 – 320,000 | 20 |
| 320,001 – 500,000 | 22 |
| 500,001 – 1,000,000 | 23 |
| Over 1,000,000 | 24 |

A Singapore citizen or Singapore Permanent Resident is considered tax resident if the individual normally resides in Singapore except for temporary absences that are consistent with the claim to be a resident. A foreigner is considered resident in Singapore for tax purposes if the individual is physically present or exercises a Singapore employment (excludes director of a company) for 183 days or more during the basis year.

Non-resident individuals exercising an employment in Singapore are subject to income tax depending on the number of days spent in Singapore. Employment income derived from short-term employment (not more than 60 days) is exempt from Singapore income tax for the non-resident employee. This exemption does not apply to non-resident company directors, non-resident public entertainers or non-resident professionals including foreign experts, foreign speakers, queen's counsels, consultants, trainers, coaches etc. Non-resident employees exercising an employment in Singapore for a period of 61-182 days in a calendar year will be taxed at the higher of 15% (no personal tax reliefs would be granted) or the progressive resident rates (with personal tax reliefs). Non-residents deriving rental income and receiving director's remuneration/ fees are taxed at 22%.

Dividend income from Singapore companies, interest income from savings, current or fixed deposit accounts with approved banks or finance companies in Singapore and foreign-sourced income are tax-exempt for individuals (regardless of residency). Gains derived from the sale of a property in Singapore are generally not taxable as it is a capital gain. However, the gains may be taxable if the property is bought and sold with a profit seeking motive.

## I. TREATY WITHHOLDING TAX RATES

The chart shows the withholding tax rates applicable under the Singapore tax treaties that are currently in force. The domestic withholding tax rate will apply if it is lower than the treaty rate. Singapore does not levy any withholding taxes on dividend payments. Special rates with respect to distributions by Real Estate Investment Trusts have not been reflected in this summary.

In addition, Singapore has pending treaties/treaties under negotiation with Argentina, Botswana, Cape Verde, Croatia, Gabon, Greece, Iran, Kenya, Kyrgyzstan, Maldives and Peru. Transport treaties have also been concluded with Bahrain, Brazil, Chile, Hong Kong, Norway, Oman, Saudi Arabia, United Arab Emirates and United States of America.

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| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Treaty countries:** | | | |
| Albania | 0[18]/5 | 0[18]/5 | 5 |
| Australia | 15 | 10 | 10 |
| Armenia | 0[1,24]/5 | 0[18]/5 | 5 |
| Austria | 0[19]/10 | 0[18]/5 | 5 |
| Bahrain | 0 | 5 | 5 |
| Bangladesh | 15 | 10 | 10 |
| Barbados | 0 | 0[18]/12 | 8 |
| Belarus | 5[18] | 0[18]/5 | 5 |
| Belgium | 0/5[4]/15 | 0[2]/5 | 5 |
| Brazil | 10[1]/15 | 10[25]/15 | 10/15[26] |
| Brunei | 10 | 5[2] /10 | 10 |

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Bulgaria | 5 | 5 | 5 |
| Cambodia | 10 | 0[18]/10 | 10 |
| Canada | 15 | 15 | 15 |
| China | 5[1]/10 | 7[2]/10 | 10 |
| Cyprus | 0 | 7[2]/10 | 10 |
| Czech Republic | 5 | 0 | 5[10]/10 |
| Denmark | 01/5[9]/10 | 10 | 10 |
| Ecuador | 0[18]/5 | 0[18]/10 | 10 |
| Egypt | 15 | 15 | 15 |
| Estonia | 5[1]/10 | 10 | 7.5 |
| Ethiopia | 5 | 5 | 5 |
| Fiji | 5[4]/15 | 10 | 10 |
| Finland | 5[4]/10 | 5 | 5 |
| France | 5[4]/15 | 10 | 0 |
| Georgia | 0 | 0 | 0 |
| Germany | 5[4]/15 | 8 | 8 |
| Ghana | 7[18] | 7[18] | 7 |
| Guernsey | 0 | 12[18] | 8 |
| Hungary | 5[1]/10 | 5 | 5 |
| India | 10[1]/15 | 10[2]/15 | 10 |
| Indonesia | 10[1]/15 | 0[18]/10 | 8/10 |
| Ireland | 0 | 0[18]/5 | 5 |
| Isle of Man | 0 | 12[18] | 8 |
| Israel | 5[4]/10 | 7 | 5 |
| Italy | 10 | 12.5 | 15[11]/20 |
| Japan | 5[5]/15 | 10 | 10 |
| Jersey | 0 | 12[18] | 8 |
| Jordan | 5[4]/8 | 0[18]/5 | 5 |
| Kazakhstan | 5[1]/10 | 10 | 10 |
| Kuwait | 0 | 7 | 10 |
| Laos | 0[18]/5[4]/8 | 0[18]/5 | 5 |
| Latvia | 0[22]/10 | 0[23]/10 | 5 |
| Libya | 0/5[18,19]/10 | 0[18]/5 | 5 |
| Liechtenstein | 0 | 0[18]/12 | 8 |
| Lithuania | 5[1]/10 | 10 | 7.5 |
| Luxembourg | 0 | 0 | 7 |
| Malaysia | 5[1]/10 | 10 | 8 |
| Malta | 0[15] | 7[2]/10 | 10 |
| Mauritius | 0 | 0 | 0 |
| Mexico | 0 | 5[2]/15 | 10 |
| Mongolia | 5[1] /10 | 5[2]/10 | 5 |
| Morocco | 0 | 0[18]/10 | 10 |
| Myanmar | 5[1]/10 | 8[2]/10 | 10[11]/15 |
| Netherlands | 0[1]/15 | 10 | 0 |
| New Zealand | 5[4]/15 | 10 | 5 |
| Nigeria | 0[18]/7.5 | 0[18]/7.5 | 7.5 |
| Norway | 5[1]/15 | 7 | 7 |
| Oman | 5 | 7 | 8 |
| Pakistan | 10[6]/12.5[6]/15 | 12.5 | 10 |
| Panama | 4/5[19] | 0[18]/5 | 5 |
| Papua New Guinea | 15 | 10 | 10 |

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Philippines | 15[12]/25 | 15 | 0[13]/15[14]/25 |
| Poland | 5/10[19] | 5[18] | 2[20]/5 |
| Portugal | 10 | 10 | 10 |
| Qatar | 0 | 5 | 10 |
| Romania | 5 | 5 | 5 |
| Russian Federation | 5[16,18]/10 | 7.5 | 7.5 |
| Rwanda | 7.5 | 0[18]/10 | 10 |
| San Marino | 0 | 0[18]/12 | 8 |
| Saudi Arabia | 5 | 5 | 8 |
| Serbia | 5[1]/10 | 0[18]/10 | 5/10 |
| Seychelles | 0 | 0[18]/12 | 8 |
| Slovak Republic | 5[4]/10 | 0 | 10 |
| Slovenia | 5 | 5 | 5 |
| South Africa | 5[4]/10 | 0[18]/7.5 | 5 |
| South Korea | 10[1]/15 | 10 | 5 |
| Spain | 0/5[19] | 5 | 5 |
| Sri Lanka | 15 | 0[2]/10 | 15 |
| Sweden | 10[1]/15 | 10[2]/15 | 0 |
| Switzerland | 5[18,19]/15 | 0[18]/5 | 5 |
| Taiwan | -[7] | --[17] | 15 |
| Thailand | 10 | 10/15 | 5/8/10 |
| Tunisia | 5[18] | 5[2]/10 | 5/10 |
| Turkey | 10[1]/15 | 7.5[2]/10 | 10 |
| Turkmenistan | 0[1]/10 | 0[18]/10 | 10 |
| Ukraine | 5[3]/15 | 10 | 7.5 |
| United Arab Emirates | 5 | 7 | 5 |
| United Kingdom | 0/15[21] | 0[2,18]/5 | 8 |
| Uruguay | 5[4]/10 | 0[18]/10 | 5/10 |
| Uzbekistan | 5 | 5 | 8 |
| Vietnam | 5[8]/ 7[8]/12.5 | 10 | 5[11]/10 |

NOTES:

1. The rate applies to dividends paid to a company which holds directly at least 25% of the capital of the paying company. For the treaty with Demark, the shares must be held for an uninterrupted period of at least one year, and the dividends are declared in that period. For the treaty with Netherlands, the capital can be held indirectly.
2. The rate applies to interest received by a bank or financial institution. For the treaty with Belgium, the payer must be a banking enterprise. For the treaty with Sweden, the payer must be engaging in an industrial undertaking.
3. The rate applies to dividends paid to a company which holds directly at least 20% of the capital of the paying company.
4. The rate of 5% applies to dividends paid to a company which holds directly at least 10% of capital or voting power, as the case may be, of the paying company.
5. The rate applies to dividends paid to a company which holds directly at least 25% of the voting shares of the paying company during a six month period prior to the year-end for which the distribution of profits occur.
6. 10% if the beneficial owner is a company and paid by a company engaged in an industrial undertaking. 12.5% if the beneficial owner is a company and paid by a company not engaged in an industrial undertaking.
7. The aggregate of dividend withholding tax and corporate income tax on the payer's profits cannot exceed 40% of the taxable income from which the dividends are declared.
8. 5% for dividends paid to a company which contributed directly or indirectly more than 50% of the capital of the paying company or more than USD 10 million. 7% for dividends paid to a company which contributed between 25% to 50% of the capital of the paying company.
9. The rate applies to dividends received by a pension fund or similar institution providing pension schemes in which individuals may participate in order to secure retirement benefits.
10. The lower rate applies to payments for the use of, or the right to use, any industrial, commercial or scientific equipment.
11. The rate applies to payments of any kind received as consideration for the use of, or the right to use, any copyright of scientific work, any patent, trade mark, design or model, plan, secret formula or process or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial or scientific experience.
12. The tax rate applies when the recipient is a company (including partnership) and during the part of the paying company's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 15% of the outstanding shares of the voting stock of the paying company was owned by the recipient company.
13. The tax rate applies in the case of Singapore where the royalties are approved under the Economic Expansion Incentives (Relief from Income Tax) Act of Singapore.
14. The tax rate applies in the case of the Philippines where the royalties are paid by an enterprise registered with the Philippine Board of

Investments and engaged in preferred areas of activities and also royalties in respect of cinematographic films or tapes for television or broadcasting.

15. The tax on the gross amount of the dividends shall not exceed the tax chargeable on the profits or income of the company out of which the dividends are paid.
16. The lower rate applies if the beneficial owner of the dividends is a company which holds directly 15% of the capital of the company paying the dividends and has invested in it at least USD 100,000 or its equivalent in other currencies.
17. The treaty is silent in respect of interest income. As such, the domestic rules will apply.
18. Exempt if paid to certain government/quasi-government institutions.
19. The lower rate applies to dividends paid to a company which holds at least 10% of the capital.
20. The rate applies to a royalty paid for any industrial, commercial or scientific equipment.
21. The higher rate applies in the case of distributions to a real estate investment trust.
22. The lower rate applies to dividends paid to a company or certain government/quasi-government institutions.
23. The lower rate applies to interest paid to a financial institution, a company, certain government/quasi-government institutions or in respect of a loan guaranteed by certain government/quasi-government institutions.
24. The lower rate also applies if the beneficial owner of the dividends is a company which has invested in it at least USD 300,000 or its equivalent in other currencies.
25. The lower rate applies if the beneficial owner is a bank and the loan has been granted for at least five years for the financing of the purchase of equipment or of investment projects.
26. The higher rate applies in the case of payments for trademarks.

## SLOVAKIA

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Bratislava | Pavol Schwartz | +421 948 758 443<br>schwartz@pkf.sk |

### BASIC FACTS

| | |
|---|---|
| Full name: | Slovak Republic |
| Capital: | Bratislava |
| Main languages: | Slovak |
| Population: | 5.46 million (2022 estimate) |
| Monetary unit: | 1 Euro (EUR) = 100 cents |
| Internet domain: | .sk |
| Int. dialling code: | +421 |

### KEY TAX POINTS

- Resident companies are subject to corporate income tax on their worldwide income. Non-residents are subject to corporate income tax only on income sourced in the Slovak Republic.
- The corporate income tax rate is 21% (small companies with a turnover not exceeding EUR 49,790 per tax period are subject to a 15% tax rate).
- The standard VAT rate is 20% while a reduced VAT rate of 10% applies to specific supplies (medicines, specific meals, books, etc.).
- Capital gains are generally considered taxable income and taxed under the corporate income tax base at a 21% tax rate.
- There is no concept of group relief nor group tax regime for corporate income tax purposes.
- With regard to transfer pricing rules, the price and conditions agreed upon between related parties should reflect the price and conditions that would have been agreed upon between unrelated parties in the same or similar transactions and under the same or similar circumstances (i.e., fair market price/conditions). Should the price or conditions in transactions between related parties be different compared to prices/conditions applicable between unrelated parties, while this difference results in a decrease of the tax base or an increase in tax losses, the corporate income tax base must be adjusted by this difference. This general rule applies to both domestic and foreign transactions. Dividends distributed to/received from entities that are tax residents of non-cooperative states are subject to a 35% tax rate. In all other cases, dividends are not subject to corporate income tax in Slovakia.
- For personal income tax purposes, dividends are subject to 7% withholding tax if an individual is tax resident in a cooperative state. Otherwise, dividends are subject to 35% withholding tax. Slovak tax residents (individuals) include dividend income into the specific tax base of the tax return, which is subject to 7% / 35% withholding tax, depending on the source country (see point above). This applies to dividends distributed from profits generated for the tax period commencing on or after 1 January 2017.
- Income sourced in the Slovak Republic (e.g. interest, royalties, technical and management fees, etc.) paid to non-resident taxpayers is basically subject to 19% withholding tax (this rate may be lowered by an applicable double tax treaty). A 35% tax rate applies if the recipient is a tax resident of a non-cooperative state or if the beneficial owner of the income is unknown. An annual property tax is levied on the owner or beneficial owner of a building, flat or land situated within the Slovak Republic. There is no inheritance tax, gift tax or real estate transfer tax.
- Personal income tax is payable by Slovak tax residents on their worldwide income. Non-residents are only subject to tax on Slovak-sourced income.

- In addition to personal income tax, employees are also subject to mandatory social and health insurance contributions and prepayments, all of which are withheld from their gross pay. Employers are obliged to withhold the respective contributions and tax prepayments on behalf of their employees.
- Individuals can ask the tax authorities to donate 2% of their income tax liability to an eligible Slovak non-profit organisation (3% may be granted subject to specific conditions), while legal entities can grant 1% or 2% of their corporate income tax liability, depending on the circumstances.

## A. TAXES

### CORPORATE INCOME TAX

Slovak resident companies are subject to corporate income tax on income derived from worldwide sources, while non-residents are subject to corporate income tax only on income sourced in the Slovak Republic. The corporate tax base is derived from the accounting result adjusted by tax non-deductible items and/or non-taxable items.

Resident companies are those which have their legal seat or place of effective management in the Slovak Republic. Corporate income tax is levied at a rate of 21%. As from 1 January 2021 there is a tax rate of 15% for small companies with a yearly turnover not exceeding EUR 49,790. This is the final tax burden on corporate profits as dividends paid out of profits derived as from 1 January 2017 are not taxed in the hands of shareholders if they are corporate entities based in another state than a non-cooperative state, i.e. a state not included in the “white list” published by the Slovak Ministry of Finance (basically non-treaty countries or countries that have not signed the Convention on Mutual Administrative Assistance in Tax Matters).

The tax period may be a calendar year or a fiscal year. There is the possibility to inform the tax authorities in writing about any change of the tax period from the calendar year to a fiscal year and vice versa. The corporate income tax return should generally be submitted within 3 months from the end of the respective tax period. The statutory deadline may be extended by 3 or 6 months depending on the circumstances. Within the same deadline also the final tax liability becomes due.

Corporate income tax prepayments are due, depending on the most recent corporate income tax liability:

- on a quarterly basis, if the previous tax liability was between EUR 5,000 and EUR 16,600;
- on a monthly basis, if the previous tax liability exceeded EUR 16,600.

Withholding tax is levied at 35% for payments made in favour of a taxpayer residing in a non-*cooperative state*, i.e. a state not included in “white list” published by the Slovak Ministry of Finance (basically non-treaty countries or countries that have not signed the Convention on Mutual Administrative Assistance in Tax Matters). A list of such countries is published by the Ministry of Finance on its official website.

### CAPITAL GAINS TAX

There is no separate capital gains tax for corporate income tax purposes – capital gains are taxed under the corporate income tax base.

### BRANCH PROFITS TAX

There is no separate branch profits tax in the Slovak Republic. The income of Slovak branches of foreign companies is subject to tax in the Slovak Republic at a flat rate of 21% (15% for small branches with a yearly turnover of up to EUR 49,790). There is no branch remittance tax in the Slovak Republic. The corporate tax base of permanent establishments is derived from the attributable income and costs.

### VALUE ADDED TAX (VAT)

VAT is paid on the supply of goods and services within the country, on the intra-community acquisition of goods from another EU Member State, and on the importation of goods from countries outside the EU. The standard rate is 20%. There is a reduced rate of 10% for medicines, books and other printed matters, healthy foods and specific foods such as meat, fish, milk and bread. A complete list is provided in an annex to the VAT Act. There is also a special excise tax imposed on selected commodities such as petroleum, wine, spirits, tobacco, beer, electricity, coal and natural gas. In addition to the above, there are specific supplies stipulated in the VAT Act, which are exempted from VAT.

Slovakia applies a VAT group, provided specific conditions stipulated in the VAT Act are met.



### EXIT TAX

If a taxpayer (Slovak tax resident or non-resident entities with permanent establishment in Slovakia) transfers its assets, business activities or changes its tax residency, it is obliged to tax the economic value of all assets transferred abroad (although the profit from the sale of assets was not yet realised). The exit tax should be reported under a separate corporate tax base and is subject to a 21% tax rate.

The exit tax must be fully paid in the tax period in which the corporate income tax return is filed or, upon request, in five instalments provided that transfer takes place to another EU or European Economic Area (EEA) member state. However, interest on outstanding tax instalments must be paid.

### EXEMPTION ON SALE OF SHARES

Legal entities are entitled to an exemption on the sale of shares / business shares provided the following conditions are met:

- holding at least 10% of the registered capital during 24 consecutive calendar months;
- economic substance test, i.e., the company selling shares must perform economic activities within Slovakia, perform material functions, bear risks and have substantial personal and material equipment for such activities.

### FRINGE BENEFITS TAX

Fringe benefits (goods or services) to employees are taxed as part of their total taxable income at a flat rate of 19%. Any tax levied on an employee is deducted by the employer. There is an increased rate of 25% levied on the personal income tax base in excess of EUR 38,553.01.

## LOCAL AND OTHER TAXES

The main local taxes that a municipality can levy are property tax (on land, buildings and flats), hotel tax, tax on the operation of vending machines and machines that do not offer cash prizes, as well as local fees on community waste disposal and low-value construction waste. Motor vehicle tax is also charged for categories of vehicles used by businesses or self-employed persons. An annual tax is levied on the owner or beneficial owner of a building, flat or land situated within the Slovak Republic. The rate of tax depends on the size, quality, type and location of the property. There is no inheritance tax, gift tax or real estate transfer tax levied in the Slovak Republic.

## B. CORPORATE TAX BASE

The corporate tax base is derived from the accounting result adjusted by tax non-deductible items and/or non-taxable items. Tax expense is defined as a cost demonstrably incurred to generate, assure and maintain taxable income at the level of the taxpayer, booked in its accounting records and, where the Slovak Income Tax Act requires so, these costs may be only deducted up to the limits allowed by this Act.

Specific additional conditions apply to deductions of certain expenses. Special expenses defined by tax law are tax deductible only for the period in which they are fully paid (so called “cash basis expenses”), e.g. legal, tax and advisory services, marketing studies, rental expenses, royalties, sports sponsorships, etc.

## DEPRECIATION

Slovak tax law prescribes the rules under which a taxpayer can depreciate its assets. Tangible assets are divided into six groups (periods ranging from 4 to 40 years). The straight-line depreciation method is used, although accelerated (declining-balance) depreciation may be applied in the case of machinery and technological equipment in depreciation groups 2 and 3. As from 1 January 2020 a new depreciation group for electric and plugin-hybrid cars has been introduced with a depreciation period of 2 years (depreciation group zero).

The choice of method is carried out on an asset-by-asset basis and, once the method is selected, it cannot be changed. Intangible assets should be amortised / depreciated on the same footing for tax and accounting purposes. (Note: starting from 1 January 2012, assets are depreciated in the first year pro rata according to the number of months.)

## STOCK / INVENTORY

All trading stock on hand is valued at purchase price including any additional procurement costs incurred. Internally generated inventory must be valued on the basis of production costs. In the event that a temporary impairment in inventories is found during stocktaking, an allowance is made. Accepted valuation methods include FIFO, average acquisition costs or pre-defined (planned) prices but not LIFO.

## CAPITAL GAINS AND LOSSES

Capital gains are considered as taxable income and taxed at the applicable tax rate of 21%. Losses from the sale of securities are recognised as a tax deduction only up to the amount of income. There are two exceptions when the loss is fully recognised for tax purposes:

- A loss from the sale of bonds to the extent of income received from the bond included in the tax base until the time of its sale;
- A loss from the sale of stock by a certified broker.

## INTEREST DEDUCTION

Interest paid by a company is treated as an ordinary business expense. Since 2015 the Slovak Republic has applied thin capitalisation related restrictions to the deduction of interest from loans. These restrictions apply to interest expenses (and other associated costs) arising in tax periods starting on or after 1 January 2015 and cover all resident legal entities and non-resident legal entities having a permanent establishment in the Slovak Republic, with the exception of financial institutions (banks, insurance companies, reinsurance companies and bodies of collective investments and leasing companies). Interest expenses on loans received from related parties exceeding 25% of a company’s earnings before interest, taxes, depreciation, and amortisation (EBIDTA) are considered non-deductible for tax purposes.

## LOSSES

Tax losses incurred and declared for tax periods 2016 – 2019 can be carried forward equally during 4 consecutive tax periods. Loss carry-back is not allowed.

Tax losses incurred and declared for tax periods commencing on or after 1 January 2020 may be carried forward and deducted from the taxable base for a maximum of 5 consecutive tax periods. Taxpayers may deduct such tax losses up to a maximum of 50% of the taxable base, except for taxpayers qualified as micro-taxpayers.



## INCENTIVES

Incentives for investors are governed by legislation on investment aid (No. 561/2007 Coll., as amended) and investment assistance (Act 561/2007 Coll.), under which tax benefits and relief may also be an incentive to invest. Specific tax benefits have to be negotiated with the Ministry of Economics.

## C. FOREIGN TAX RELIEF

No unilateral double taxation relief is provided. Double taxation is relieved only on the basis of tax treaties. Tax paid in a foreign country can be offset against tax liabilities in the resident country in accordance with double tax treaties with the applicable country (either by a credit or exemption method). Income earned by Slovak individuals (from wages and salaries) may be exempted from tax in Slovakia where proof is given that the income was taxed abroad and where the Slovak Republic has no double tax treaty with the other country which has taxed the income.

## D. CORPORATE GROUPS

There is no concept of corporate groups in the Slovak Republic. For tax purposes, profits and losses of holding and subsidiary companies may not be consolidated.

## E. RELATED PARTY TRANSACTIONS

All transactions between related parties must be conducted on an arm's-length basis with the meaning of arm's length price depending upon each individual transaction. Any difference arising between the price of the actual transaction and that regarded as the arm's-length price shall be adjusted for tax purposes. It is possible to negotiate an advance pricing agreement (APA) with the tax authorities. The APA may cover up to five tax periods and is renewable (subject to specific conditions). Mandatory transfer pricing documentation requirements exist, which generally follow the recommendations contained in the OECD Guidelines.

Slovak companies involved in transactions with related parties are obliged to maintain transfer pricing documentation proving the transfer pricing method used. Transfer pricing documentation needs to be prepared in the Slovak language and a taxpayer needs to submit it to the Slovak tax authorities within 15 days upon receipt of their request. If transfer pricing documentation is not submitted to the tax authorities within the deadline, the tax authorities are allowed to levy a penalty of up to EUR 3,000. The penalty may also be levied repeatedly.

## CFC RULES

As of 1 January 2019 controlled foreign company (CFC) regulations were introduced in Slovak tax legislation.

A CFC is defined as a legal person or subject with its seat abroad, if:

- A Slovak resident entity alone or jointly with related parties holds a direct or indirect participation in the share capital or voting rights of at least 50% or has at least a 50% profit share; and
- Corporate income tax liability of such foreign entity is less than 50% of tax that would have been computed according to the Slovak Income Tax Act.

If the aforementioned conditions are met, the corporate tax base of the controlled foreign entity will be included into the corporate income tax base of the Slovak tax resident entity. Tax paid by a controlled foreign entity abroad may be credited against the final corporate income tax liability in Slovakia.

Since 1 January 2022, the CFC regulations were extended also to individuals. The purpose of such regulation is to tax profits already at the time of the taxpayer´s potential entitlement to income. The aim of this new provision stipulated in the Slovak Income Tax Act is to avoid aggressive tax planning and the transfer of taxable profits to more favourable tax jurisdictions (either with lower or no income tax).

The restrictions are applicable if an individual – Slovak tax resident, alone or jointly with controlled entities – has effective control of the CFC or they have a shareholding ratio in the CFC of more than 10%. The restrictions will also apply if the CFC represents a tax resident of a non-cooperative state or when the effective tax rate of the CFC is less than 10%.The applicable tax rate would be 25% or 35% depending on the fact whether the CFC will be considered a tax resident of a cooperative / non-cooperative state.

Certain exceptions to the above rule may apply.

## F. WITHHOLDING TAX

### Dividends

Dividends distributed to / received from entities that are tax residents of non-cooperative states are subject to a 35% tax rate. Otherwise, dividends are not subject to corporate tax in Slovakia.

Dividends paid to individuals – tax residents of cooperative states are subject to 7% withholding tax in Slovakia (subject to the application of a double tax treaty). If an individual is a tax resident of a non-cooperative state, 35% withholding tax shall apply on distribution of profits. If an individual – Slovak tax resident receives foreign-sourced dividends, these are included in the separate tax base and taxed via the Slovak tax return under a 7% or 35% tax rate.

This rule applies to taxation of dividends derived from accounting results for tax periods commencing on or after 1 January 2017.

### Interest and royalties

- Interest or royalties paid to a non-resident are subject to 19% withholding tax, unless the rate is reduced under a double tax treaty or income is exempted under the EU Interest and Royalties Directive (conditions are transposed into the Slovak Income Tax Act);
- A 35% withholding tax rate applies where the payment is made to a resident of a non-cooperative state (i.e., a state not included in the 'white list' published by the Slovak Ministry of Finance), or if the beneficial owner of respective income is unknown.



## G. EXCHANGE CONTROL

The Slovak Republic has been using the euro as its currency since 1 January 2009. The Foreign Exchange Act allows the euro to be used freely to pay for business and other costs, for direct investment and reinvestment and for purchase of real estate property abroad. Also, it is legal to accept financial credit (i.e. receive loans) from companies with no registered office within the Slovak Republic but, in certain circumstances, there is a requirement to report such credit.

The Foreign Exchange Act partially restricts the ability for companies without a registered office in the Slovak Republic to acquire real property in the Slovak Republic. Capital transfers are regulated and there is a duty to report and obtain a special permit or licence from the central bank. Since 2013 cash payments are restricted under a separate law to a ceiling of EUR 5,000, except for individuals (non-entrepreneurs), where the ceiling for payments in cash is EUR 15,000.

## H. PERSONAL INCOME TAX

Personal income tax is payable by Slovak tax residents on their worldwide income. Non-residents are only subject to tax on Slovak-sourced income.

According to the Slovak Income Tax Act, an individual is considered a Slovak tax resident, provided he has a permanent address or accommodation available in Slovakia, or spent at least 183 days in Slovakia during the respective tax period (calendar year). Employees in Slovakia are obliged to pay social security and health insurance contributions amounting to 13.4%, which are withheld by the employer. The rate of contributions is as follows:

| | |
|---|---|
| Health insurance | 4.00% |
| Hospitalisation | 1.40% |
| Retirement | 4.00% |
| Disability | 3.00% |
| Unemployment insurance | 1.00% |

Different rates apply to contributions made by self-employed persons. The personal income tax rate in the Slovak Republic is 19% for a tax base up to EUR 38,553.01 and 25% above that threshold. In addition, the general tax allowance is applicable in all cases to "active income" depending on the amount of personal income tax base. Furthermore, taxpayers may apply for a child bonus provided specific conditions stipulated by the Slovak Income Tax Act are met.

Employers pay contributions to social security and health insurance companies amounting to 35.2% of gross income paid to employees as shown on payroll records up to a maximum threshold set by law. These contributions are deductible when computing the personal income tax base. The rates are as follows:

| | |
|---|---|
| Health insurance | 10.00% |
| Hospitalisation | 1.40% |
| Retirement insurance | 14.00% |
| Disability | 3.00% |
| Unemployment insurance | 1.00% |
| Accident insurance | 0.80% |
| Guaranty insurance | 0.25% |
| Reserve fund of solidarity | 4.75% |

Capital gains are taxed separately at a 19% rate.

Tax returns for the applicable period should be filed by 31st March of the following year. This deadline may be extended by 3 or 6 months, depending on the circumstances. Income tax on earnings from employment is withheld monthly. Prepayments for personal income tax from specific income (e.g. self-employed persons) are paid quarterly or monthly depending on the last known tax liability (between EUR 5,000 and EUR 16,000 or over EUR 16,600 respectively).

Individuals can request the tax authorities to donate 2% of their income tax liability to an eligible Slovak non-profit organisation (3% may be granted subject to specific conditions). The Act sets out who can receive such charitable contributions, for example, civic associations, foundations and religious organisations. These recipients must meet several conditions.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends[1] (%) | Interest[2,3] (%) | Royalties[2,4] (%) |
|---|---|---|---|
| **Domestic rates** | | | |
| Companies | 0/19/35 | 0/19/35 | 0/19/35 |
| Individuals | 0/7/35 | 19/35 | 19/35 |
| **Treaty countries:** | | | |
| Armenia | 10/5 | 10/0 | 5 |
| Australia | 15 | 10 | 10 |
| Austria | 10 | 0 | 5/0 |
| Belarus | 15/10 | 10/0 | 10/5 |
| Belgium | 15/5 | 10/0 | 5 |
| Bosnia and Herzegovina | 15/5 | 0 | 10 |
| Brazil | 15 | 15/10 | 25/15 |
| Bulgaria | 10 | 10 | 10 |
| Canada | 15/5 | 10/0 | 10/0 |
| China | 10 | 10/0 | 10 |
| Croatia | 10/5 | 10 | 10 |
| Cyprus | 10 | 10/0 | 5/0 |
| Czech Republic | 15/5 | 0 | 10/0 |
| Denmark | 10 | 0 | 5/0 |
| Estonia | 10 | 10/0 | 10 |
| Ethiopia | 10/5 | 5/0 | 5 |

| | Dividends[1] (%) | Interest[2,3] (%) | Royalties[2,4] (%) |
|---|---|---|---|
| Finland | 15/5 | 0 | 10/5/1/0 |
| France | 10 | 0 | 5/0 |
| Georgia | 0 | 5 | 5 |
| Germany | 15/5 | 0 | 5 |
| Greece | 0[5] | 10/0 | 10/0 |
| Hungary | 15/5 | 0 | 10 |
| Iceland | 10/5 | 0 | 10 |
| India | 25/15 | 15/0 | 30 |
| Indonesia | 10 | 10/0 | 15/10 |
| Iran | 5 | 5/0 | 7.5 |
| Ireland | 10/0 | 0 | 10/0 |
| Israel | 10/5 | 10/5/2 | 5 |
| Italy | 15 | 0 | 5/0 |
| Japan | 15/10 | 10/0 | 10/0 |
| Kazakhstan | 15/10 | 10/0 | 10 |
| Korea (South) | 10/5 | 10/0 | 10/0 |
| Kuwait | 0 | 10/0 | 10 |
| Latvia | 10 | 10/0 | 10 |
| Libya | 0 | 10/0 | 5 |
| Lithuania | 10 | 10/0 | 10 |
| Luxembourg | 15/5 | 0 | 10/0 |
| Malaysia | 5/0 | 10/0 | 10 |
| Malta | 5 | 0 | 5 |
| Mexico | 0 | 10/0 | 10 |
| Moldova | 15/5 | 10 | 10 |
| Montenegro | 15/5 | 10 | 10 |
| Netherlands | 10/0 | 0 | 5 |
| Nigeria | 15/12.5 | 15/0 | 10 |
| North Macedonia | 5 | 10 | 10 |
| Norway | 15/5 | 0 | 5/0 |
| Poland | 5/0 | 5/0 | 5 |
| Portugal | 15/10 | 10 | 10 |
| Romania | 10 | 10/0 | 15/10 |
| Russia | 10 | 0 | 10 |
| Serbia | 15/5 | 10 | 10 |
| Singapore | 10/5 | 0 | 10 |
| Slovenia | 15/5 | 10 | 10 |
| South Africa | 15/5 | 0 | 10 |
| Spain | 15/5 | 0 | 5/0 |
| Sri Lanka | 15 | 10/0 | 10/0 |
| Sweden | 10/0 | 0 | 5/0 |
| Switzerland | 15/0 | 5 | 10/0 |
| Syria | 5 | 10/0 | 12 |
| Taiwan | 10 | 10/0 | 10/5 |
| Tunisia | 15/10 | 12/0 | 15/5 |
| Turkey | 10/5 | 10/0 | 10 |
| Turkmenistan | 10 | 10/0 | 10 |
| Ukraine | 10 | 10 | 10 |
| United Arab Emirates | 15/5 | 10/0 | 10 |
| United Kingdom | 15/5 | 0 | 10/0 |
| United States | 15/5 | 0 | 10/0 |

| | Dividends[1] (%) | Interest[2,3] (%) | Royalties[2,4] (%) |
|---|---|---|---|
| Uzbekistan | 10 | 10 | 10 |
| Vietnam | 10/5 | 10 | 15/10/5 |

NOTES:

1. Different tax rate according to respective double tax treaty may apply provided particular shareholding ratio is met.
2. Interest and royalties may be tax exempted for associated companies in EU Member States.
3. The lower tax rate generally applies to interest on loans provided by the government or the central bank. It is advisable to check the applicable double tax treaty for specific details.
4. Different tax rate applies for industrial or cultural royalties. It is advisable to check the applicable double tax treaty for specific details.
5. According to local legislation.

## SLOVENIA

### CORRESPONDENT FIRM

| City | Name | Contact Information |
|---|---|---|
| Ljubljana | Luka Vremec | +386 1 541 19 44<br>office@gmrevizija.si |

### BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Slovenia |
| Capital: | Ljubljana |
| Main languages: | Slovenian |
| Population: | 2.1 million (2022 estimate) |
| Monetary unit: | Euro (EUR) |
| Internet domain: | .si |
| Int. dialling code: | +386 |

### KEY TAX POINTS

- Resident companies are subject to corporate income tax on their worldwide income. Non-residents are taxable on Slovenian source income on particular types of income.
- Capital gains are included in a company's profits subject to corporate income tax. 50% of gains/losses derived from the disposal of shares are exempt subject to certain conditions.
- VAT is chargeable in accordance with the provisions of EU law. A standard rate of 22% applies to most transactions with a reduced rate of 9.5% available for some goods and services while a 5% VAT rate is applied to books and magazines.
- Relief for double taxation is provided by means of credit for overseas tax suffered on overseas income. The credit is the lower of the foreign tax paid and the Slovenian tax on the income concerned.
- Withholding taxes are due in respect of various types of payments to residents and non-residents. Withholding taxes do not apply to dividends distributed to legal persons where a common system of taxation applies or in respect of dividends and similar income distributed through a business unit of a non-resident located in Slovenia.
- Resident individuals are subject to personal income tax on their worldwide income. Non-residents are taxable on Slovenian source income.



### A. TAXES PAYABLE

### CORPORATE INCOME TAX

A company is resident in Slovenia if it has its legal seat or place of effective management in Slovenia. Resident companies are taxed on their worldwide income. Non-resident companies are taxed on their Slovenian source income. Corporate income tax is levied on the taxable profits of legal persons at a rate of 19% with a special rate of 0% for investment funds, pension funds and insurance undertakings for pension plans (subject to certain conditions).

### BRANCH PROFIT TAX

Non-resident companies are subject to corporate income tax in Slovenia on business activities carried on through a permanent establishment in Slovenia.

### VALUE ADDED TAX (VAT)

**General**

All companies pay VAT except those carrying out certain defined activities, small businesses and farmers with a turnover and income below defined thresholds, and those dealing with products intended for export and international transport. VAT is payable on all supplies of goods and services effected by a taxable person acting as such for consideration within the territory of Slovenia, on intra-Community acquisition (including intra-Community acquisition of new means of transport) and on importation of goods. It is also imposed on the transfer of ownership of buildings or parts thereof if the transfer is made before first occupancy or within a period of two years after first occupancy.

Slovenia adopted a value added tax system in July 1999. In May 2004, when Slovenia became a member of the European Union, all provisions concerning intra-Community trade were enacted. The Slovenian VAT Act was generally changed with effect from 1 January 2010. The purpose of those changes was to follow the development of European VAT regulations.

### Taxable Persons

A taxable person must apply for registration if the value of his supplies within the period of the last 12 months exceeds the threshold of EUR 50,000. There is a separate threshold for registration in the VAT system for agricultural activities exceeding EUR 7,500 in accordance with the cadastral income of agricultural and forestry land. A foreign taxable person who makes supplies where the place of supply is Slovenia is liable to be registered irrespective of the fact that his turnover does not meet the prescribed threshold of EUR 50,000. Small businesses (including farmers) may apply for voluntary registration which is valid for at least a five-year period.

### Rates

There are three VAT rates applicable in Slovenia:

(1) The standard rate of 22% applies to all supplies of goods and services not specified as being subject to the reduced rate or to exemptions.

(2) The reduced rate of 9.5% applies to goods and services specifically defined by the VAT Act. These include food, medicines, the supply of medical appliances for the personal use of disabled persons, supply of water, supply of books and other printed materials, tickets to cultural and sports events and the construction, renovation and supply of residential property unless it is built or supplied as part of social policy.

(3) The reduced rate of 5% applies to books, magazines, newspapers, including e- and CD books, magazines and newspapers. Children's books, drawing and painting books, children's music, and maps also fall within the new reduced rate.

### VAT Declaration – Payment / VAT Return

VAT shall be paid no later than the last working day of the month following the expiration of the tax period. Registered persons shall calculate their tax liability and submit a VAT return for the tax period (calendar month or calendar quarter). Taxable persons who are obliged to submit recap statements shall submit a monthly VAT return on the 20th day of the month following the expiration of the tax period. In principle, tax credits (excess of input tax over output tax in the tax period) shall be carried forward to the next tax period. However, VAT may be refunded to a taxable person upon his request within 21 days after the VAT return is submitted.

### The Place of Supply of Services

There are different rules depending on the place of the provision and type of service. Business-to-business (B2B) supplies of services are taxed where the buyer is situated, rather than where the seller is located. For business-to-consumer (B2C) supplies of services, the place of taxation is where the seller is established. However, in certain circumstances, the place of supply is the place of consumption. These exceptions include services such as intermediary services, services connected with immovable property, transport services, cultural, artistic, sporting, scientific, educational, entertainment or similar services, ancillary transport services, valuations of movable tangible property or work on such property, restaurant and catering services, the hiring of means of transport, and electronic services supplied to consumers.

For services provided in the fields of culture, art, sports, science, education, entertainment, fairs, exhibitions to businesses, the place of consumption is the headquarters of the purchaser.

### Foreign Taxable persons VAT Refund

Foreign taxable persons are entitled to a refund of VAT paid in the Republic of Slovenia on supplies of goods and services and upon importation of goods if the conditions defined by law are fulfilled. The claim for a refund of VAT must be filed electronically in the claimant's own territory. To obtain a refund of VAT in Slovenia, the taxable person, if established in another Member State, must address an electronic refund application to Slovenia and submit it to the Member State in which he is established via the electronic portal set up by that Member State. Minimum refund limits are as follows:

- EUR 400 or the equivalent in national currency if the refund period is between three months and less than a calendar year;
- EUR 50 or the equivalent in national currency if the refund period is of a calendar year or the remainder of a calendar year.

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VAT refunds due to taxable persons established outside the EU are only granted according to the conditions of reciprocity. Refund applications must be submitted by 30 June of the calendar year following the refund period to the competent tax authority.

### Special Scheme for Small Taxable Persons

Small enterprises whose turnover does not exceed EUR 50,000 are exempt from charging VAT and have consequently no right to recover input VAT.

### Special Scheme for Farmers

Farmers are exempt from charging VAT if their farming income does not exceed EUR 7,500. They are not able to recover VAT incurred on their purchases, but they are allowed to charge VAT at a flat rate of 8% on supplies to taxable persons and retain it.

### Special Cash Accounting Scheme

Small businesses with a taxable turnover of up to EUR 400,000 per year, exclusive of VAT, may opt for the cash accounting scheme under which a taxable person may account for VAT on the basis of cash paid and received. Certain transactions are excluded from the scheme, e.g. exports, imports, intra-Community supplies, intra-Community acquisitions, etc.

## FINANCIAL SERVICES TAX

Financial Services Tax Act is introducing liability to pay tax on financial services that are exempt from VAT according to current regulations governing the VAT system and services performed by insurance brokers and insurance agents. Subject of taxation are:

(a) Grant and negotiation of credits or loans in the form of money and the management of credits or loans in the form of money by the person granting them;
(b) Negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;
(c) Transactions, including negotiation, involving deposit and current accounts, payments, transfers, debts, cheques and other payment instruments;
(d) Transactions, including negotiation, involving currency, bank notes and coins used as legal tender;
(e) Services provided by insurance brokers and insurance agents.

The tax base is the fee or commission paid on the basis of a concluded financial service. Transactions in shares, interests in companies or associations, debentures and other securities and management of investment funds are not subject to the financial services tax, even though these services are exempt from VAT. Liability to pay the tax arises when the financial service is performed. A financial service is considered to have been performed when a fee (commission) has been paid tor this service.

Any person performing financial services in the territory of the Republic of Slovenia is subject to the financial services tax. A financial services tax return must be filed by anyone subject to the tax. It is a transaction tax and is charged at the moment when the financial service is performed. A financial service is considered to have been performed when a fee (commission) has been paid for this service. The tax rate increased from 6.5% to 8.5% of the tax base in 2015 and forward.

## FRINGE BENEFITS TAX

In principle, all fringe benefits given by employers or other persons to their employees or family members of employees in connection with employment, such as the private use of company cars, rental benefits, zero-interest loans, discounts on products and services, gifts and share options, are taxed.

## LOCAL TAXES

There are no special regional or local taxes in Slovenia.

## OTHER TAXES

Other taxes not covered above are:

- Personal income tax;
- Derivative instruments gains tax;
- Contractual work tax;
- Contributions to social security insurance;
- Taxes on lottery winnings;
- Tax on gambling;
- Inheritance and gift tax;
- Property tax (new Real Estate Tax has not been enforced yet);
- Tax on vessels;
- Circulation tax;
- Tax on insurance services;
- Immovable property transfer tax;
- Customs Duties and Excise Duties.

# B. DETERMINATION OF TAXABLE INCOME

## CORPORATE INCOME TAX

In general, taxable income is based on financial statements prepared in accordance with Slovenian accounting standards(SRS 2016), unless otherwise provided by the CITA. Both Slovenian accounting standards (SRS 2016) and the International Financial Reporting Standards (IFRS) may be applied and are equally acceptable.

The resident's taxable income is computed on a worldwide basis. Income and expenses are taken into account on the accrual basis, therefore cash payments are irrelevant for accounting and tax purposes.

## DEPRECIATION

Depreciation costs are allowed in Slovenia. Rates applicable to the main types of assets are:

| Description | Rate |
|---|---|
| Building projects, including investment property | 3% |
| Parts of building projects, including parts of investment property | 6% |
| Equipment, vehicles and machinery | 20% |
| Parts of equipment and equipment for research | 33.3% |
| Computers and computer equipment, software | 50% |
| Long-term plantations | 10% |
| Breeding and working herds | 20% |
| Other investments | 10% |

## OPERATING LEASE DEPRECIATION

Assets under an operating lease are also subject to depreciation at the rates applicable to the respective class above.

## RECEIVABLES

The write-off of a receivable is recognised as an expense when recorded in the business accounts. However, the amount of receivables value adjustment must not exceed the lower of the following two amounts: the arithmetical average of the actual write-off of the last three years or the amount representing 1% of taxable revenue in the tax period.

## CAPITAL GAINS AND LOSSES

Capital gains from regular income are subject to tax. Capital gains are included within the profits chargeable to corporation tax for an accounting period. Capital losses can be offset against income of an accounting period when they are realised. 50% of capital gains derived on the disposal of shares are exempt where:

- The shares represent at least an 8% participation in capital or voting rights of the company;
- The shares have been held for at least six months;
- The company has at least one employee;
- The participation is not held in a company in a low-tax jurisdiction (where the nominal tax rate is less than 12.5% and the jurisdiction is listed with the Ministry of Finance.

## DIVIDENDS

Domestic dividends are exempt from corporate income tax in the hands of corporate shareholders if:

- The payer is liable to corporate income tax in Slovenia; and
- The dividends result from income that was taxed at the level of the payer in a previous tax year.

A lump-sum amount equal to 5% of the dividends received is excluded from the exemption, representing deemed expenses incurred with respect to the exempt dividend income.

No withholding tax is levied on dividends and other profit distributions paid by a resident company to another resident company that communicates its tax identification number to the paying company.

## INTEREST DEDUCTIONS

Interest paid on borrowed money is treated as a regular financial expense and can be offset against income arising in the same accounting period. Thin capitalisation rules apply to loan finance received from shareholders who have at least a 25% participation in the company unless the taxpayer can demonstrate that the loan finance would have been provided on the same terms by a non-related entity. These rules apply also to loans by related parties and prescribe a maximum debt to equity ratio of 4:1.

## LOSSES

Effective 1 January 2020, certain amendments to the Corporate Income Tax Act came into effect. The new CIT Act limits the utilisation of carried forward tax losses up to 63% of the tax base in a given fiscal year.

Despite this limitation, tax losses may still be carried forward to subsequent years without a limitation, however, loss carry-backs are not permitted. Loss relief may not exceed the amount of current taxable income. Generally, losses that are generated in multiple tax years are absorbed chronologically (oldest recorded losses first). The right to carry losses forward may be surrendered if the ownership of the capital or voting power of the taxpayer claiming the loss carry-forward changes by more than 50% within the tax period and the taxpayer either has not performed business activities for two years prior to the change of ownership or substantially changes its business activity two years prior to or after the change in ownership.

Treatment of tax losses mentioned as described above does not apply to losses generated in the year of change of ownership or prior tax periods.

## FOREIGN SOURCE INCOME

Slovenia has no special rules that apply to foreign source income. All legal persons carrying out commercial activities and having their head office in Slovenia or having their place of effective management in Slovenia (partnerships and other corporate forms, investment funds, banks, insurance companies, co-operative enterprises, public enterprises and other legal persons) are subject to corporate income tax.

Non-residents (legal persons who do not have their headquarters in Slovenia or their place of effective management in Slovenia) are subject to corporate income tax to the extent that their income has its source in Slovenia for certain types of income.

## INCENTIVES

A 100% deduction is available for research and development (R&D) investment activities and the purchase of R&D services not exceeding the amount of the taxable base. There is also a 40% deduction for amounts invested in certain equipment and intangibles, again only up to the amount of the taxable base. There are also further general tax incentives under certain conditions for entities that provide work for employees, trainees or disabled persons, as well as relief for donations and voluntary supplementary pension insurance. Unused tax reliefs may be carried forward for 5 years.

A tax relief of 45% of eligible salary payments (subject to a maximum of the employer’s tax base) is granted to a taxpayer who employs a person under the age of 29 or a person above the age of 55 or a person in deficit occupations who has been registered as unemployed with the Employment Service of the Republic of Slovenia for at least six months and has not been employed with this taxpayer or his/her associated enterprise for the past 24 months. Another tax allowance to the amount of 55% of a person’s salary is available for employing a person under the age of 25 and this being his first employment. There are further general tax incentives available to entities that provide work for apprentices or disabled persons. A taxpayer who employs disabled persons may claim a tax deduction equal to 50% of the salaries of such persons but not exceeding the amount of the taxable base. A taxpayer who employs disabled persons with a 100% physical or hearing disability may claim a reduction in the taxable base in the amount of 70% of the salaries of such persons but not exceeding the amount of the taxable base.

If a taxpayer under a teaching agreement employs an apprentice or student to perform practical work in professional education, the taxpayer may claim a reduction in the taxable base in the amount of the salary paid but not exceeding 80% of the average monthly salary in Slovenia for each month of performing practical work and for each individual person who takes part in such professional education.

Relief is available for voluntary supplementary pension insurance up to 24% of the compulsory contributions for pension and disability insurance for an insured employee but no more than EUR 2,819.09 annually (for the year 2021) per employee may apply under certain conditions. Additional tax incentives for eligible costs for initial investments and employment costs are given to companies which operate in an economic zone.

A new tax relief is available of up to 40% of the amount of investment in the energy sector, energy efficiency of buildings and implementation of other standards for climate neutrality.

## C. FOREIGN TAX RELIEF

Relief for double taxation is provided by means of credit for overseas tax suffered on overseas income. The credit is the lower of the foreign tax paid and the Slovenian tax on the income concerned.

## D. CORPORATE GROUPS

Groups cannot be taxed as a single entity in Slovenia.

## E. RELATED PARTY TRANSACTIONS

### Transfer pricing

Transactions of Slovenian resident companies with non-resident companies must be carried out on an arm's length basis or adjustments are required for tax purposes. In addition, transfer pricing rules apply to transactions between two resident companies if one of them is in a better tax position than the other (e.g. has tax losses from the previous or current tax year, is entitled to apply a zero tax rate or is exempt from paying the tax under the Corporate Profit Tax Act). In general, two companies are considered "related companies" when:

- one company holds directly or indirectly at least 25% of the capital or voting rights of the other company; or
- the same company holds directly or indirectly at least 25% of the capital or voting rights of both companies; or
- an individual or his spouse or relatives (parents, children, brothers or sisters) hold directly or indirectly at least 25% of the capital or voting rights of both companies or they participate in the supervision or management of both companies.

### Controlled foreign companies (CFCs)

CFC rules have been introduced that are aligned with the EU ATAD Directive (ATAD 1). The CFC income of a taxpayer is included in its taxable base. CFC losses are not included in the taxpayer's taxable base but can be carried forward to future tax periods.

A CFC is defined as an entity whose profits are not subject to tax or are exempt in the entity's residence State if:

- the taxpayer holds, individually or together with affiliates, a direct or indirect stake of more than 50% in the entity; and
- the actual corporate income tax paid by the entity or permanent establishment is effectively lower than 50% of the corporate income tax that would have been due in the taxpayer's residence State.

### Thin capitalisation

As of 2004, thin cap rules were introduced and are applied to interest on loans from qualified shareholders, except for loan recipients being banks or insurance companies. In addition, loans provided by sister companies owned by a qualifying shareholder are also subject to thin cap rules.

A qualified shareholder is a shareholder or partner who at any time during the tax period directly or indirectly owns at least 25% of the shares in the equity capital or voting rights of the taxpayer.

Currently, a 4:1 debt to equity ratio applies. Under thin cap rules, interest on loans from a qualified shareholder is not deductible for tax purposes if at any time during the tax period the loans exceed four times the amount of the shareholder's equity capital. All categories of equity capital except for net profits of the year are considered equity capital for the purposes of thin cap rules.

## F. WITHHOLDING TAX

Companies paying dividends withhold tax at a rate of 15% on each dividend and similar income distributed to residents and non-residents of Slovenia. If double tax treaties stipulate a tax rate lower than 15%, the treaty tax rate applies. No withholding tax applies where a resident taxpayer notifies the payer of its tax number or if a non-resident taxpayer with activities in a business unit in Slovenia notifies the payer of its tax number. No tax is withheld from payments of dividends and similar income distributed to companies resident in the EU with a minimum 10% equity stake which has been held for at least 24 months prior to the dividend payment.

There is no withholding tax on dividends paid to a non-resident who is a resident of the EU or EEA (excluding the Principality of Liechtenstein) if the recipient of the dividend is not able to offset the applicable Slovenian withholding tax in his country of residence. This also applies to payments of dividends and interest paid from Slovenia to EU and EEA-based (excluding the Principality of Liechtenstein) investment and pension funds. Companies are, in most cases, exempt from tax on dividends if the payer is:

- Liable to pay tax by the Corporate Income Tax Act; or,
- A taxpaying resident in an EU Member State under that State's domestic tax law is not deemed to be resident outside the EU under a tax treaty concluded with a non-member state; or,
- Liable to pay the equivalent of Slovenian corporate income tax and is resident in a country in which the rate of tax on corporate profits is at least 12.5%.

Withholding tax at a rate of 15% applies to interest payments. There is no withholding tax if a resident taxpayer notifies the payer of its tax number and if a non-resident taxpayer for activities in a business unit in Slovenia notifies the payer of its tax number.

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In case of interest on loans raised and securities issued by the government of Slovenia and interest paid by banks there is no withholding tax.

Withholding tax at a rate of 15% applies to royalties. There is no withholding tax if a resident taxpayer notifies the payer of its tax number and if a non-resident taxpayer for activities in a business unit in Slovenia notifies the payer of its tax number.

## G. EXCHANGE CONTROLS

There are no exchange controls in Slovenia.

## H. PERSONAL TAX

Personal income tax is levied on six categories of income:

- Income from employment;
- Business income (from self-employment);
- Income from basic agriculture and forestry;
- Income from rents and royalties;
- Income from capital;
- Other income accruing to persons liable to tax in the Republic of Slovenia. Residents are liable to income tax on their worldwide income (i.e. income derived in Slovenia as well as abroad). Non-residents are liable to income tax on income derived in Slovenia.

An individual, regardless of his nationality, is a resident in Slovenia for personal income tax purposes if he has a formal residential tie with Slovenia i.e. has permanent residence in Slovenia, is a Slovenian public employee employed abroad or was a Slovenian resident but is currently employed in an EU institution). A person who is present for more than 183 days in a taxable year in Slovenia is deemed to be resident there in that tax year. Each individual is treated as a separate taxpayer. There is no taxation of spouses or a family as a whole. The tax year is the calendar year.

Tax on income from capital (on interest, dividends and capital gains) is paid according to a flat income tax rate. Any such tax payment is treated as a final tax for residents and non-residents alike. Tax rates are the following:

- Interest: 27.5%;
- Dividends: 25%;
- Capital gains: 25% for a holding period of up to five years, 20% for a holding period from five to 10 years, 15% for a holding period from 10 to 15 years, and 0% for a holding period longer than 15 years.

Income tax on other categories of income (income from employment, business income, income from basic agriculture and forestry, royalties and other income hereinafter referred to as active income) is paid during the tax year in the form of advance tax payments, except for rental income where tax is based on cadastral income. The rate for advance tax payment is prescribed by the Personal Income Tax Act. Any such advance tax payment of a non-resident is treated as a final tax while, in the case of a resident, it is treated as a prepayment of tax.

The tax schedule for the year 2022 is as follows:

| Taxable income (EUR) | Tax (EUR) | Rate on excess (EUR) |
|---|---|---|
| Up to 8,755 | 0 | 16% |
| 8,755 – 25,750 | 1,400.80 | + 26% over 8,755 |
| 25,750 – 51.500 | 5,819.50 | + 33 over 25,750 |
| 51,500 – 74,160 | 14,317 | + 39% over 51,500 |
| Over 74,160 | 23,154.40 | + 45 % over 74,160 |

Advance tax payments are deductible from the annual active income tax liability of a resident and any difference is collected upon receipt of an assessment from the tax authorities. The Tax Administration is obliged to generate an annual tax return based on its own information, to assess the tax and submit the return to the taxpayer. If the taxpayer does not dispute the tax assessment, the tax will be due (the difference between the total tax payable and the total amount of tax paid in advance) within 60 days of the day the tax assessment is submitted.

When the total sum of advance payments exceeds the annual tax payable, a refund will be provided within the same time limit. If the tax assessment has not been submitted to the taxpayer by the end of May, then the taxpayer is obliged to file an annual income tax return by the end of June. Then the tax liability of the taxpayer will be calculated by the Tax Administration which is obliged to issue a written order before 31 October of the same year. The tax due (the difference between the total tax payable and the total amount of tax paid in advance) must be paid within 30 days of the day the written order is submitted. When the total sum of advance payments exceeds the annual tax payable, a refund is provided within the same time limit. A tax return is required for all taxpayers regardless of the annual taxable base.

All taxpayers (except for basic agricultural and forestry activity) must keep records of their income. They are obliged to keep records for at least five years from the year to which they relate. To avoid double taxation of income, Slovenia has concluded a considerable number of double tax treaties.

### EXEMPTIONS

There are a number of exemptions within each category of income which are defined by the Personal Income Tax Act.

### ALLOWANCES AND DEDUCTIONS

Allowances that reduce the aggregated taxable base (deductions) for a resident taxpayer on an annual level include (for the year 2022):

**General allowance:**

- EUR 4,500 + (19,261.43 – 1.40427 x total income) for residents with active income below EUR 13,716.33;
- EUR 4,500 for residents with active income in excess of EUR 13,716.33.

**Personal allowances:**

- Disabled person's allowance: EUR 18,188.61 if the resident is a disabled person;
- Independent artists, journalists and sportsmen: a special deduction of 15% of their revenues (up to EUR 25,000 of revenues);
- Student allowance: EUR 3,500 (for earnings above 13,316.83) for income earned by pupils or students for temporary work done on the basis of a referral issued by a special organization dealing with job-matching services for pupils and students.
- Personal allowance for a resident older than 70 years: EUR 1,500.

**Family allowances:**

Family allowances are granted to residents who are supporting their family members, as follows:

- EUR 2,510.03 for the first dependent child; for each subsequent dependent child this amount is increased;
- EUR 9,094.90 for a dependent child who requires special care;
- EUR 2,510.03 for any other dependent family member.

**Special deduction for voluntary additional pension insurance payments:**

Premiums paid by a resident to the provider of a pension plan based in Slovenia or in an EU Member State according to a pension plan that is approved and entered into a special register, but limited to a sum equal to 24% of the compulsory contribution for compulsory pension and disability insurance for the taxpayer, or 5.844% of the taxpayer's pension, and no more than EUR 2,903,66 annually.

Pensioners and working disabled persons are entitled to a tax credit in the amount of 13.5% of the pension/compensation received from compulsory pension and disability insurance.

## WAGE FOR BUSINESS PERFORMANCE

Part of the wage for business performance is not subject to tax for personal income tax purposes if the amount does not exceed 100 % of the average wage in Slovenia or 100% of the average monthly salary of the employee, including salary compensations paid over the past 12 months to the employee, if this is more favourable to the worker but it is subject to regular social security contributions. It can only be paid once in a single year. Such wages should also be paid in accordance with the employer's general act and collective agreement.

## DIRECT TAXES ON PROPERTY

## INHERITANCE AND GIFT TAX

Inheritance and gift tax applies to transfers of property. The tax is paid by individuals or legal persons of private law receiving property in the form of inheritance or gifts. Taxpayers are divided into four categories according to their relationship with the deceased or donor as follows:

- Class I: all direct descendants and spouses;
- Class II: parents, siblings and their descendants;
- Class III: grandparents;
- Class IV: others.

The tax base of inherited or given property is the value after deduction of debts and other liabilities. For real estate, this value is set at 80% of gross appraisal value. For movable property - except money - this value is set as market value. Exemptions to the inheritance and gift tax include:

- Individuals classified under Class I;
- Taxpayers who inherit a house or apartment and who own only one house or apartment themselves and have lived in the same house as the decedent;
- Farmers who inherit agricultural land or an entire farm; and,
- Legal persons of private law, established for religious, humanitarian, educational, cultural, charitable and certain other activities.

Movable property up to a value of EUR 5,000 is also exempt from taxation. The tax is levied progressively depending on the value of the property and the category under which the relation to the deceased or donor is classified. Inheritance and gift tax rates are as follows:

| Category | Tax Rate Ranges |
|---|---|
| Class II | 5% to 14% |
| Class III | 8% to 17% |
| Class IV | 12% to 39% |

Taxpayers must declare their liability to the local tax authority within 15 days of receiving a gift. The assessment of inheritance tax is made according to the inheritance decision sent by the court to the tax authority. The tax is payable within 30 days of the assessment being issued.

## PROPERTY TAX

A fee for the use of construction land is charged to owners by municipalities (% depending on individual municipality).

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## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 15 | 0/15 | 0/15[2] | 0/15[3] |
| Individuals | 27.5[6] | -- | 0/27.5[6] | 27.5[6] |
| **Treaty countries:** | | | | |
| Albania | 10 | 5 | 0/7 | 7 |
| Armenia | 10 | 5 | 10 | 5 |
| Austria | 15 | 5 | 0/5 | 5 |
| Azerbaijan | 8 | 8 | 8 | 5/10 |
| Belarus | 5 | 5 | 0/5 | 5 |
| Belgium | 15 | 5 | 10 | 5 |
| Bosnia and Herzegovina | 10 | 5 | 0/7 | 5 |
| Bulgaria | 10 | 5 | 5 | 5/10 |
| Canada | 15 | 5 | 10 | 10 |
| China | 5 | 5 | 10 | 10 |
| Croatia | 5 | 5 | 5 | 5 |
| Cyprus | 5 | 5 | 0/5 | 5 |
| Czech Republic | 15 | 5 | 5 | 10 |
| Denmark | 15 | 5 | 5 | 5 |
| Estonia | 15 | 5 | 10 | 10 |
| Finland | 15 | 5 | 5 | 5 |
| France | 15 | 0 | 0/5 | 0/5 |
| Georgia | 5 | 5 | 0/5 | 5 |
| Germany | 15 | 5 | 5 | 5 |
| Greece | 10 | 10 | 10 | 10 |
| Hungary | 15 | 5 | 5 | 5 |
| Iceland | 15 | 5 | 5 | 5 |
| India | 15 | 5 | 10 | 10 |
| Iran | 7 | 7 | 5 | 5 |
| Ireland | 15 | 5 | 5 | 5 |
| Israel | 15 | 5 /10 | 5 | 5 |
| Italy | 15 | 5 | 0/10 | 5 |
| Japan | 5/10 | 5/10 | 5 | 5 |
| Kazakhstan | 15 | 5 | 0/10 | 10 |
| Korea (South) | 15 | 5 | 5 | 5 |
| Kosovo | 10 | 5 | 5 | 5 |
| Kuwait | 5 | 0 | 5 | 10 |
| Latvia | 15 | 5 | 10 | 10 |
| Lithuania | 15 | 5 | 10 | 10 |
| Luxembourg | 15 | 5 | 5 | 5 |
| Malta | 15 | 5 | 5 | 5 |
| Moldova | 10 | 5 | 5 | 5 |
| Montenegro[4] | 10 | 5 | 10 | 5/10 |
| Netherlands | 15 | 5 | 5 | 5 |
| North Macedonia | 15 | 5 | 10 | 10 |
| Norway | 15 | 0 | 5 | 5 |
| Poland | 15 | 5 | 10 | 10 |
| Portugal | 15 | 5 | 10 | 5 |
| Qatar | 5 | 5 | 5 | 5 |
| Romania | 5 | 5 | 5 | 5 |
| Russia | 10 | 10 | 10 | 10 |
| Serbia[4] | 10 | 5 | 10 | 5/10 |
| Singapore | 5 | 5 | 5 | 5 |
| Slovak Republic | 15 | 5 | 10 | 10 |

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| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Spain | 15 | 5 | 5 | 5 |
| Sweden[5] | 15 | 5 | 0 | 0 |
| Switzerland | 15 | 0 | 0/5 | 0/5 |
| Thailand | 10 | 10 | 10/15 | 10/15 |
| Turkey | 10 | 10 | 10 | 10 |
| Ukraine | 15 | 5 | 5 | 5/10 |
| United Arab Emirates | 5 | 5 | 5 | 5 |
| United Kingdom | 15 | 0 | 0/5 | 5 |
| United States | 15 | 5 | 5 | 5 |
| Uzbekistan | 8 | 8 | 8 | 10 |

Notes:

1. Dividends and other profit distributions paid to non-residents are subject to a 15% final withholding tax levied on the gross amount, unless a reduced rate applies under a tax treaty. Under Slovenian domestic tax law implementing the provisions of the EU Parent-Subsidiary Directive, outbound dividends are exempt from withholding tax if the recipient is an EU company subject to a corporate income tax listed in the directive and holds directly at least 10% of the capital or voting rights of the paying company. A minimum holding period of 2 years is required. If the 2-year holding period has not yet elapsed, the exemption can be directly applied if the recipient lodges a bank guarantee. The benefits of the directive do not apply if the main purpose or one of the main purposes of the transaction is to achieve a tax advantage.
2. Reduced withholding tax rates on dividends (qualifying companies) are also available under the treaties with non-EU member states, subject to certain conditions and participations.
3. Interest paid to non-residents is subject to a 15% final withholding tax levied on the gross amount, unless a reduced rate applies under a tax treaty. Under Slovenian domestic tax law implementing the provisions of the EU Interest and Royalties Directive, interest and royalty payments by resident companies are exempt from withholding tax, provided that the recipient company is resident in another EU Member State and is subject to corporate income tax in that state, and is an associated company of the paying company. Two companies are associated companies if (i) one of them holds directly at least 25% of the capital of the other or (ii) a third EU company holds directly at least 25% of the capital of the two companies. In both cases, a continuous minimum holding period of 2 years is required.
4. Royalties paid to non-residents are subject to a 15% final withholding tax levied on the gross amount, unless a reduced rate applies under a tax treaty. For the implementation of the EU Interest and Royalties Directive, see footnote 2.
5. Treaty concluded between Slovenia and the former Serbia and Montenegro.
6. Treaty concluded by the former Yugoslavia.
7. Dividends and other profit distributions, interest and royalties paid to non-resident individuals are subject to a 27.5% (25% before 1 January 2020) withholding tax.

# SOMALILAND

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Hargeisa | Enock Barongo | +252 636 469 561<br>+254 720 779 459<br>ebarongo@pkf.so |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Somaliland |
| Capital: | Hargeisa |
| Main languages: | Somali, Arabic |
| Population: | 3.81 million (Somaliland Central statistics 2017 estimate) |
| Monetary unit: | Somaliland Shilling (SLSH) |
| Internet domain: | .so |
| Int. dialling code: | +252 |

## A. TAXES PAYABLE

## COMPANY TAX

Company tax is based on computed tax profits as follows:

- Resident companies: 10%;
- Non-resident companies: 18%.

## CAPITAL GAINS TAX

Capital gains are subject to tax at a rate of 10% of the net gain.

## BRANCH PROFITS TAX
A branch of a foreign entity pays tax at the rate of 18%.

## VALUE ADDED TAX (VAT)
The VAT rate is 5%.

## LOCAL TAXES
Employment income is taxed at 6% of gross annual income.

Vehicle road tax rate is 0.5% of the value of the vehicle.

## OTHER TAXES

### Land rates
Land rates are based on the percentage of the site value.

## RENTAL INCOME TAXES
10% of the rental income.

## SINGLE BUSINESS PERMIT
Depending on the type of business, this permit costs a minimum of USD 300 to a maximum of USD 800.

## B. DETERMINATION OF TAXABLE INCOME

## CAPITAL ALLOWANCES

| Asset | Rate |
|---|---|
| Land | 0% |
| Buildings | 5% |
| Machinery | 10% |
| Computers | 33% |
| Equipment | 20% |
| Trucks | 20% |

## C. PERSONAL TAX
Employment income is taxed at 6% of gross income.

# SOUTH AFRICA

## MEMBER FIRMS

| City | Name | Contact Information |
|---|---|---|
| Cape Town North | Alexa Muller | +27 21 914 8880<br>alexa.muller@pkf.co.za |
| Cape Town South | Kobus Nell | +27 21 713 8400<br>kobus.nell@pkf.co.za |
| Durban | Paul Gering | +27 31 573 5000<br>paul.gering@pkf.co.za |
| Johannesburg (East Rand) | Herman Nieuwoudt | +27 10 595 9610<br>herman@vg-a.co.za |
| Johannesburg (Octagon) | Mohammed Mayet | +27 10 003 0150<br>mohammed@pkfoctagon.com |
| Port Elizabeth | Deon van Zyl | +27 41 398 5600<br>deon.vanzyl@pkf.co.za |
| Pretoria | Retief Smith | +27 12 809 7000<br>retief.smith@pkf.co.za |

| | | |
|---|---|---|
| Saldanha | Francois Hofmeyr | +27 22 714 1981<br>francois.hofmeyr@pkf.co.za |
| Welkom | Roland Heiriss | +27 57 353 2601/2<br>roland.heiriss@pkf.co.za |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of South Africa |
| Capital: | Pretoria (executive), Bloemfontein (judicial), Cape Town (legislative) |
| Main languages: | Afrikaans, Northern Sotho, English, Southern Ndebele, Southern Sotho, Swazi, Tsonga, Tswana, Venda, Xhosa, Zulu |
| Population: | 60.64 million (2022 estimate) |
| Monetary unit: | South African Rand (ZAR) |
| Internet domain: | .za |
| Int. dialling code: | +27 |

## KEY TAX POINTS

- Resident companies are generally taxed on their worldwide income. Non-resident companies are taxed on their South African sourced income.
- Dividends paid or that become payable by a South African company to a shareholder are subject to a 20% withholding tax. Withholding tax is not levied on dividends paid to another South African company and dividends paid by headquarter companies.
- Where a branch of a foreign company operates in South Africa ("SA"), its branch profits are taxed at the rate of 28% of its taxable income.
- For years of assessment ending on or after 30 March 2023, the corporate tax rate is reduced from 28% to 27%.
- VAT is imposed at 15% (prior to 1 April 2018: 14%) on most goods and services supplied by a vendor. Exports are zero-rated and very few exemptions exist.
- Employees are taxed on the value of fringe benefits as determined in accordance with a separate schedule to the Income Tax Act.
- Although group taxation is not applicable, corporate rules provide relief in respect of transactions between group companies and between founding shareholders and their company.
- The South African Revenue Service is empowered to make adjustments to cross-border transactions between related parties that are not conducted on arm's length terms. While no specific thin capitalisation rules apply, the normal arm's length transfer pricing principle applies in respect of loans as well.
- Royalties and similar income are subject to withholding taxes at source, at a rate of 15% (effective 1 January 2015). Royalties paid by headquarter companies are exempt from the withholding tax.
- A 20% withholding tax applies to dividends earned by non-residents and a 20% withholding is also applicable to dividends in specie (where the company declaring the dividends will be liable for the tax).
- As from 1 March 2015, withholding tax at a rate of 15% is imposed on interest paid or payable to non-residents. Notable exclusions include interest paid on so-called portfolio debt capital, i.e., government bonds, listed securities, debts owing by local banks, domestic brokerage accounts, etc., international bank finance and interest paid by a headquarter company.
- Resident individuals are generally subject to personal income tax on their worldwide income irrespective of the source. Non-resident individuals are generally subject to tax on their South African-sourced income only.

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## A. TAXES PAYABLE

### COMPANY TAX

A company is resident in SA if it is incorporated, formed or established in SA or has its place of effective management in SA. Subject to certain limited exemptions, South African resident companies and close corporations (companies) are taxed on their worldwide income. Furthermore, and again subject to certain exemptions, the international 'anti-avoidance' practice of taxing income earned by controlled foreign companies ("CFCs") applies to South African residents.

Normal tax is payable by South African companies on their worldwide taxable income at the rate of 28%. For years of assessment ending on or after 30 March 2023, the corporate tax rate is reduced from 28% to 27%. The tax is payable by both public and private companies as well as close corporations.

Small business corporations are close corporations and private companies with only natural persons as shareholders, gross income of less than ZAR 20 million during a year of assessment, and where not more than 20% of its gross income consists of investment income or income from the rendering of a personal service. These corporations qualify for taxation at the following rates in respect of the years of assessment ending between 1 April 2022 and 28 February 2023:

| Taxable income | Rates of tax |
|---|---|
| ZAR 0 – ZAR 91,250 | Nil |
| ZAR 91,251 – ZAR 365,000 | 7% of the amount over ZAR 91,250 |

| Taxable income | Rates of tax |
|---|---|
| ZAR 365,001 – ZAR 550,000 | ZAR 19,163 + 21% of the amount over ZAR 365,000 |
| ZAR 550,001 + | ZAR 58,013 + 28% of the amount over ZAR 550,000 |

Life assurers are taxed according to the four-fund approach. The taxable income of what is known as The Individual Policyholder Fund is taxed at 30%. The Company Policyholder Fund and The Corporate Fund are taxed at 28%. Retirement Fund's receipts and accruals are exempt from tax.

Mining companies are, in addition to their specific corporate rates of tax, subject to a royalty calculated on the gross sales relating to the transfer of mineral resources. The royalty is calculated in terms of a specific formula and can range from 0.5% to 7% depending on whether refined or unrefined minerals are transferred.

## TRUSTS

South African trusts pay tax at a flat rate of 45% (2017: 41%) on each Rand of taxable income. Notwithstanding the aforementioned, special provisions apply to testamentary trusts (for so long as the beneficiaries remain minors under the age of 18 years) and trusts created for the benefit of mentally or physically challenged persons. These trusts pay tax at rates applicable to resident individuals. Founders and donors of trusts may be taxed on income earned by the trust in terms of certain attribution rules (deeming provisions). The same can apply to beneficiaries of non-resident trusts in certain circumstances. Interest free (or low interest) credit loan accounts made by natural persons to Trusts may attract deemed Donations Tax in certain circumstances.

## CAPITAL GAINS TAX (CGT)

CGT was introduced with effect from 1 October 2001. South African residents are taxed on their worldwide assets while non-residents are only subject to CGT on any direct or indirect interest or right in or to immovable property situated in SA, and assets of a permanent establishment through which they carry on a trade in SA. CGT is triggered on the disposal or deemed disposal of an asset which includes but is not limited to any event, act, forbearance or operation of law that results in the creation, variation, transfer or extinction of an asset.

A noteworthy deemed disposal arises on termination of SA tax residence (exit charge). CGT not only affects assets purchased and sold after 1 October 2001 but it also affects assets acquired prior to this date and disposed of subsequent to 1 October 2001. In the case of assets acquired prior to 1 October 2001 and disposed of subsequent thereto, the gain is calculated based on the growth in value after 1 October 2001 which, of necessity, has resulted in legislation providing for complex alternatives to determine the gain at the time of disposal.

Strictly speaking, CGT is not a separate tax but rather forms an integral part of SA's income tax legislation. In short, subject to any exclusions and exemptions, a taxable gain is calculated by taking the difference between the proceeds received on disposal of the asset and the base cost and then multiplying this amount by an inclusion factor (which varies depending on the nature of the taxpayer). The resultant sum is then added to the taxpayer's normal taxable income and taxed accordingly.

A capital loss results where the base cost exceeds the proceeds on disposal.

Capital losses are however ring-fenced and may not be set off against a taxpayer's taxable income from revenue sources but may be set off against capital gains, with any excess capital losses carried forward for set off against any capital gains arising in subsequent years of assessment.

A summary of some of the more relevant inclusion rates and effective rates are set out below:

| Nature of taxpayer | Inclusion rate | Maximum tax rate | Effective rate |
|---|---|---|---|
| Company/close corporation | 80% | 28% | 22.4% |
| Natural person | 40% | 45% | 0% to 18% |
| Trust | 80% | 45% | 36% |

## BRANCH PROFITS TAX

Where a branch of a foreign company operates in South Africa, its branch profits are taxed at the rate of 28% of its taxable income. There is no branch remittance tax in SA.

## DIVIDENDS TAX (DT)

Dividends paid or that become payable by a South African company to a shareholder are subject to a 20% withholding tax. Notable exclusions from the DT are dividends paid to another South African company and dividends paid by headquarter companies. The DT may be reduced for dividends paid to foreign shareholders in terms of any applicable Double Tax Treaty.

## VALUE ADDED TAX (VAT)

VAT is imposed on most goods and services supplied by a vendor at 15% (prior to 1 April 2018: 14%). Exports are zero-rated. Very few exemptions exist. Compulsory VAT registration is triggered when the value of taxable supplies in a 12-month period exceeds or is expected to exceed ZAR 1 million. As from 1 April 2014, compulsory VAT registration is triggered when the value of taxable supplies has already exceeded the ZAR 1 million threshold within the preceding 12 months or there is a written contractual commitment to make taxable supplies exceeding ZAR 1 million within the next 12 months. The supply of electronic services by a non-resident in excess of ZAR 1 million also requires VAT registration.

## FRINGE BENEFITS TAX

Employees are taxed on the value of fringe benefits as determined in accordance with a separate schedule to the Income Tax Act. The tax levied is in accordance with the tax rates applicable to natural persons.

## DONATIONS TAX

Subject to certain exemptions, donations tax is levied at the rate of 20% on the value of any property disposed of under any donation (or deemed donation) made by a natural person, company, municipality or trust resident for tax purposes in SA. As from 1 March 2018, where a donation or the cumulative donations exceed ZAR 30 million, the excess is taxed at a rate of 25%. Donations made prior to 1 March 2018 and exempt donations are excluded from the determination of the ZAR 30 million threshold.

## SECURITIES TRANSFER TAX

With effect from 1 July 2008, securities transfer tax is levied on every transfer of a security. A security in essence is any share in a company, member's interest in a close corporation or any right or entitlement to receive any distribution from a company or close corporation. Only securities issued by companies incorporated, established or formed inside SA and companies incorporated, established or formed outside SA, which are listed on a South African exchange, are taxable. The tax rate is 0.25% and is applied to the taxable amount in respect of any transfer of a security.

## TRANSFER DUTY

Transfer duty is imposed on the transfer of immovable property (on or after 1 March 2020) at the following rates:

| | |
|---|---|
| On the first ZAR 1,000,000 | 0% |
| For ZAR 1,000,001 to ZAR 1,375,000 | 3% on the value above ZAR 1,000,000 |
| For ZAR 1,375,001 to ZAR 1,925,000 | ZAR 11,250 + 6% on the value above ZAR 1,375,000 |
| For ZAR 1,925,001 to ZAR 2,475,000 | ZAR 44,250 + 8% on the value above ZAR 1,925,000 |
| For ZAR 2,475,001 to ZAR 11,000,000 | ZAR 88,250 + 11% on the value above ZAR 2,475,000 |
| For ZAR 11,000,001 and above | ZAR 1,026,000 + 13% on the value above ZAR 11,000,000 |

## OTHER TAXES

These include, amongst others, customs and excise duties, and skills development levies.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company is determined by deducting expenditure incurred in the production of income and other allowable expenses and incentives from the company's income. Capital gains are subject to CGT with effect from 1 October 2001.

## CAPITAL ALLOWANCES

| Asset Type | Conditions for annual allowance | Annual Allowance |
|---|---|---|
| Industrial buildings or improvements and buildings used for research and development (Note 1) | Construction of buildings or improvements on or after 1 January 1989, provided building is used wholly or mainly for carrying on process of manufacture or similar process or research and development.<br>Construction of buildings or improvements on or after 1 July 1996 to 30 September 1999 and the buildings or improvements are bought into use before 31 March 2000 and used in the process of manufacture or similar process. | 5% of cost (previously 2%) (Note 2)<br>10% of cost (Note 2) |
| New commercial buildings (other than residential accommodation) (Note 3) | Any cost incurred in erecting any new and unused building, or improving an existing building on or after 1 April 2007 wholly or mainly used for the purpose of producing income in the course of trade. | 5% of cost |
| Building in an Urban Development Zone | Costs incurred in erecting or extending a building in respect of demolishing, excavating the land, or to provide water, power or parking, drainage or security, waste disposal or access to the building.<br>Improvement to existing buildings. | 20% in first year<br>8% in each of the 10 subsequent years<br>20% of cost |
| Hotel Buildings | Construction of buildings or improvements, provided used in trade as hotelkeeper or used by lessee in trade as hotelkeeper.<br>Refurbishments (Note 4) which commenced on or after 17 March 1993. | 5% of cost<br>20% of cost |
| Hotel equipment | Machinery, implements, utensils or articles bought into use on or after 16 December 1989. | 20% of cost |
| Aircraft | Acquired on or after 1 April 1995. | 20% of cost (Note 2) |
| Airport and port assets | New and unused assets and improvements brought into use on or before 28 February 2022 and used directly and solely for purpose of business as airport, terminal or transport operation or port authority | 5% of cost |
| Farming equipment and equipment used for production of renewable energy | Machinery, implements, utensils or articles (other than livestock) bought into use on or after 1 July 1988 for farming operations.<br>Biodiesel plant and machinery bought into use after 1 April 2003. | 50% in first year<br>30% in second year<br>20% in third year |

| Asset Type | Conditions for annual allowance | Annual Allowance |
|---|---|---|
| Ships | South African registered ships used for prospecting, mining or as a foreign-going ship, acquired on or after 1 April 1995. | 20% of cost (Note 2) |
| Plant and Machinery (Note 1) | New and unused manufacturing assets acquired on or after 1 March 2002 will be subject to wear and tear allowances over four years.<br><br>Used manufacturing assets | 40% in first year<br>20% in each of the 3 subsequent years (Note 5)<br>20% of cost |
| Plant and Machinery (small business corporations only) | New and unused plant and machinery bought into use on or after 1 April 2001 and used by the taxpayer directly in the process of manufacture. | 100% of cost |
| Non-manufacturing assets (small business corporation only) | Acquired on or after 1 April 2005. | 50% in first year<br>30% in second year<br>20% in third year |
| Licences | Expenditure, other than for infrastructure to acquire a licence from government body to carry on telecommunication services, exploration, production or distribution of petroleum or the provision of gambling facilities. | Evenly over the period of the licence, subject to a maximum of 30 years |
| Strategic projects | An additional industrial investment allowance is allowed on new and unused assets used for preferred qualifying strategic projects which were approved between 31 July 2001 and 31 July 2005<br><br>Any other qualifying strategic projects | 100% of cost<br><br>50% of cost |
| Electronic telecommunication lines and cables | New and unused structures contracted for and construction commenced on or after 23 February 2000<br><br>As from 1 April 2015, new and unused structures<br><br>As from 1 April 2019, new and unused structures | 5% of cost<br><br>6.67% of cost<br><br>10% of cost |
| Pipelines, electricity cables and railway tracks | New and unused structures contracted for and construction commenced on or after 23 February 2000 | 10% of cost (oil pipelines)<br>5% of cost (other) |
| Rolling stock | Brought into use on or before 28 February 2022 | 20%of cost |
| Environmental assets | Environmental treatment and recycling assets as from 8 January 2008 for new and unused assets.<br><br>Environmental waste disposal assets of a permanent nature. | 40% in first year<br>20% in each of the three subsequent years<br>5% of cost |
| Energy efficiency savings | All forms of energy efficiency savings as reflected on an energy savings certificate in any year of assessment ending before 1 January 2023 | Determined in accordance with a formula |
| Solar PV renewable energy | Generation capacity exceeding 1 megawatt<br><br>For years of assessment on or after 1 January 2016, generation capacity not exceeding 1 megawatt | 50% in first year<br>30% in second year<br>20% in third year<br>100% of cost |

Notes:

1. As from 1 April 2012, new or unused assets or buildings used for the purposes of research and development will also qualify for the allowances.
2. Recoupment of allowances can be deducted from the cost of the replacement asset.
3. Allowances available to owners as users of the building or as lessors.
4. Refurbishment is defined as any work undertaken within the existing building framework.
5. Where plant and machinery is used in a process of manufacture or similar process, the taxpayer is obliged to make use of the allowances and not the wear and tear rates.

Prior to 1 January 2013, wear and tear on any assets acquired from a connected person may only be claimed on the original cost to the seller less allowances claimed by the seller, plus recoupments and CGT included in the seller's income.

**Certified Emission Reductions**

Income received by a person disposing of credit emission reductions (CERs) emanating from Clean Development Mechanism (CDM) projects as envisaged in the Kyoto Protocol, will be wholly exempt from income tax and capital gains tax. This exemption includes 'in specie' distributions and applies in respect of CERs disposals on or after 11 February 2009. This concession ceases to apply from 1 January 2021. As CERs will, by default, be exported, they will be zero-rated for VAT purposes.

## STOCK / INVENTORY

All trading stock on hand at the end of the tax year must be added to income while all trading stock on hand at the beginning of the year ranks as a deduction. Trading stock is valued at the lesser of cost or net realisable value. Consumable stores and work-in-progress on hand constitute trading stock. The LIFO method of valuing trading stock is not permitted in respect of years of assessment commencing on or after 1 July 2000.

## RESEARCH AND DEVELOPMENT EXPENDITURE

As from 2 November 2006, specific deductions are allowed for expenditure incurred in respect of qualifying research and development activities. The Department of Science and Technology must approve the entire 150% deduction. Only expenditure incurred on or after the date of receipt of the application is eligible for this deduction. Plant and machinery used for research and development qualify to be written off over four years (40:20:20:20). As from 1 January 2012, these assets can be written off over three years (50:30:20). Buildings used for research and development activities qualify for a 5% annual allowance. This incentive ceases to apply from 1 October 2022, although there is a proposal to extend this incentive to 31 December 2023.

## INTELLECTUAL PROPERTY

Where the expenditure was incurred before 29 October 1999, the deduction is allowed over the number of years of the duration of use or 4% of the expenditure, whichever is greater.

Where the expenditure was incurred on or after 29 October 1999 and exceeds ZAR 5,000 the annual deduction is limited to:

- 5% of the expenditure in the case of an invention, patent, copyright, knowledge or other property of a similar nature;
- 10% of the expenditure in the case of a design or other property of a similar nature.

No allowance is allowed in respect of any expenditure incurred on or after 29 October 1999 in respect of the acquisition of any trademark or property of a similar nature.

## INTEREST AND FINANCE CHARGES

Interest incurred in the production of income is a deductible expense. Where the loan or instrument in respect of which interest is incurred complies with certain requirements, such interest is deemed to be incurred on a day-to-day basis. Interest incurred prior to the commencement of trade is deductible in the year in which trade commences. In certain circumstances the interest deduction is limited by means of the application of a complex formula. This is generally the case where interest is paid to a person that is not subject to tax in South Africa or where the interest is due to a reorganisation transaction. For years of assessment ending on or after 30 March 2023, this interest deduction will be subject to the complex formula where interest is paid to a non-resident and the withholding tax rate of 15% is reduced to a lower rate.

## TAX LOSSES

Subject to certain anti-avoidance provisions, company tax losses are carried forward to the following year provided the trading activity is perpetuated and income is derived from that trade. For years of assessment ending on or after 30 March 2023, the ability to apply tax losses of companies is limited to the greater of ZAR 1 million or 80% of taxable income.

For natural persons, tax losses from secondary trades are ring-fenced in certain circumstances.

There is no carry back of assessed losses to prior years.

## INTEREST RECEIVED

Interest received (or accrued) is included in gross income. Where the loan or instrument in respect of which interest is received complies with certain requirements, such interest is deemed to accrue on a day-to-day basis.

## FOREIGN SOURCE INCOME

South African resident individuals and corporates are subject to tax in SA on their worldwide income. However, this general principle may be overridden by the provisions of a double taxation treaty or certain unilateral relief provisions contained in South African tax legislation. A comprehensive set of rules govern the determination of the source of income. Foreign dividends, i.e., dividends paid or payable by a foreign company, in respect of a share in that company are taxable, subject to certain exemptions.

The following foreign dividends are fully exempt from tax:

- If the shareholder (whether alone or together with any other company forming part of the same group of companies as that person) holds at least 10% of the total equity shares and voting rights in the company. This is however subject to certain exclusions.
- If the shareholder is a company which is in the same country as the foreign company paying the dividend.
- If the dividend is in respect of foreign shares listed on the Johannesburg Stock Exchange and from 1 March 2014 includes a dividend in specie.
- If the dividend is declared out of net income which has already been taxed in SA in terms of the legislation regulating the taxation of CFCs, in the hands of the shareholder. Certain limitations apply in respect of this exemption.

Foreign dividends that are not fully exempt from tax are exempt in part based on a specified formula, the effect of which is that the foreign dividend will be subject to an effective 20% tax.



## TAX INCENTIVES

The Department of Trade and Industry provides an additional industrial investment allowance for qualifying industrial assets and projects. No tax holiday scheme is in force.

**Regional headquarter company and investment fund regimes**

A headquarter company regime applies from years of assessment commencing on or after 1 January 2011. Qualifying criteria for a headquarter company are:

- For the duration of the year of assessment each shareholder of the headquarter company must have held at least 10% of the headquarter company's equity shares and voting rights;
- Where the company in question was dormant for a part of the year of assessment in which the qualifying 10% shareholding stands to be determined, the shareholding during the dormant part of the year must be ignored;
- At the end of the year of assessment and all previous years of assessment of that company, 80% or more of the cost of the total assets of the company was attributable to one or more of the following:
  - any interest in equity shares in;
  - any amount loaned or advanced to;
  - any intellectual property that is licensed by the company to any foreign company in which that company (whether alone or together with any other company forming part of the same group of companies as that company) held at least 10% of the equity shares and voting rights (qualifying investments);
  - Where the foreign company in question is dormant, the 80% of the cost of its total assets requirement should be ignored for that part of the year of assessment or previous years of assessment during which it was dormant);
  - For years of assessment commencing 1 January 2013, no regard need be had to any year of assessment in which the company had assets with total market value of ZAR 50,000 or less.
- Where the gross income of that company for that year of assessment exceeds ZAR 5 million, 50% or more of that gross income consisted of amounts in the form of one or both of the following:
  - any rental, dividend, interest, royalty or fee paid or payable by any foreign company that constitutes a qualifying investment; or
  - any proceeds from the disposal of any interest in a foreign company or in intellectual property licensed to a foreign company that constitutes a qualifying investment; and
- The company elects to be classified as a headquarter company.

The SA tax implications of qualifying as a headquarter company are:

- The company is resident in SA for normal tax purposes but is excluded from the definition of a resident for purposes of the corporate roll over rules.
- Dividends declared are not subject to Dividends Tax.
- Dividends received from a headquarter company do not enjoy the general local dividend exemption and are treated as foreign dividends, subject to the foreign dividend taxation rules.
- The disposal of shares by the headquarter company in foreign companies could qualify for CGT exemption in SA in terms of the participation exemption rule.
- No application of transfer pricing rules for back-to-back cross-border loans to foreign companies that constitute qualifying investments.
- No application of transfer pricing rules for back-to-back licensing of intellectual property (losses as result of back-to-back licensing will however be ring-fenced).
- Exemption from the pending withholding tax on interest in respect of back-to-back loans.
- Exemption from withholding tax on royalties in respect of back-to-back royalties paid to a foreign shareholder (applicable from 1 January 2015).
- Exemption from securities transfer tax.

A regional investment fund regime also applies from years of assessment commencing on or after 1 January 2011. Qualifying foreign investors will be regarded as passive investors with no exposure to South African tax because of the use of a South African portfolio manager.

## C. FOREIGN TAX RELIEF

Tax credits are granted in respect of foreign taxes paid on foreign sourced income in accordance with unilateral provisions contained in the Income Tax Act and numerous Double Tax Treaties. Where income is sourced in SA, no foreign tax credit will be allowed but a deduction of the foreign taxes suffered is likely to be allowed.

## D. CORPORATE GROUPS

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Group taxation is not applicable. However, corporate rules exist which provide relief in respect of transactions between group companies and between founding shareholders and their company. The relief provisions deal with the following transactions:

- Asset-for-share transactions;
- Intra-group transactions;
- Unbundling transactions;
- Transactions relating to liquidation, winding-up or deregistration;
- Amalgamation transactions.

Briefly, the corporate rules provide for the following tax relief in respect of the abovementioned transactions, provided certain requirements are met:

- CGT;
- STC (until 31 March 2012);
- Dividends Tax (effective from 1 April 2012);
- Securities transfer tax;
- Income tax, specifically with respect to capital allowances claimed, recovery of capital allowances and the transfer of trading stock;
- Transfer duty;
- VAT.

The corporate rules have been expanded to include most inbound and foreign-to-foreign restructuring transactions that fall within the list of transactions set out above. These rules are complex. However, for the most part they require that the transactions be affected within a group of companies and that only built-in capital gains assets would qualify for the roll over relief.

## E. RELATED PARTY TRANSACTIONS

The Commissioner for the South African Revenue Service is empowered to make adjustments to cross-border transactions between connected persons that are not conducted on arm's length terms. While no specific thin capitalisation rules apply, the normal arm's length transfer pricing principle applies in respect of loans as well. There are also limitations on certain deductions and allowances on transactions between connected parties.

For years of assessment commencing on or after 1 October 2016, entities which enter into cross border transactions with connected persons, and the value of the transactions exceed or are reasonably expected to exceed ZAR 100 million are required to maintain transfer pricing policy documentation. Where the value of a specific transaction exceeds ZAR 5 million, detailed records of the transaction must be maintained.

For years of assessment commencing on or after 1 January 2016, the ultimate parent company of a multinational enterprise (MNE) group that is tax resident in South Africa will be required to file a country-by-country report to the South African Revenue Service. The threshold for reporting is a consolidated turnover of at least ZAR 10 billion in the fiscal year prior to the year in which the report must be submitted. The first report was due for filing from 31 December 2017. However, an extension was granted to 28 February 2018.

## F. WITHHOLDING TAX

Royalty and similar income are subject to withholding taxes at source. The applicable rate increased from 12% to 15% on 1 January 2015. As from 1 July 2013, royalties paid by headquarter companies are exempt from the withholding tax.

A 20% withholding tax on dividends earned by non-residents applies from 1 April 2012. Dividends in specie will be subject to the 20% tax but the company declaring the dividends will be liable for the tax.

A 15% withholding tax on interest paid or payable to non-residents applies from 1 March 2015. Notable exclusions include interest paid on so-called portfolio debt capital, i.e., government bonds, listed securities, debts owing by local banks, domestic brokerage accounts, etc., international bank finance and interest paid by a headquarter company.

There is no withholding tax on cross border consultancy, management and technical fees from a South African source.

## G. EXCHANGE CONTROL

Subject to certain limited exclusions, South African residents are subject to exchange controls. Exchange controls have been relaxed somewhat in recent years. Non-residents are excluded from the ambit of exchange controls.

### Loop structures

As from 1 January 2021, the restriction of loop structures in relation to individuals, corporates and private equity funds has been lifted. The previous regulations permitted a maximum investment of 40% of the equity/and or voting rights in a non-resident company. The change removes the 40% restriction, however, approval must still be sought from the residents authorised dealer. Existing unauthorised loop structures (created prior to 1 January 2021 or where the 40% threshold was exceeded) must still be regularised with SARB.

### Ceasing of Tax Residency

As from 1 March 2021, the concept of exchange control emigration is no longer applicable and has been replaced with the ceasing of tax residence. An emigrant is permitted a foreign capital allowance from assets disclosed as at the date of ceasing of residency of ZAR 10 million (2015: ZAR 4 million) per calendar year.

### Withdrawal of lump sums from retirement funds

As from 1 March 2021, lump-sum withdrawals can be made prior to retirement age where an individual is not a tax resident for an uninterrupted period of three years. Prior to such date, pre-retirement lump-sum withdrawals were only permitted upon exchange control emigration.

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## H. PERSONAL TAX

As a result of the change from a source-based system of taxation to a resident-basis of taxation, SA resident individuals are subject to tax on their worldwide income irrespective of the source of the income, except for certain exclusions. Non-resident individuals, subject to certain exclusions, are subject to tax on their SA-sourced income only. A natural person will be regarded as a resident for tax purposes if he is ordinarily resident in SA or where the person is not ordinarily resident in South Africa but spends more than a certain number of days in SA (the physical presence test).

The income tax rates applicable to natural persons for the tax year ending 28 February 2023 are:

| | |
|---|---|
| ZAR 0 – ZAR 226,000 | 18% of each ZAR 1 |
| ZAR 226,001 – ZAR 353,100 | ZAR 40,680 + 26% of the amount over ZAR 226,000 |
| ZAR 353,101 – ZAR 488,700 | ZAR 73,726 + 31% of the amount over ZAR 353,100 |
| ZAR 488,701 – ZAR 641,400 | ZAR 115,762 + 36% of the amount over ZAR 488,700 |
| ZAR 641,401 – ZAR 817,600 | ZAR 170,734 + 39% of the amount over ZAR 641,400 |
| ZAR 817,601 – ZAR 1,731,600 | ZAR 239,452 + 41% of the amount over ZAR 817,600 |
| ZAR 1,731,601+ | ZAR 614,192 + 45% of the amount over ZAR 1,731,600 |

In respect of the 2022 year of assessment, the first ZAR 23,800 (2013: ZAR 22,800) of local interest earned is exempt from tax for individuals younger than 65 years and the first ZAR 34,500 (2013: ZAR 33,000) for individuals aged 65 years or older.

As from 1 March 2015, natural persons can invest in approved saving instruments, subject to a lifetime investment limit of ZAR 500,000 and an annual investment limit of ZAR 36,000 (2020: 33,000) with the resulting returns which include interest, dividends and capital gains being fully exempt from tax. Where the investment limits are exceeded a 40% penalty will apply to excess amounts invested.

As from 1 March 2020, foreign employment income not exceeding ZAR 1.25 million is exempt, provided the person spends more than 183 days (2020 and 2021 tax years: 117 days), of which at least 60 days is continuous, outside South Africa in any 12-month period commencing or ending during that tax year. Prior to 1 March 2020, foreign employment income was fully exempt provided the same days requirement was met.

Deductions available to salaried employees and directors are restricted to the following:

- Bad debt allowance;
- Doubtful debts allowance;
- Wear and tear allowance;
- Business travel expenses limited to the travel allowance or fringe benefit for the use of a company motor vehicle;
- Pension or retirement annuity fund contributions;
- As from 1 March 2016, provident fund contributions;
- Donations to qualifying Public Benefit Organisations;
- Home office expenses, subject to stringent requirements;
- Legal expenses;
- Prior to 1 March 2015, premiums paid in terms of certain allowable insurance policies;
- As from 1 March 2008, refunded awards for services rendered and refunded restraint of trade awards.

Retirement saving contribution deductions are subject to certain limitations. Medical expenses are not deductible but a tax credit is available in respect of medical scheme contributions/fees. In addition to the medical scheme fees tax credit a further tax credit is available in respect of additional medical expenses, subject to certain limitations.

## LABOUR BROKERS AND PERSONAL SERVICE PROVIDERS

Labour brokers and personal service providers are regarded as employees. A labour broker is a natural person who, for reward, provides a client with other persons to render a service for the client or procures such other persons for the client and remunerates such person. A personal service provider is a company or trust where any service rendered on behalf of the entity to its client is rendered personally by any person who is a connected person in relation to such entity and certain provisions are met.

A labour broker who is not in possession of an exemption certificate will be subject to employees' tax at the rate applicable to individual taxpayers. A personal service provider will be subject to employees' tax at a rate of 28% in the case of a company and 45% in the case of a trust.

Deductions available to deemed employees are limited to remuneration for services rendered, contributions to pension and provident funds, legal expenses, bad debts, rent, finance charges, insurance, repairs and maintenance and fuel, incurred wholly and exclusively for trade.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Withholding tax rates for dividends, royalties and interest (from 1 March 2015) paid to non-residents from SA are set out in the table below. The rates below assume a South African domestic withholding tax rate of 15% as it applies in respect of interest and royalties paid to non-residents from 1 January 2015. For the purposes of dividends, the assumed South African domestic withholding tax rate is 20% as it applies to dividends paid on or after 22 February 2017. For the rates as they would have applied in respect of royalties and dividends paid to non-residents prior to 1 January 2015 and 22 February 2017 respectively, please refer to earlier versions of this guide.

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 20 | 0[1] | 15 | 15 |
| Individuals | 20 | -- | 15 | 15 |
| **Treaty countries:** | | | | |
| Algeria | 15 | 10[2] | 10 | 10 |
| Australia | 15 | 5[3] | 10 | 5 |
| Austria | 15 | 5[4] | 0 | 0 |
| Belarus | 15 | 5[2] | 5/10[26] | 5/10[36] |
| Belgium | 15 | 5[5] | 10 | 0 |
| Botswana | 15 | 10[2] | 10 | 10 |
| Brazil | 15 | 10[2] | 15 | 10/15[37] |
| Bulgaria | 15 | 5[6] | 5 | 5/10[38] |
| Cameroon | 15 | 10[2] | 10 | 10 |
| Canada | 15 | 5[7] | 10 | 6/10[39] |
| Chile | 15 | 5[6] | 5/15[27] | 5/10[40] |
| China | 5 | 5 | 10 | 7/10[41] |
| Chinese Taipei | 15 | 5[7] | 10 | 10 |

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| | Dividends | | Interest | Royalties |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | (%) | (%) |
| Congo (Democratic Republic) | 15 | 5[4] | 10 | 10 |
| Croatia | 10 | 5[2] | 0 | 5 |
| Cyprus | 10 | 5[8] | 0 | 0 |
| Czech Republic | 15 | 5[4] | 0 | 10 |
| Denmark | 15 | 5[2] | 0 | 0 |
| Egypt | 15 | 15 | 12 | 15 |
| Eswatini (formerly Swaziland) | 15 | 10[2] | 10 | 10 |
| Ethiopia | 10 | 10 | 8 | 20 |
| Finland | 15 | 5[8] | 0 | 0 |
| France | 15 | 5[7] | 0 | 0 |
| Germany | 15 | 7.5[9] | 10 | 0 |
| Ghana | 15 | 5[8] | 5/10[28] | 10 |
| Greece | 15 | 5[4] | 8 | 5/7[42] |
| Grenada | --[29] | --[29] | --[29] | --[29] |
| Hong Kong | 10 | 5[7] | 10 | 5 |
| Hungary | 15 | 5[6] | 0 | 0 |
| India | 10 | 10 | 10 | 10 |
| Indonesia | 15 | 10[8] | 10 | 10 |
| Iran | 10 | 10 | 5 | 10 |
| Ireland | 10 | 5[7] | 0 | 0 |
| Israel | 25 | 25 | 25 | 0/4.2[43] |
| Italy | 15 | 5[10] | 10 | 6 |
| Japan | 15 | 5[11] | 10 | 10 |
| Kenya | 10 | 10 | 10 | 10 |
| Korea | 15 | 5[6] | 10 | 10 |
| Kuwait | 0 | 0 | 0 | 10 |
| Lesotho | 15 | 10[8] | 10 | 10 |
| Luxembourg | 15 | 5[4] | 0 | 0 |
| Malawi | --[12] | --[12] | --[12] | 0 |
| Malaysia | 10 | 5[2] | 10 | 5 |
| Malta | 10 | 5[8] | 10 | 10 |
| Mauritius | 10 | 5[8] | 0/10[30] | 5 |
| Mexico | 10 | 5[8] | 10 | 10 |
| Mozambique | 15 | 8[2] | 8 | 5 |
| Namibia | 15 | 5[2] | 10 | 10 |
| Netherlands | 10 | 5/0[13] | 0 | 0 |
| New Zealand | 15 | 5[2] | 10 | 10 |
| Nigeria | 10 | 7.5[8] | 7.5 | 7.5 |
| Norway | 15 | 5[6] | 0 | 0 |
| Oman | 10 | 5[8] | 0 | 8 |
| Pakistan | 15 | 10[8] | 10 | 10 |
| Poland | 15 | 5[4] | 10 | 10 |
| Portugal | 15 | 10[14] | 10 | 10 |
| Qatar | 10 | 5[15] | 10 | 5 |
| Romania | 15 | 15 | 15 | 15 |
| Russia | 15 | 10[16] | 10 | 0 |
| Rwanda | 20 | 10[2] | 10 | 10 |
| Saudi Arabia | 10 | 5[15] | 5 | 10 |
| Seychelles | 10 | 5[8] | 0 | 0 |
| Sierra Leone | --[31] | --[31] | --[31] | --[31] |
| Singapore | 10 | 0[17]/5[8] | 0/7.5[32] | 5 |
| Slovak Republic | 15 | 5[6] | 0 | 10 |
| Spain | 15 | 5[4] | 5 | 5 |
| Sweden | 15 | 5/0[18] | 0 | 0 |
| Switzerland | 15 | 5[19] | 5 | 0 |
| Tanzania | 20 | 10[20] | 10 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Thailand | 15 | 10[2] | 0/10/15[33] | 15 |
| Tunisia | 10 | 10 | 5/12[34] | 10 |
| Turkey | 15 | 10[4] | 10 | 10 |
| Uganda | 15 | 10[2] | 10 | 10 |
| Ukraine | 15 | 5[21] | 10 | 10 |
| United Arab Emirates | 10 | 5[22] | 10 | 10 |
| United Kingdom | 10/15[23] | 5[8] | 0 | 0 |
| United States | 15 | 5[24] | 0 | 0 |
| Zambia | --[25] | --[25] | --[25] | 0 |
| Zimbabwe | 10 | 5[6] | 0/5 | 10 |

Note: the above rates are provided as a guide only. A number of DTTs provide for alternative rates, including zero, to be applied in specific circumstances. The DTTs are available on www.sars.gov.za

1. Any dividend is exempt from dividends tax when the beneficial owner is, among others, a person that is not a resident and the foreign dividend is paid in respect of a share that is listed on a recognized South African securities exchange and does not consist of a dividend in kind.
2. The reduced rate applies if the beneficial owner is a company which holds at least 25% of the capital of the dividend-paying company.
3. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the voting power in the dividend-paying company.
4. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
5. The 5% reduced rate applies if the beneficial owner is a company which holds directly or indirectly at least 25% of the capital of the dividend-paying company.
6. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company.
7. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company.
8. The reduced rate applies if the beneficial owner is a company which holds at least 10% of the capital of the dividend-paying company.
9. The 7.5% reduced rate applies if the beneficial owner is a company (excluding partnerships) which owns directly at least 25% of the voting shares of the dividend-paying company.
10. The 5% reduced rate applies if the beneficial owner is a company which has owned at least 25% of the capital of the dividend-paying company for a 12-month period ending on the date the dividend is declared.
11. The 5% reduced rate applies if the beneficial owner is a company which owns at least 25% of the voting shares of the dividend-paying company during the period of six months immediately before the end of the accounting period for which the distribution of profits takes place.
12. The 1971 treaty between South Africa and Malawi does not deal with the taxation of these items of income.
13. The 5% reduced rate applies if the beneficial owner is a company which holds at least 10% of the capital of the dividend-paying company. However, by virtue of a most favoured nation clause, (introduced by the 2008 protocol to the treaty), the rate is reduced to 0% for such qualified dividends. Under the MFN clause in the South Africa-Sweden treaty, (introduced by the 2010 protocol), the rate for qualified dividends has been reduced to 0%. The rate in the South Africa-Sweden treaty was reduced to 0% by way of the South Africa-Kuwait treaty. For further information, see Case No. 14287 of 12 June 2019, published by the South African Revenue Service (SARS). See also footnote 18 hereafter.
14. The 10% reduced rate applies if the beneficial owner is a company that, for an uninterrupted period of two years prior to the payment of the dividend, owns directly at least 25% of the capital stock (capital social) of the dividend-paying company.
15. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
16. The 10% reduced rate applies if Russian residents hold at least 30% of the capital of the dividend-paying company and have directly invested in the equity share capital (authorised fund) of that company an amount of not less than USD 100,000 or the equivalent thereof in South African currency (ZAR).
17. Dividends paid by a South Africa resident company to the government of Singapore are exempt from withholding tax.
18. The 5% reduced rate applies if the beneficial owner holds at least 10% of the capital of the dividend-paying company. However, the wording of the most favoured nation clause (introduced by the 2010 protocol to the treaty) suggests that the 5% rate is reduced to 0% for such qualified dividends as the rate for qualified dividends is 0% under the South Africa-Kuwait tax treaty. See also footnote 13.
19. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company.
20. The 10% reduced rate applies if the beneficial owner is a company which holds at least 15% of the capital of the dividend-paying company.
21. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds at least 20% of the capital of the dividend-paying company.
22. The 5% reduced rate applies if the beneficial owner is a company the capital of which is wholly or partly divided into shares which holds directly at least 10% of the capital of the dividend-paying company.
23. The 15% rate applies to qualifying dividends paid by a property investment company.
24. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the voting stock of the dividend-paying company.
25. The 1956 treaty between South Africa and Zambia does not deal with the taxation of these items of income.
26. The 5% reduced rate applies if the interest is derived by a bank or any other financial institution.
27. The 5% reduced rate applies if the interest is derived from (i) loans granted by banks and insurance companies (ii) bonds or securities that are regularly and substantially traded on a recognised securities market (iii) a sale on credit paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of the machinery and equipment.
28. The 5% reduced rate applies if the interest is derived by a bank.
29. The 1960 Grenada-South Africa treaty, which is an extension from a 1946 convention between the United Kingdom and South Africa, does not deal with the taxation of these items of income.

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30. The 0% rate applies if (i) the payer of the interest is the South Africa government or a political subdivision or a local authority thereof (ii) the interest is paid to the Mauritius government or a political subdivision or a local authority thereof (iii) the interest is paid by the South Africa Central Bank to the Mauritius Central Bank (iv) the interest is paid to any institution or body which is wholly owned, directly or indirectly, by Mauritius or a political subdivision or a local authority thereof (v) the interest arises in respect of any debt instrument listed on a recognised stock exchange.
31. The 1960 Sierra Leone-South Africa treaty, which is an extension from a 1946 convention between the United Kingdom and South Africa, does not deal with the taxation of these items of income.
32. The 0% rate applies if (i) the interest is paid by the South Africa government (ii) the interest is paid to the Singapore government (iii) the interest arises in respect of any debt instrument listed on a recognised stock exchange.
33. The 10% reduced rate applies if the interest is received by a financial institution (including an insurance company). The 0% rate applies if interest is paid to the Thai government (i.e. among others the Bank of Thailand and the Export-Import Bank of Thailand).
34. The 5% reduced rate applies to interest in respect of loans made by banks.
35. The 0% rate applies if (i) the payer of the interest is the South Africa government or a political subdivision or a local authority thereof (ii) the interest is paid to the Zimbabwe government or a political subdivision or a local authority thereof (iii) the interest is paid by the South Africa Central Bank to the Zimbabwe Central Bank (iv) the interest is paid to any institution or body which is wholly owned, directly or indirectly, by Zimbabwe or a political subdivision or a local authority thereof (v) the interest arises in respect of any debt instrument listed on a recognised stock exchange.
36. The 5% reduced rate applies if royalties are paid for the use of, or the right to use, industrial, commercial or scientific equipment, or transport vehicles.
37. The 15% rate applies to royalties arising from the use of, or the right to use, trademarks. The 10% rate applies in all other cases.
38. The 5% reduced rate applies to (i) copyright royalties and other similar payments in respect of the production or reproduction of any cultural, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films and works on film or videotape or other means of reproduction for use in connection with television) (ii) royalties paid for the use of industrial, commercial or scientific equipment. The 10% rate applies in all other cases.
39. The 6% reduced rate applies to (i) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting) (ii) royalties for the use of, or the right to use, computer software (iii) royalties for the use of, or the right to use, any patent or any information concerning industrial, commercial or scientific experience (but not including any such information provided in connection with a rental or franchise agreement). The 10% rate applies in all other cases.
40. The 5% reduced rate applies if royalties are paid for the use of, or the right to use, industrial, commercial or scientific equipment.
41. The 7% reduced rate applies to payments of any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment. The 10% rate applies in all other cases.
42. The 5% reduced rate applies to payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films, tapes or discs or any other media for television or radio broadcasting.
43. The 0% rate applies to royalties derived by a resident of Israel who is subject to tax in Israel in respect thereof. The 4.2% rate (being the corporate income tax rate (28%) applied on 15% of the gross amount of the royalty) applies depending on the type of royalties.

## SOUTH KOREA

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Seoul | Jooil Park | +82 2 3011 1100<br>jooil.park@pkr.kr |

### BASIC FACTS

| | |
|---|---|
| Full name: | The Republic of Korea |
| Capital: | Seoul |
| Main languages: | Korean |
| Population: | 51.63 million (2022 estimate) |
| Monetary unit: | South Korean Won (KRW) |
| Internet domain: | .kr |
| Int. dialling code: | +82 |

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### KEY TAX POINTS

- Corporate Income Tax: Domestic corporations are taxed on their worldwide income, whereas foreign corporations are taxed only on their Korean-source income. The corporate income tax rates vary from 11% (including local income tax) to 27.5% (including local income tax) depending on the level of total taxable income for the year.
- Value Added Tax: VAT is imposed at a rate of 10% on supplies of goods and services. However, zero-rated VAT or exemption is applied to certain supply of goods and services.
- Individual Income Tax: Any person domiciled in Korea or having resided in Korea for 183 days or longer is subject to individual income tax on his/her worldwide income (i.e. Korean-sourced income and foreign-sourced income). Individuals are taxed at progressive rates from 6.6% (including local income tax) to 49.5% (including local income tax) depending on their total taxable income for the year.
- Withholding Tax: Taxes are required to be withheld at rates ranging from 2.2% to 22%, from certain cross-border payments made to non-resident individuals or corporations without a permanent establishment in Korea, unless exempted or reduced under a relevant double tax treaty.

## A. TAXES PAYABLE

### TAX LAWS AND REGULATIONS

Taxes in Korea are comprised of national and local taxes. While national taxes, imposed by the central government, are divided into internal taxes and customs duties, local taxes are imposed by three-tier local authorities – province, city and county. Internal taxes consist of direct taxes (individual income tax, corporate income tax, inheritance and gift tax and comprehensive real estate tax), indirect taxes (VAT, individual consumption tax, liquor tax, stamp tax and securities transaction tax) and three earmarked taxes (transportation, energy and environment tax (or TEE tax), education tax and agriculture and fishery community special tax).

Presidential Decrees can be formulated by the executive branch of the Korean legal system in order to enforce the tax laws. The Minister of Strategy and Finance also formulates Ministerial Decrees to enforce the Presidential Decree and to publish rulings and authoritative interpretations of the laws. In addition to the Presidential and Ministerial Decrees, the Commissioner of the National Tax Service (NTS) may issue administrative orders and rules to ensure consistent application of the laws. The courts have the final authority in interpreting the tax laws. In this regard, taxpayers are not generally bound by such interpretations by the tax authorities, except for advance rulings.

### CORPORATE INCOME TAX

Corporate income tax is imposed by the central government under Corporate Income Tax Law ("CITL"). There are two classifications of corporate taxpayers in Korea, i.e. Domestic Company vs. Foreign Company and Profit-making Corporation vs. Non-profit Corporation. For tax purposes, if a company has its head office or principal place of business in Korea or the place of effective management is located in Korea, the company is deemed to be a domestic company. While a domestic company is liable for taxes on its worldwide income, a foreign company is taxed on Korean-sourced income only.

Corporate income tax rates are as follows:

| Taxable income (Tax base) | Tax rates (including local income tax) |
|---|---|
| Under KRW 200 million | 11% |
| From KRW 200 million to KRW 20 billion | KRW 22 million + 22% in excess of KRW 200 million |
| From KRW 20 billion to KRW 300 billion | KRW 4.378 billion + 24.2% in excess of KRW 20 billion |
| In excess of KRW 300 billion | KRW 72.138 billion + 27.5% in excess of KRW 300 billion |

Corporate taxpayers are liable for the alternative minimum tax before certain tax deductions and tax credits:

- For small and medium-sized companies: 7%(*) of taxable income (before tax incentives); and
- For other corporations: 10%(*) on taxable income (before tax incentives) up to KRW 10 billion, 12%(*) of taxable income exceeding KRW 10 billion but up to KRW 100 billion and 17%(*) of taxable income exceeding KRW 100 billion.

(*) Local income tax rate (i.e. 10% of corporate income tax rate) which will increase the total tax rate is not taken into account.

### VALUE ADDED TAX (VAT)

VAT is a broad base consumption tax aimed at taxing the end consumers of the goods and services. If an entity or person engages in supplies of goods or services independently in the course of carrying on business, such supplies of goods or services attract VAT. Furthermore, supplies of goods or services for business purposes are VAT chargeable, regardless of whether the business aim is to make profit.

VAT taxpayers include individuals, corporations, national and local governments, associations of local authorities, any bodies of persons, and unincorporated organisations.

VAT taxpayers must file a quarterly VAT return to declare output VAT and input VAT. After filing the VAT return, VAT taxpayers will pay or receive the net VAT payable or refundable, amounting to the difference between the output VAT and the input VAT. Imported goods are also subject to VAT.

The standard VAT rate is 10%. The export of goods and the provision of certain cross-border services are zero-rated. However, zero-rated VAT is applied to certain supplies of goods and services (e.g. exports of goods and provision of eligible services to non-resident customers or clients) and an exemption is applied to certain supplies of goods and services (e.g. basic life necessities, finance and insurance services and duty-exempt goods).

Electronic VAT invoicing is required pursuant to the VAT law. If a taxpayer fails to issue the electronic VAT invoice or to report electronically to the tax authority, the relevant penalty tax shall be levied



## B. DETERMINATION OF TAXABLE INCOME

The tax base of corporate income tax is defined as revenue minus expenses incurred in the operation of the business. Expenses can be deducted for tax purposes if they are incurred wholly and exclusively for producing income, unless specifically disallowed or restricted under appropriate tax laws and regulations (e.g. entertainment expenses exceeding the prescribed limits, non-business expenses, excessive or unreasonable expenses, penalties, fines, losses on valuation, etc.).

### TRADING STOCK / INVENTORY

Securities can be valued using either the weighted average cost method or the moving average cost method. Also, a taxpayer can choose the individual cost method for the valuation of bonds.

A corporation may elect one of the following methods for inventory valuation and submit a report on its valuation method by the due date. The method elected is required to be applied consistently every year unless an application for change has been submitted three months before year-end at the latest.

1. Cost method:
   a) Individual cost method;
   b) First-in first-out method (FIFO);
   c) Last-in first-out method (LIFO);

   d) Weighted average cost method;
   e) Moving average cost method;
   f) Gross profit method.
2. Lower of cost or market price (LCM).

## CAPITAL GAINS AND LOSSES

Capital gains derived by a company are regarded as assessable income that should be included in the calculation of its tax base for corporate income tax purposes, unless such capital gains are derived from capital transactions such as capital surplus or gains on reduction of paid-in capital.

However, a company's disposals of non-business purpose land or houses attract an additional corporate income tax at the rate of 10% (or 40% in case of non-registered land or houses) on top of the regular corporate income tax attributed to the capital gain already included in the tax base. Therefore, such capital gains are taxed twice under the CITL in Korea.

## DIVIDENDS

Dividends paid by domestic companies in Korea are taxed at the level of the corporate recipient. However, to avoid double taxation on the dividend income earned by the corporate recipient, the prescribed portion of such dividend income is excluded from the calculation of the tax base of the corporate recipient. For instance, in case of a holding company established in accordance with Anti-trust and Fair Trade Law, its dividend income paid by its subsidiaries is not taxable to the extent of the exclusion ratio specified under CITL. Likewise, a corporation other than a holding company is not taxed on dividends paid by its subsidiaries up to the prescribed exclusion ratio under CITL.

Foreign-sourced dividends received by a domestic entity in Korea are also subject to corporate income tax. In order to avoid double taxation on the foreign-sourced dividend income, taxes imposed by foreign governments on such foreign-sourced dividends are allowed as a foreign tax credit up to the foreign tax credit limit.

## INTEREST DEDUCTIONS

Interest expenses incurred in the ordinary course of business are tax deductible. However, interest expenses are not deductible if such expenses are incurred in respect of non-business activities, etc.

### Limiting Base Erosion Involving Interest Deductions

- Debt-based interest deduction limitation ("Thin Capitalisation Rules")

Where a domestic corporation borrows funds from its foreign controlling shareholder, or from a third party under a payment guarantee provided by its foreign controlling shareholder (including the offer of a collateral etc. for the guarantee of payment), and such borrowing exceeds twice (or six times for financial institutions) the share capital contributed by the relevant foreign controlling shareholder to the domestic corporation, the portion of total interest paid and discount on the borrowing that corresponds to the excess amount over the foregoing threshold shall not be tax deductible and is re-characterised into a deemed dividend paid to the foreign controlling shareholder or a deemed other outflow paid to the third party. The domestic corporation would furthermore be required to adjust the withholding tax which has already been withheld at the time of the payment of interest income to the foreign controlling shareholder or the third party in such a way that the above is taken into account.

- Income-Based interest deduction limitation ("Income Base Rules")

From the fiscal year which commences at 1 January 2019 and thereafter, if the net interest expense on funds borrowed by a domestic corporation from its foreign related parties exceeds 30% of the adjusted gross income, the excess amount shall not be tax deductible and is re-characterised into a deemed other outflow. Net interest expense can be calculated as interest paid and discount on the borrowing from the foreign related parties less the amount of interest income received from the foreign related parties. Adjusted gross income is the income before depreciation and the net interest expense referred to above.

- Interest deduction limitation in relation to Hybrid Financial Instrument Transactions ("Hybrid Financial Instrument Transaction Rules")

From the fiscal year commencing at 1 January 2018 onwards, interest paid and discount on the borrowing of a domestic corporation in relation to transactions involving prescribed hybrid financial instruments with a foreign related party are not tax deductible if the foreign related party treats the interest received (including the discount) as dividend income that is either 1) not included as taxable income or 2) taxable only up to less than 10% of the dividend income, according to the laws and rules of the jurisdiction in which the foreign related party is located, within the end of the fiscal year commencing within 12 months from the end of the fiscal year in which the domestic corporation bears the interest and the discount. The non-deductible interest and discount according to the Hybrid Financial Instrument Transaction Rules would be re-characterised into a deemed other outflow.

Where both Thin Capitalisation Rules and Income Base Rules can be applicable, the one with larger non-deductible expenses shall be applied. If the amounts calculated according to both rules are the same, Thin Capitalisation Rules shall apply. Thin Capitalisation Rules and Income Base Rules shall take precedence over Hybrid Financial Instrument Transaction Rules.



## LOSSES

Deductions denote expenses or outgoings that decrease the net assets of a corporate taxpayer, except for return of capital and appropriation of surplus or unless otherwise stipulated under the CITL. In this respect, a loss for tax purposes is considered to be the deduction in excess of taxable revenue. Unutilised tax losses can be carried forward for up to 10 years. However, as from 2016 a company can only deduct the loss carry-forward up to 80% (70% for a fiscal year starting in the year 2018 and 60% for a fiscal year starting in the year 2019 and thereafter) of its tax base for a particular year under the CITL, except for small and medium-sized enterprises and certain qualifying companies under recovery process, etc.

## FOREIGN SOURCE INCOME

As domestic corporations are subject to corporation tax on a worldwide basis, their foreign source income is also taxable. The tax treatment of foreign income is generally the same as for Korean-sourced income.

## TAX INCENTIVES

Various tax incentives aimed at achieving specific national economic objectives have been provided under domestic tax law. For example, Special Tax Treatment Control Law provides various tax incentives to stimulate R&D activities including a tax credit for research and manpower development expenses and a tax credit for investment in facilities for technology and human resources development. A domestic company may be liable for the alternative minimum tax (see higher under "CORPORATE INCOME TAX") before certain tax deductions and tax credits, subject to certain exceptions.

## C. FOREIGN TAX CREDIT

Where a domestic corporation pays or is liable to pay income tax abroad, the amount of tax paid or payable abroad is allowed as a tax credit against corporate income tax up to an amount equivalent to the ratio of the foreign sourced income to total worldwide taxable income. If the foreign tax paid or payable for a fiscal year exceeds the prescribed foreign tax credit limit, the excess of the tax credit may be carried forward for up to 10 years.

An indirect foreign tax credit is also available. Foreign taxes paid by a qualifying subsidiary may be creditable against corporate income tax payable by a parent company, attributable to its dividend income. In this regard, a qualifying subsidiary means a corporation the shares of which are owned for 25% or more by a domestic corporation for more than six consecutive months prior to the date of dividend declaration.

## D. CORPORATE GROUPS

As from tax year 2010 a consolidated tax return system is in effect, the scope of which is limited to parent-subsidiary companies with 100% ownership, subject to certain technical exceptions that only allow a 5% deviation. Sister companies may join a group indirectly through a common parent company. Under the consolidated tax regime, the parent company pays corporate tax for the group, and the subsidiaries pay their share of corporate tax to the parent company. Companies in a group assume the tax liability jointly and severally. Tax consolidation can only be elected once every 5 years.

## E. RELATED PARTY TRANSACTIONS

Pursuant to the Law for Coordination of International Tax Affairs (the "LCITA") and its regulations in Korea, foreign related party transactions must meet the arm's length principle. When a price charged between related parties is not at arm's length and the Korean tax authorities therefore consider that the corporate income tax is unreasonably reduced, they could recalculate the corporation's taxable income using what is considered to be an arm's length price or margin.

The LCITA regulates transfer pricing issues surrounding cross-border transactions with foreign related parties. Cross-border transactions are defined under the LCITA as transactions where one party or both parties are foreign entities. Therefore, if a domestic company enters into any transaction with its foreign related parties, the transaction would be subject to transfer pricing regulations in Korea. The Korean transfer pricing rules generally follow the OECD guideline whereby the price for transactions between related parties should be determined at arm's length. Therefore, if the domestic company does not recognize arm's length revenue or expenses in relation to the transactions with its foreign related parties, the transfer pricing rules would be triggered to force the domestic company to recognize the arm's length income or expenses.

Similarly, under the CITL, the tax authorities may also reject the transaction of a company with its specially-related party if the transaction price is higher or lower than the market price, and may assess tax on the basis of the market price ("Principle of Rejecting Unfair Transaction"). Under the CITL, in case of a transaction price continuously used in arm's length transactions with third parties (other than with specially-related parties) or a transaction price generally used in transactions between unrelated parties, then such transaction price can be treated as the market price. If the market price cannot be determined based on the foregoing method, however, the market price can be determined by an appraisal price (excluding shares) or the value calculated according to the method stipulated in the Inheritance and Gift Tax Law of Korea.

## F. WITHHOLDING TAX

### Corporate income tax

A person paying interest income and distribution of profit from securities investment trusts to a domestic company is required to withhold the corporate income tax on such income at the rate of 14% (15.4% including local income tax). Regarding the interest from a non-commercial loan, the withholding tax rate is 25% (27.5% including local income tax).

### Individual income tax

A person paying interest, dividends, business income, salary income, pension income, retirement income or other income to a resident is required to withhold the individual income tax on such income. For the reference, interest income except the interest from non-commercial loans or excess refund from a workplace mutual-aid association and dividend income except dividend of joint investment business operators are subject to withholding tax at the rate of 14% (15.4% including local income tax).

## G. PERSONAL INCOME TAX

Any person domiciled in Korea or having resided in Korea for 183 days or longer is subject to individual income tax on his/her worldwide income, i.e. both Korean-sourced income and foreign-sourced income. Resident individuals are subject to the following progressive tax rates based on their taxable base. Various personal reliefs are available to resident individuals.

Individual income can be classified into global income, capital gains and severance pay under the Income Tax Law. Each of them is subject to tax under a unique tax calculation structure. Global income includes interests, dividends, business income, wages and salaries, pension income and other income.

Basic individual income tax rates are as follows:

| Tax base of global income (KRW) | Tax Rates (including local income tax) (KRW) |
|---|---|
| 12 million or less | 6.6% of tax base |
| 12 million – 46 million | 0.792 million + 16.5% of the amount exceeding 12 million |
| 46 million – 88 million | 6.402 million + 26.4% of the amount exceeding 46 million |
| 88 million – 150 million | 17.49 million + 38.5% of the amount exceeding 88 million |
| 150 million – 300 million | 41.36 million + 41.8% of the amount exceeding 150 million |
| 300 million – 500 million | 104.06 million + 44% of the amount exceeding 300 million |
| 500 million – 1 billion | 192.06 million + 46.2% of the amount exceeding 500 million |
| In excess of 1 billion | 423.06 million + 49.5% of the amount exceeding 1 billion |

A Korean citizen is considered a tax resident in Korea if he or she normally resides in Korea. Korean public officials working overseas and directors and personnel dispatched to foreign affiliates of a Korean resident employer are deemed tax residents in Korea.

A foreigner is considered a resident in Korea for tax purposes, if he or she resides in or undertakes employment in Korea for 183 days or more during the year. A foreigner can opt for a flat tax rate of 20.9% (including local income tax) on Korean-sourced earned income without claiming a tax deduction for 5 years from the year of his or her first employment in Korea, provided that he or she commences his or her employment in Korea by 31 December 2023.

## H. TAXATION OF NON-RESIDENTS

### Corporate Income Tax

Resident corporations are taxed on their worldwide income, whereas non-resident corporations are taxed only to the extent of their Korean-sourced income. Non-resident corporations without a permanent establishment in Korea are generally subject to a withholding tax on Korean-sourced income.

| | Resident corporation | Non-resident corporation |
|---|---|---|
| **Definition** | A corporation having its head office or principal office, or a place of effective management in Korea | Any corporation not regarded as a resident corporation |
| **Taxable place** | Head or principal office or a place of effective management | Permanent establishment or place of income source |
| **Tax liability** | Worldwide income | Korean-sourced income |
| **Methods of taxation** | Global taxation | Global taxation (In case of having a permanent establishment in Korea)<br><br>Withholding tax (In case of having no permanent establishment in Korea) |

### Individual Income Tax

A non-resident individual is liable for tax on income derived from sources within Korea. Two methods of taxation are applied: global taxation and separate withholding taxation. Global taxation is applied to non-resident taxpayers who have a place of business in Korea or those with income from real estate located in Korea (excluding capital gains from the transfer of land, buildings or certain securities). All domestic source income is subject to global taxation, except for severance pay and capital gains, all of which are taxed in the same manner as if they would be earned by a resident. Withholding taxation is applied to each domestic item of income of non-residents who do not have a place of business in Korea and do not have income from real estate located in Korea.

| | Resident individual | Non-resident individual |
|---|---|---|
| **Definition** | Residence or domicile in Korea for more than 183 days | Any person not deemed a resident |
| **Taxable place** | Residence or domicile | Place of business (fixed base) or place of income source |
| **Tax liability** | Worldwide income | Korean-sourced income |
| **Methods of taxation** | Global Taxation<br><br>Scheduled taxation for capital gains and retirement income<br><br>Withholding taxation | Global taxation (In case of having a fixed base in Korea)<br><br>Scheduled taxation for capital gains and retirement income<br><br>Withholding taxation |

### Withholding Tax Rates

Withholding tax rates for non-resident corporations without a permanent establishment in Korea and non-resident individuals without a place of business in Korea are as follows:

| Items of Income | Tax rates (including local income tax) (*) |
|---|---|
| Interest | 22% (15.4% in case of interest on bonds) |
| Dividends | 22% |
| Lease Income | 2.2% |
| Business Income | 2.2% |
| Independent Personal Services | 22% (3.3% in case of income deemed accrued in Korea under a tax treaty) |
| Capital Gains Income | Lesser of 11% of sales price or 22% of capital gains |
| Royalties | 22% |
| Capital Gains from Securities Transaction | Lesser of 11% of sales price or 22% of capital gains |
| Other Income | 22% |

* If there is a tax treaty between Korea and the country of a non-resident, the reduced tax rate stipulated in the applicable treaty applies to such income derived by the non-resident.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Taxes are required to be withheld at applicable rates, ranging from 2.2% to 22%, from certain cross-border payments made to non-resident individuals or corporations without a permanent establishment in Korea, unless exempted or reduced under the relevant tax treaty.

As of the end of March 2022, Korea has entered into bilateral tax treaties with 94 countries globally. The chart below shows the withholding tax rates applicable under the Korea tax treaties that are currently in force. The applicable domestic withholding tax rate will apply if such a rate is lower than the reduced rate under the tax treaty or if there is no tax treaty. There are various reduced rates under the tax treaty applicable to residents of the following tax treaty countries. As for dividends, interest, and royalties, set out below are the reduced tax rates under applicable tax treaties.

| | Dividends (%) | Interest[36] (%) | Royalties (%) |
|---|---|---|---|
| **Domestic rates** | | | |
| Companies | 20[1] | 14/20[1] | 20[1] |
| Individuals | 20[1] | 14/20[1] | 20[1] |
| **Treaty countries:** | | | |
| Albania | 5/10[2] | 10 | 10 |
| Algeria | 5/15[2] | 10 | 2/10[38] |
| Australia | 15 | 15 | 15 |
| Austria | 5/15[2] | 10 | 2/10[38] |
| Azerbaijan | 7 | 10 | 5/10[39] |
| Bahrain | 5/10[2] | 5 | 10 |
| Bangladesh | 10/15[3] | 10 | 10 |
| Belarus | 5/15[2] | 10 | 5 |
| Belgium | 15 | 10 | 10 |
| Brazil | 10/15[4] | 10/15[25] | 15/2[59] |
| Brunei | 5/10[2] | 10 | 10 |
| Bulgaria | 5/10[5] | 10 | 5 |
| Cambodia[14] | 10 | 10 | 10 |
| Canada | 5/15[2] | 10 | 10 |
| Chile | 5/10[6] | 10/15[26] | 5/15[38] |
| China | 5/10[2] | 10 | 10 |
| Colombia | 5/10[7] | 10 | 10 |
| Croatia | 5/10[2] | 5 | 0 |
| Czech Republic | 5/10[2] | 5 | 0/10 |
| Denmark | 15 | 15 | 10/15[40] |
| Ecuador | 5/10[3] | 12 | 5/12[38] |
| Egypt | 10/15[10] | 10/15[27] | 15 |
| Estonia | 5/10[2] | 10 | 5/10[41] |
| Ethiopia | 5/8[2] | 0/7.5 | 5 |
| Fiji | 10/15[10] | 10 | 10 |
| Finland | 10/15[10] | 10 | 10 |
| France | 10/15[3] | 10 | 10 |

| | Dividends (%) | Interest36 (%) | Royalties (%) |
|---|---|---|---|
| Gabon | 5/15[2] | 10 | 10 |
| Georgia | 5/10[8] | 0/10[28] | 10 |
| Germany | 5/15[2] | 10 | 2/10[38] |
| Greece | 5/15[2] | 8 | 10 |
| Hong Kong | 10/15[10] | 10 | 10 |
| Hungary | 5/10[2] | 0 | 0 |
| Iceland | 5/15[2] | 10 | 10 |
| India | 15 | 10 | 10 |
| Indonesia | 10/15[10] | 10 | 15 |
| Iran | 10 | 10 | 10 |
| Ireland | 10/15[11] | 0 | 0 |
| Israel | 5/10/15[12] | 0/7.5/10[29] | 2/5[38] |
| Italy | 10/15[10] | 10 | 10 |
| Japan | 5/15[13] | 10 | 10 |
| Jordan | 10 | 10 | 10 |
| Kazakhstan | 5/15[8] | 10 | 10 |
| Kenya | 8/10[15] | 12 | 10 |
| Kuwait | 5 | 5 | 15 |
| Kyrgyzstan | 5/10[2] | 10 | 5/10[38] |
| Laos | 5/10[8] | 10 | 5 |
| Latvia | 5/10[2] | 10 | 5/10[41] |
| Lithuania | 5/10[2] | 10 | 5/10[41] |
| Luxembourg | 10/15[3] | 0/5/10[30] | 5/10[42] |
| Malaysia | 10/15[10] | 15 | 10/15[43] |
| Malta | 5/15[2] | 10 | 0 |
| Mexico | 0/15[16] | 5/15[30] | 10 |
| Mongolia | 5 | 5 | 10 |
| Morocco | 5/10[2] | 10 | 5/10[44] |
| Myanmar | 10 | 10 | 10/15[45] |
| Nepal | 5/10/15[37] | 10 | 15 |
| Netherlands | 10/15[10] | 10/15[31] | 10/15[46] |
| New Zealand | 15 | 10 | 10 |
| Norway | 15 | 15 | 10/15[46] |
| Oman | 5/10[8] | 5 | 8 |
| Pakistan | 10/12.5[18] | 12.5 | 10 |
| Panama | 5/15[2] | 5 | 3/10[38] |
| Papua New Guinea | 15 | 10 | 10 |
| Peru | 10 | 15 | 10/15[47] |
| Philippines | 10/25[10] | 10/15[32] | 15 |
| Poland | 5/10[8] | 10 | 5 |
| Portugal | 10/15[19] | 15 | 10 |
| Qatar | 10 | 10 | 5 |
| Romania | 7/10[20] | 10 | 7/10[48] |
| Russia | 5/10[21] | 0 | 5 |
| Saudi Arabia | 5/10[2] | 5 | 5/10[38] |
| Serbia | 5/10[2] | 10 | 5/10[49] |
| Singapore | 10/15[10] | 10 | 15 |
| Slovak Republic | 5/10[2] | 10 | 0/10[50] |
| Slovenia | 5/15[2] | 5 | 5 |
| South Africa | 5/15[2] | 10 | 10 |
| Spain | 10/15[10] | 10 | 10 |

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| | Dividends (%) | Interest[36] (%) | Royalties (%) |
|---|---|---|---|
| Sri Lanka | 10/15[10] | 10 | 10 |
| Sweden | 10/15[10] | 10/15[33] | 10/15[46] |
| Switzerland | 5/15[8] | 5/10[30] | 5 |
| Tajikistan | 5/10[2] | 8 | 10 |
| Thailand | 10 | 10/15[34] | 5/10/15[51] |
| Tunisia | 15 | 12 | 15 |
| Turkey | 15/20[22] | 10/15[35] | 10 |
| Turkmenistan | 10 | 10 | 10 |
| Ukraine | 5/15[7] | 5 | 5 |
| United Arab Emirates | 5/10[8] | 10 | 10 |
| United Kingdom | 5/15[23] | 10 | 2/10[38] |
| United States | 10/15[24] | 12 | 10/15[52] |
| Uruguay | 5/15[7] | 10 | 10 |
| Uzbekistan | 5/15[2] | 5 | 2/5[38] |
| Venezuela | 5/10[8] | 5/10[30] | 5/10[38] |
| Vietnam | 10 | 10 | 5/15[45] |

Notes:

1. Dividends received by non-residents are subject to withholding tax at 20% (22% including 10% local income tax). Interest received by non-residents is subject to withholding tax at 20% (22% including 10% local income tax). A rate of 14% (15.4% including local income tax) applies to interest on bonds issued by the central government, local government or a resident corporation. Royalties received by non-residents are subject to withholding tax at 20% (22% including local income tax).
2. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
3. The 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
4. The treaty rate is 15%. However, under the application of a most favoured nation clause based on the Brazil-Israel treaty, the rate is reduced to 10% regarding participations of at least 25% of capital.
5. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 15% of the capital of the dividend-paying company.
6. The 5% rate applies if the beneficial owner is a company that controls directly or indirectly at least 25% of the voting power in the dividend-paying company.
7. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company.
8. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
9. The 25% rate applies to royalties arising from the use or the right to use trademarks. 15% applies in all other cases.
10. The 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
11. The 10% rate applies if the beneficial owner is a company which controls directly or indirectly 10% or more of the voting power in the dividend-paying company.
12. The 5% rate applies if the beneficial owner is a company which holds directly or indirectly at least 10% of the dividend-paying company. The 10% rate applies if the beneficial owner is a company which holds 10% of the capital of the dividend-paying company where the latter is a Korean resident and the dividends are paid out of profits which are subject to Korean tax at a lower rate than the normal corporate tax rate. The 15% rate applies in all other cases.
13. The 5% rate applies if the beneficial owner is a company which owns at least 25% of the voting shares issued by the dividend-paying company during the period of 6 months immediately before the end of the accounting period for which the profits distribution takes place.
14. Effective date: 1 January 2022.
15. The 8% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
16. The 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
17. The 5% rate applies if the beneficial owner is a company which holds directly at least 25% of the shares of the dividend-paying company. The 10% rate applies if the beneficial owner is a company which holds directly at least 10% of the shares of the dividend-paying company. The 15% rate applies in all other cases.
18. The 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company and the latter is engaged in an industrial undertaking.
19. The 10% rate applies if the beneficial owner is a company that, for an uninterrupted period of 2 years prior to the payment of the dividend, owns directly at least 25% of the capital stock of the dividend-paying company.
20. The 7% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
21. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 30% of the capital of the dividend-paying company and invests not less than 100,000 USD or the equivalent amount of local currencies into the paying company.
22. The 15% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.

23. The 5% rate applies if the beneficial owner is a company (other than a partnership) which controls, directly or indirectly, at least 25% of the voting power in the dividend-paying company.
24. The 10% rate applies if the recipient is a corporation and if (i) during the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10% of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation and (ii) not more than 25% of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50% or more of the outstanding shares of the voting stock of which is owned by the paying corporation at the time such dividends or interest is received).
25. The 10% rate applies if the recipient is a bank and the loan is granted for a period of at least 7 years in connection with the purchase of industrial equipment or with the study, the purchase and installation of industrial or scientific units, as well as with the financing of public works.
26. The 10% rate applies to interest derived from loans granted by banks and insurance companies.
27. The 10% rate applies to interest paid in respect of a loan or other debt-claim for a period exceeding 3 years.
28. The 0% rate applies to (i) interest beneficially owned by the Government of Georgia (ii) interest paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or paid in connection with the sale on credit of any merchandise to a Georgian enterprise and beneficially owned by a Georgian resident (iii) interest beneficially owned by a Georgian pension fund, provided that such interest is not derived from the carrying on of a business, directly or indirectly, by such pension fund.
29. The 7.5% rate applies to interest received by any bank or financial institution. The 0% rate applies, among others, to a loan made, refinanced, guaranteed or insured, or a credit extended, refinanced, guaranteed or insured by the Central Bank of Korea or the Korea Development Bank.
30. The 5% rate applies to interest paid to a bank. The 0% rate applies to interest (i) received by the Government including a political subdivision or a local authority thereof or the central bank (ii) arising in respect of loans or credits made or guaranteed by the Export Import Bank of Korea and paid to a Luxembourg resident.
31. The 10% rate applies to interest paid on a loan made for a period of more than 7 years.
32. The 10% rate applies to interest paid in respect of public issues of bonds, debentures or similar obligations.
33. The 10% rate applies if the recipient of the interest is a bank and the loan is made for a period of more than 7 years.
34. The 10% rate applies if the interest is beneficially owned (i) by any financial institution (including an insurance company) (ii) by a Thai resident and is paid with respect to indebtedness arising as a consequence of a sale on credit by a Thai resident of any equipment, merchandise or services, except where the sale was between persons not dealing with each other at arm's length.
35. The 10% rate applies to interest paid in respect of a loan or other debt-claim for a period exceeding two years.
36. Certain treaties provide for an exemption of some types of interest (but not all included in this list), e.g. interest paid to public bodies and institutions or banks or in relation to approved or state-guaranteed loans.
37. The 5% reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the shares of the dividend-paying company. The 10% reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the shares of the dividend-paying company. The 15% rate applies in all other cases.
38. The lower rate applies to royalties which are paid for the use of, or the right to use, industrial, commercial or scientific equipment.
39. The 5% rate applies to royalties which are paid for any patent, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
40. The 10% rate applies to royalties in the case of industrial investment.
41. The 5% rate applies to royalties paid for the use of industrial, commercial or scientific equipment.
42. The 5% rate applies to royalties paid for the use of, or the right to use industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.
43. The 10% rate applies to royalties paid for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, copyright of any scientific work, or for the use of, or the right to use, industrial commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.
44. The 5% rate applies to copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films and works on film or videotape for use in connection with television).
45. The lower rate applies to royalties in respect of payments of any kind received as a consideration for the use of, or the right to use, any patent, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
46. The 10% rate applies to payments of any kind received as a consideration for the use of, or the right to use any patent, trademark, design or model, plan, secret formula or process; industrial, commercial or scientific equipment; or information concerning industrial, commercial or scientific experience. The 15% rate applies to payments of any kind received as a consideration for the use of, or the right to use any copyright of literary, artistic or scientific work including cinematograph films.
47. The 10% rate applies to payments received as consideration for the furnishing of technical assistance. The 15% rate applies in all other cases.
48. The 7% rate applies to royalties for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
49. The 5% rate applies to payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or films or tapes used for radio or television broadcasting. The 10% rate applies to payments of any kind received as a consideration for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.
50. The 0% rate applies to payments of any kind received as a consideration for the use of, or the right to use any copyright of literary, artistic or scientific work including cinematograph films, and films or tapes for television or radio broadcasting. The 10% rate applies to payments of any kind received as a consideration for the use of, or the right to use any patent, trade mark, design or model, plan, secret formula or process, or any industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.
51. The 5% rate applies to payments of any kind received as a consideration for the use of or the right to use any copyright of literary, artistic or scientific work, including software, and motion pictures and works on film, tape or other means of reproduction for use in connection with radio or television broadcasting. The 10% rate applies to payments of any kind received as a consideration for the use of or the right to use any patent, trademark, design or model, plan, secret formula or process. The 15% rate applies to payments of any kind received as a consideration for the use of or the right to use industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
52. The 10% rate applies to royalties derived from copyrights, or rights to produce or reproduce any literary, dramatic, musical, or artistic work, as well as royalties received as consideration for the use of, or the right to use, motion picture films including films and tapes used for radio or television broadcasting.

# SOUTH SUDAN

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Juba | Alpesh Vadher | +254 20 4270000<br>avadher@ke.pkfea.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of South Sudan |
| Capital: | Juba |
| Main languages: | English, Arabic, Bari, Dinka, Murle, Nuer, Zande and around 60 other languages |
| Population: | 11.43 million (2021 estimate) |
| Monetary unit: | South Sudanese Pound (SSP) |
| Internet domain: | .ss |
| Int. dialling code: | +211 |

## KEY TAX POINTS

- The business tax rate is 10% for small, 20% for medium-sized and 25% for large enterprises respectively.
- Advance business profit tax on imports at 2% on all imported food items and 4% on all other imported goods.
- Capital gains are deemed to be business income subject to the aforementioned applicable corporate tax rate.
- Excise Duty applicable at the rate of 5% to 300% depending on the type of excisable goods and services.
- Sales tax applies to the import of goods into South Sudan, production of goods in South Sudan and provision of hospitality services in hotels, bars and restaurants at a rate of 20%, 18% and 20% respectively.
- Transactions between related parties are required to be at arm's length.
- From an accounting perspective, financial statements must be presented in accordance with applicable relevant laws and International Financial Reporting Standards.

## A. TAXES PAYABLE

### COMPANY TAX

A company, partnership or other entity that is established in South Sudan or has its place of effective management in South Sudan is a resident. Resident companies are liable for tax on their worldwide income while non-resident companies are liable for tax on their South Sudan-sourced income only.

For corporate income tax purposes, companies are classified into three categories on the basis of their gross annual profits: small, medium-sized and large. The 2014/2015 Finance Act revised the gross annual profit limits as follows:

- Entities with a gross profit of less than SSP 1 million are small;
- Entities with a gross profit between SSP 1 million and SSP 30 million are medium-sized;
- Entities with a gross profit of over SSP 30 million are large.

Small companies are subject to corporate income tax at a rate of 10%, medium-sized companies at a rate of 20% and large companies at a rate of 25%. The tax year is the calendar year unless the tax authorities approve a different tax year.

| Type of Business (annual gross profit) | Tax Rate |
|---|---|
| Small Business Enterprise (SSP 0 – 1,000,000) | 10% |
| Medium Business Enterprise (SSP 1,000,001 to 30,000,000) | 20% |
| Large Business Enterprise (SSP 30,000,001 and above) | 25% |

### CAPITAL GAINS TAX

Capital gains are deemed as business income subject to the abovementioned applicable corporate tax rate.

### BRANCH PROFITS TAX

Branches are subject to the same corporate rates as resident companies (10%, 20% and 25%). There is no branch remittance tax in South Sudan.

### SALES TAX

Sales tax applies to the import of goods into South Sudan, production of goods in South Sudan and provision of hospitality services in hotels, bars and restaurants at a rate of 20% as from 2017 at the level of small, medium sized and large companies. Manufacturers and service providers are required to file a VAT return and pay the tax due not later than the 15th day of every month for the tax collected in the prior month.

### STAMP DUTY

There are no stamp duty provisions.

## REAL PROPERTY TAX

There is no legislation, although, in practice, rates vary by locality.

## EXCISE TAX

Taxpayers are subject to Excise Duty at the rate of 5% (e.g. mineral water) to 300% (e.g. alcohol) depending on the type of excisable goods and services stipulated by the Taxation Act. Other examples of goods that attract excise duty are: fruit juices, soft drinks, cigars, cigarettes, petroleum products, motor vehicles and transport services etc.

## TAX INCENTIVES

Various incentives are available for foreign investors on a case-by-case basis including concessions for machinery and equipment in qualified investment priority areas, capital and deductible annual allowances, certain depreciations and access to land for investment.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income generally comprises worldwide income for resident companies and business profits derived from South Sudan by non-resident companies less expenditure incurred wholly and exclusively in the production of the income for the year. Certain expenses are specifically disallowed like e.g. the cost of acquisition and/or improvement of land, cost of acquisition, improvement, renewal and reconstruction of assets that are depreciated or amortized, corporate income tax and fines and penalties.

## DEPRECIATION

Depreciation rates for tangible assets are as follows:

- Buildings and other structures: 10% (straight-line method);
- Vehicles, office equipment and computers: 33% (reducing balance method);
- Any other property: 25% (reducing balance method).

## CAPITAL ALLOWANCES

Allowances are granted for certain capital expenditure like e.g. initial allowance on plant and machinery (50% or 75% depending on the development of the area), start-up and development costs (25% or 40% depending on the development of the area), scientific and research expenditure (100%) etc.

In addition to the aforementioned capital allowances, investments in priority sectors enjoy annual allowances ranging from 8% (intangible assets) to 40% (Class 4 depreciable assets like railroad cars, locomotives and equipment, vessels, tugs and similar water transportation equipment, air craft, specialized public utility plant, equipment and machinery, office furniture, fixtures and equipment, etc.).

## DIVIDENDS

Dividends that have been subjected to final withholding tax are exempt from corporate income tax. Domestic dividends are subject to a 10% final withholding tax.

## INTEREST DEDUCTIONS

There are no thin capitalisation rules in South Sudan.

## LOSSES

Business losses may be carried forward and set off against taxable income for up to five successive years. Losses cannot be carried back.

## FOREIGN SOURCE INCOME

South Sudan operates a worldwide system of taxation on the basis of which the income of a resident company includes all economic benefits regardless of their source.

## C. FOREIGN TAX RELIEF

A resident taxpayer generating profit from business activities outside South Sudan through a permanent establishment and paying foreign tax on such income is entitled to a foreign tax credit, provided the other country allows a similar treatment for tax paid in South Sudan. The foreign tax is creditable for the year in which the income is taxable in South Sudan. The foreign tax credit is the foreign tax or the South Sudan tax applied to the part of the foreign-sourced income liable for tax in South Sudan, whichever is less. The credit is limited on a country-by-country basis.



## D. CORPORATE GROUPS

There is no legislation on the consolidation of accounts for companies within a group.

## E. RELATED PARTY TRANSACTIONS

### Transfer pricing

The arm's length principle applies to all transactions between related parties. The difference between the arm's length price and the transfer price needs to be included in the taxable profit. The preferred method for determining the arm's length price is the comparable uncontrolled price method and where it is not possible to use this method, the resale price method or the cost-plus method may be used. Advance price agreements (APAs) cannot be negotiated with the tax authorities.

### Controlled Foreign Companies (CFC)

There are no CFC rules in South Sudan

## F. WITHHOLDING TAX

Dividends, interest and royalties paid by a South Sudan resident company to a non-resident company are subject to a 10% final withholding tax on the gross amount. With effect from 20 December 2016, technical fees (i.e. fees paid for technical, managerial and consultancy services performed in South Sudan) paid to non-resident companies without a permanent establishment in South Sudan are subject to a 15% final withholding tax for amounts exceeding SSP 10,000. Rent and contract payments by government institutions (GRSS) to non-resident companies are subject to a 20% final withholding tax rate.

| Type | Resident | Non-resident |
|---|---|---|
| Technical fees | -- | 15% |
| Dividends | 10% | 10% |
| Interest | 10% | 10% |
| Royalties | 10% | 10% |
| Rent | 20% | 20% |
| Contract payments by GRSS institutions | 20% | 20% |

## G. EXCHANGE CONTROL

There are no exchange controls but banks must report significant foreign exchange transactions to the Central Bank.

## H. PERSONAL TAX

Both resident and non-resident are taxed at progressive rates from 0% (under SSP 24,000 yearly) to 20% (in excess of SSP 180,000 yearly).

| Amount of Taxable Income (Monthly Average) | Tax Rate |
|---|---|
| Up to SSP 2,000 | 0% |
| SSP 2,001 – SSP 5,000 | 5% |
| SSP 5,001 – SSP 10,000 | 10% |
| SSP 10,001 – SSP 15,000 | 15% |
| SSP 15,001 and above | 20% |

Residents individuals are subject to tax on their worldwide income derived from employment, entrepreneurial activities, leasing income and personal income while non-resident are subject to tax on South Sudan-source income only. The employer is required to contribute an amount equal to 17% of the monthly salary of its Sudanese and expatriate employees for social security while the employee contributes 8%. Contribution for social security at employee level is deductible when calculating the personal tax payable. The fiscal year-end for resident individuals is 31 December.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

South Sudan has not concluded any double tax treaties.

# SPAIN

## MEMBER FIRMS

| City | Name | Contact Information |
|---|---|---|
| Barcelona | David Cañabate | +34 936 11 50 51<br>david.canabate@pkf-attest.es |
| Bilbao | Mikel Zuaznabar | +34 94 424 30 24<br>mzuaznabar@pkf-attest.es |
| Donostia-San Sebastian | Ramon Madariaga | +34 943 42 97 95<br>rmadariaga@pkf-attest.es |
| Madrid | Santiago Gonzalez Barrau | +34 91 556 11 99<br>sgonzalez@pkf-attest.es |
| Palma de Mallorca | Sonia Velilla Garcia | +34 971 71 22 79<br>svelilla@pkf-attest.es |

| | | |
|---|---|---|
| Pamplona | Alfredo Ciriaco | +34 948 211 832<br>aciriaco@pkf-attest.es |
| Sevilla | Juan Carlos Sánchez | +34 983 100 844<br>jcsanchez@pkf-attest.es |
| Valencia | Juan Carlos Sánchez | +34 983 100 844<br>jcsanchez@pkf-attest.es |
| Valladolid | Gonzalo Ruiz | +34 983 100 844<br>gonzalo.ruiz@pkf-attest.es |
| Vitoria-Gasteiz | Alberto Rodriguez | +34 945 13 74 26<br>arodriguez@pkf-attest.es |

## BASIC FACTS

| | |
|---|---|
| Full name: | Kingdom of Spain |
| Capital: | Madrid |
| Main languages: | Spanish (Castilian), Catalan, Valencian, Gallego (Galician), Euskera (Basque) |
| Population: | 46.79 million (2022 estimate) |
| Monetary unit: | 1 Euro (EUR) = 100 cents |
| Internet domain: | .es (.cat for Catalonia) |
| Int. dialling code: | +34 |

## KEY TAX POINTS

- A Spanish resident company is liable for corporation tax on all sources of income and capital gains, wherever arising. A non-resident company is taxed on income and gains of a branch carrying on a trade in Spain. Foreign branch profits of a Spanish company are liable to Spanish tax.
- Capital gains are taxed as ordinary income.
- The transfer of real estate is generally subject to VAT at 21%. This is reduced to 10% for private residential property. If the transferor is not within the VAT system, transfer tax at 6% is applicable.
- Transfer tax is payable on the transfer of movable property, at a rate of 4% of the value.
- VAT is levied on the supply of taxable goods and services. The normal VAT rate is 21%. There is a reduced rate of 10% and a super-reduced rate of 4% on certain basic goods and services. A zero rate exists for exports and international services provided to EU and non-EU countries.
- Dividends and interest are generally paid subject to a withholding tax of 19% at source, although this is normally reduced or eliminated by a double tax treaty.
- Foreign taxes may be credited against Spanish corporation tax, whether or not a treaty exists with the foreign country.
- Spanish-resident individuals are liable for personal tax on their worldwide income; non-residents are only liable for tax on Spanish-sourced income.
- Resident individuals are subject to net wealth tax in respect of their worldwide assets. The various autonomous governments can establish different reductions.
- There is an inheritance tax charge on a recipient of property passing by gift or death.



## TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

## COMPANY TAX

Spanish resident companies are liable to corporation tax on all sources of income and capital gains, wherever arising. A company is treated as resident in Spain if it is incorporated in Spain, has its registered office in Spain or its effective management is in Spain. A non-resident company is taxed on income and gains of a branch carrying on a trade in Spain.

Trading profits, other income and capital gains are liable to corporation tax at the rate of 25%. Special tax rates are chargeable on portfolio investment funds (1%), on mutual insurance societies (25%), on co-operatives (except for capital gains) (20%), and on non-profit institutions (10%).

**Recent amendments to corporate income tax (CIT)**

On 28 December 2021, Spanish Congress approved the 2022 State Budget Bill. Measures included in this Budget Bill were introduced by Law 22/2021 that was gazetted the following day (29 December 2021).

***15% minimum CIT rate***

A new concept of "Minimum tax liability net of all credits" has been established, which cannot be less than 15% of the taxable base. The salient features are:

- For tax periods beginning from 1 January 2022 onwards,
- Scope: taxpayers with an annual net turnover of at least EUR 20 million in the preceding year or subject to the tax consolidation regime (irrespective of turnover)
- Calculation of minimum tax rate: 15% of the tax base after adjustments to the accounting profit, some specific reductions and deductions (for avoidance of double taxation, investments done by port operators, related to Tax Regime of the Canary Islands, capitalisation reserve) and application of tax loss carry-forwards
- Said minimum CIT rate is (i) reduced to 10% of the tax base for newly created entities and (ii) increased to 18% for financial institutions and entities engaged in exploration, research and mining in relation to mineral deposits and underground hydrocarbon storage facilities
- Excluded from this measure: taxpayers subject to a reduced tax rate (articles 29.3, 29.4 and 29.5 of the CIT code; not-for-profit organisations, entities with variable capital, financial investment funds, real estate investment funds, etc.).
- This measure will also apply to non-resident taxpayers earning income through a permanent establishment in Spain.

***Entities engaged in the rental of housing: decrease of the applicable allowance***

Another amendment was introduced further to the 2022 State Budget Bill. For periods starting from 1 January 2022 onwards, the reduction or allowance applicable to the income of entities under the rental housing tax regime ("REAV") decreases from 85% to 40%.

Although this tax regime does not fall into the scope of the minimum tax rate rule, the lower allowance results in an effective tax rate of 15% on these revenues (60%*25%= 15%).

**Tax year and instalments**

The Spanish tax year is the calendar year, but companies can establish a different tax year. The main condition is that the tax year must not exceed 12 months. Corporate income tax is due for payment 6 months and 25 days after the financial year-end (on 25 July 2022, for example, for the year ended 31 December 2021). The tax return must be filed by the same date. There are two systems for advance payments:

(1) Under the first system, the payments are calculated as 18% of the previous year's tax liability. The payments are due on 20 April, 20 October and 20 December;

(2) Under the second system, the payments are based on the forecasted taxable income of the period as follows:
   - General rate for companies with an annual turnover lower than EUR 10 million is 17%.
   - For companies with an annual turnover higher than EUR 10 million, the general rate is 24%.
   - Additionally, for companies with an annual turnover higher than EUR 20 million, the minimum payment is the 23% of the accounting result after taxes, less the advance payments of the period. Three payments due on:
     - 20 April: Taxable income of the period January-March less withholdings.
     - 20 October: Taxable income of the period January-September less withholdings and advance payment of 20 April.
     - 20 December: Taxable income of the period January-November less withholdings and advance payments of 20 April and 20 October.

The second system is mandatory for companies whose annual turnover exceeds EUR 6,010,121.

## CAPITAL GAINS

Capital gains are taxed as ordinary income. Foreign-sourced capital gains are fully liable for Spanish corporate income tax with a credit for any foreign taxes payable, although such gains can be exempt under the terms of a double tax treaty.

**Personal income tax**

The personal income tax rate for capital gains as a result of the sale of wealth goods ranges from 19% to 26%. Capital losses realised on the sale of goods may be offset against capital gains and saving incomes (with a limit of 25% from 2018) or carried forward for four years to offset against capital gains realised in subsequent years.

The losses not generated from the disposal of any wealth good may be set off against up to 25% of ordinary income and the remainder may be carried forward for up to four years to be offset against future capital gains realised on the sale of assets.

## BRANCH PROFITS TAX

Foreign branch profits of a Spanish company will be liable to Spanish tax.

## VALUE ADDED TAX (VAT)

VAT is levied on the supply of taxable goods and services. The normal VAT rate is 21%. There is a reduced rate of 10% and a super-reduced rate of 4% on certain basic goods and services. A zero rate exists for exports and international services provided to EU and non-EU countries.

The Tax Office has approved a new model for distance sales called e-commerce. E-commerce is a system of buying and selling products or services performed exclusively through the Internet. It refers to transactions between buyers and sellers through an online platform that manages collections and payments completely electronically.

## FRINGE BENEFITS TAX (FBT)

There is no fringe benefits tax in Spain.

## LOCAL TAXES

The main local taxes comprise transfer tax, economic activity tax (trade licenses), property tax, tax on the increase of the value of urban land, tax on motor vehicles, tax on construction, planning permission and opening licenses for each business premises.

## OTHER TAXES

The transfer of real estate is generally subject to VAT at 21%. This is reduced to 10% for private residential property and to 4% in the case of some housing. If the transferor is not within the VAT system, transfer tax at 6% is applicable. Transfer tax is also payable on the transfer of movable property. The rate is 4% of the value. The Spanish autonomous regions are allowed to modify the transfer tax rate and to set their own rates (e.g. the tax rate for real estate properties is 10% in Catalonia and 6% in Madrid).

## B. DETERMINATION OF TAXABLE INCOME

Trading profits are calculated for tax purposes in accordance with financial accounts but adjusted for the main items as follows.

## DEPRECIATION

Depreciation can be deducted on a straight-line basis, reducing-balance basis (in the case of new tangible assets with a life of more than three years) or on an individual basis (if approved by the tax authorities). The Ministry of Finance issues guidelines on the maximum straight-line rates as follows:

| Asset | Rate (%) |
|---|---|
| Motor vehicles | 16 |
| Office equipment | 10 |
| Industrial buildings and hotels | 3 |
| Office and shop buildings | 2 |
| Machinery | 12 |
| Computer equipment | 25 |
| Software | 33 |

Land cannot be depreciated.

## STOCK

Stock and work in progress are valued at the lower of cost or market value. FIFO and average cost methods are acceptable.

## CAPITAL GAINS AND LOSSES

As discussed above, capital gains and losses are included in the overall taxable profits of companies.

## DIVIDENDS

Dividends paid are subject to a 19% withholding tax when paid to residents. Dividends paid to EEC residents are subject to a 19% withholding tax rate while dividends paid to non-EEC residents are subject to a 24% withholding tax rate. The withholding tax rate may be reduced under the relevant double tax treaties. Dividends received by certain companies (EU parent companies) are not subject to withholding tax if the holding is more than 5% and has been held for more than 12 months. All withholding tax suffered may be credited against the recipient company's corporate income tax liability.

## INTEREST DEDUCTIONS

Interest is normally deductible on an accrual's basis. Withholding tax of 19% is generally deductible from interest paid although this may be reduced or eliminated by a double tax treaty. Interest paid to certain companies (EU companies) is not subject to withholding tax. Since 2012 there are certain limits to some financial expenses' deductions.

## LOSSES

As from 1 January 2015 there is no time limit to carry forward tax losses with future profits. The loss carry forward is normally not restricted by a change in the ownership of a company's shares. As from 2016 companies can only offset part of their positive tax basis with previous year's tax losses. The general rate of losses that can be compensated is limited to 70% as from 2017. Stricter rates apply to big companies:

a) Companies with an annual turnover between EUR 20 million and 60 million are only allowed to compensate 50% of the positive tax basis.

b) Companies with an annual turnover exceeding EUR 60 million are only allowed to compensate 25% of the positive tax basis.

However, there exists a deductible minimum amount of EUR 1,000,000.



## FOREIGN SOURCED INCOME

Under the International Fiscal Transparency regime, Spanish resident companies can be subject to tax on profits earned by certain non-EU resident subsidiaries in which they have a more than 50% interest. These rules apply to passive income earned by the subsidiary and taxed at a rate less than 75% than it would have been taxed at if it had been earned by the Spanish resident company.

## INCENTIVES

A credit against tax payable may be taken for 25% of research and development expenses. Where the expenses exceed the average amount incurred in the preceding two years, a credit equal to 42% is available on the amount exceeding the average amount. In addition, there is a credit against tax payable of 12% of the cost of technological innovation of existing products. Industrial development banks and companies and venture capital companies and funds are subject to special tax regimes.

## C. FOREIGN TAX RELIEF

Foreign taxes may be credited against Spanish corporation tax regardless of whether a double tax treaty exists with the foreign country. There is no system of global foreign tax credits. Under certain circumstances, profits arising in permanent establishments of Spanish companies may be exempt from Spanish tax if they have suffered a similar tax overseas. Foreign tax credits are not available for the underlying taxes which the foreign company pays on the profits.

## D. CORPORATE GROUPS

Permission may be obtained from the tax authorities to consolidate the results of a group of companies for corporate income tax purposes. The group must be headed by a company which directly or indirectly owns more than 75% of its subsidiaries. All subsidiaries must be Spanish resident companies. The result of consolidation is that all income, gains and losses of the group are brought together for tax purposes.

## E. RELATED PARTY TRANSACTIONS

For tax purposes, transactions between related companies will be treated as if they had been made at arm's length prices. In certain cases (if certain thresholds are exceeded), the companies must disclose related party transactions made during the year in a separate informative form (form 232).

## F. WITHHOLDING TAX

Withholding taxes paid to Spanish resident companies must generally be deducted from dividends, from interest at 19% and from royalties at 24%. A 0% rate applies to royalties paid to associated EU resident companies. There are also withholding taxes due on technical assistance fees and management fees payable to non-residents. All types of interest paid to EU resident companies (excluding Cyprus holding companies) are exempt.

## G. EXCHANGE CONTROLS

In principle, all direct investments into Spain require previous verification by the Dirección General del Tesoro y Politica Financiera (DGTPF). Outward direct investments also require approval by the DGTPF.

## H. PERSONAL TAX

Individual residents are liable to Personal Income Tax (IRPF) in respect of their worldwide income. Non-residents are liable to IRPF only on their Spanish-sourced income. An individual is deemed to be resident for tax purposes if:

(i) He or she stays in Spain for more than 183 days in any calendar year;

(ii) His or her centre of vital interests is in Spain;

(iii) His or her spouse and minor dependent children qualify as residents of Spain. Fringe benefits in cash or kind constitute employment income. Ordinary gains and losses are treated as ordinary income.

All businessmen and self-employed professionals are required to file quarterly returns and make advance payments by 20 April, 20 July and 20 October of the current year and 30 January of the next year on account of final income tax liability for the current year. All resident employees and self-employed individuals must register and pay monthly contributions to the Spanish social security system. The general rate of the employee's general social security contributions is 6.35% and the employer's contribution is 30.15%.

The current tax rates for taxpayers are as follows:

| Tax basis (EUR) | 2021 tax rate |
|---|---|
| Up to 12,450 | 19% |
| From 12,450 to 20,200 | 24% |
| From 20,200 to 35,200 | 30% |
| From 35,200 to 60,000 | 37% |
| From 60,000 to 300,000 | 45% |
| above 300,000 | 47% |

The current tax rates for savings income are as follows:

| Tax basis (EUR) | 2021 tax rate |
|---|---|
| Up to 6,000 | 19% |
| From 6,000 to 50,000 | 21% |
| From 50,000 to 200,000 | 23% |
| above 200,000 | 26% |

The autonomous governments can establish different taxation rates. Usually when earned income is less than EUR 22,000 the individual is not obliged to prepare a tax return.

The 2022 State Budget Bill has introduced some amendments to personal income tax.

***Reductions for contributions to employee social welfare systems***

- In 2021: the limit of the tax reduction to the personal income tax base for contributions to social welfare systems was reduced from EUR 8,000 to EUR 2,000 per year, except for company contributions, for which the limit was increased from EUR 2,000 to EUR 10,000 (measure that aimed to enhance employment pension plans)
- In 2022: the limit it is again reduced, being the maximum reduction for individual contributions at EUR 1,500 per year. However,

if contributions are performed by the company the limit rises to EUR 8,500, thus maintaining a maximum combined limit of EUR 10,000.

In addition, this increase of EUR 8,500 can also come from individual contributions, provided these are equal to or lower than company contributions.

Until 31 December 2021, resident individuals were subject to net wealth tax on their worldwide assets.

Inheritance tax is also levied on the recipient of property passing by way of gift or death. The inheritance tax rate can be charged at progressive rates, from 0% to 34% from father to son, and increased rates in other cases. The different autonomous governments can establish different reductions. The rate is determined with reference to the total value of assets gifted to each beneficiary.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies[1] (%) | | |
| **Domestic rates** | | | | |
| Companies | 19 | 0/19 | 0/19[2] | 0/19/24[3] |
| Individuals | 0/19 | -- | 0/19 | 0/19/24 |
| **Treaty countries:** | | | | |
| Albania | 10 | 0/5 | 6 | 0 |
| Algeria | 15 | 5 | 0/5 | 7/14 |
| Andorra | 15 | 5 | 5 | 5 |
| Argentina | 15 | 10 | 0/12 | 3/5/10/15 |
| Armenia | 10 | 0 | 5 | 5/10 |
| Australia | 15 | 15 | 10 | 10 |
| Austria | 15 | 10 | 5 | 5 |
| Azerbaijan[4] | 10 | 5 | 0/8 | 5/10 |
| Barbados | 5 | 0 | 0 | 0 |
| Belarus5 | 10 | 5 | 0 | 0/5 |
| Belgium | 15 | 0 | 0/10 | 5 |
| Bolivia | 15 | 10 | 0/15 | 0/15 |
| Bosnia and Herzegovina | 10 | 5 | 0/7 | 7 |
| Brazil | 15 | 10/15 | 0/10/15 | 10/15 |
| Bulgaria | 15 | 5 | 0 | 0 |
| Cape Verde[4] | 10 | 0 | 0/5 | 5 |
| Canada | 15 | 5 | 0/10 | 0/10 |
| Chile | 10 | 5 | 5/15 | 5/10 |
| China | 10 | 5 | 10 | 10/60 |
| Colombia | 5 | 0 | 0/10 | 10 |
| Costa Rica | 12 | 5 | 0/5/10 | 10 |
| Croatia | 15 | 0 | 0 | 0 |
| Cuba | 15 | 5 | 0/10 | 0/5 |
| Cyprus | 5 | 0 | 0 | 0 |
| Czech Republic | 15 | 5 | 0 | 0/5 |
| Dominican Republic | 10 | 0 | 0/10 | 10 |
| Ecuador | 15 | 15 | 0/5/10 | 5/10 |
| Egypt | 12 | 9 | 0/10 | 12 |
| El Salvador | 12 | 0 | 0/10 | 10 |
| Estonia | 15 | 5 | 0/10 | 0/5/10 |
| Finland | 15 | 10 | 10 | 5 |
| France | 15 | 0 | 0/10 | 0/5 |
| Georgia | 10 | 0 | 0 | 0 |
| Germany | 15 | 5 | 0 | 0 |
| Greece | 10 | 5 | 0/8 | 6 |
| Hong Kong | 10 | 0 | 0/5 | 5 |
| Hungary | 15 | 5 | 0 | 0 |
| Iceland | 15 | 5 | 0/5 | 5 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies[1] (%) | | |
| India | 15 | 15 | 0/15 | 10/20 |
| Indonesia | 15 | 10 | 0/10 | 10 |
| Iran | 10 | 5 | 0/7.5 | 5 |
| Ireland | 15 | 0 | 0 | 5/8/10 |
| Israel | 10 | 10 | 5/10 | 5/7 |
| Italy | 15 | 15 | 0/12 | 4/8 |
| Jamaica | 10 | 5 | 0/10 | 10 |
| Japan[4] | 5/10 | 5/10 | 0/10 | 0 |
| Kazakhstan | 15 | 5 | 0/10 | 10 |
| Korea (South) | 15 | 10/15 | 0/10 | 10 |
| Kuwait | 5 | 0 | 0 | 5 |
| Kyrgyzstan | 18 | 18 | 0 | 0/5 |
| Latvia | 10 | 5 | 0/10 | 0/5/10 |
| Lithuania | 15 | 5 | 0/10 | 5/10 |
| Luxembourg | 15 | 10 | 0/10 | 10 |
| Malaysia | 5 | 0 | 0/10 | 5/7 |
| Malta | 5 | 0 | 0 | 0 |
| Mexico | 10 | 0 | 4.9/10 | 0/10 |
| Moldova | 10 | 0/5 | 0/5 | 8 |
| Morocco | 15 | 10 | 10 | 5/10 |
| Netherlands | 15 | 5/10 | 10 | 6 |
| New Zealand | 15 | 15 | 0/10 | 10 |
| Nigeria | 10 | 7.5 | 0/7.5 | 3.75/7.5 |
| North Macedonia | 15 | 5 | 0/5 | 5 |
| Norway | 15 | 10 | 0/10 | 5 |
| Oman | 10 | 0 | 0/5 | 8 |
| Pakistan | 10 | 5/7.5 | 10 | 7.5 |
| Panama | 10 | 0/5 | 0/5 | 5 |
| Philippines | 15 | 10 | 0/10/15 | 15/20 |
| Poland | 15 | 5 | 0 | 0/10 |
| Portugal | 15 | 10 | 15 | 5 |
| Qatar | 5 | 0 | 0 | 0 |
| Romania[4] | 5 | 0 | 0/3 | 0/3 |
| Russia | 15 | 5/10 | 0/5 | 5 |
| Saudi Arabia | 5 | 0 | 0/5 | 8 |
| Senegal | 10 | 10 | 0/10 | 10 |
| Serbia | 10 | 5 | 0/10 | 5/10 |
| Singapore | 5 | 0 | 0/5 | 5 |
| Slovak Republic | 15 | 5 | 0 | 0/5 |
| Slovenia | 15 | 5 | 0/5 | 5 |
| South Africa | 15 | 5 | 0/5 | 5 |
| Sweden | 15 | 10 | 0/15 | 10 |
| Switzerland | 15 | 0 | 0 | 0/5 |
| Tajikistan | 18 | 18 | 0 | 0/5 |
| Thailand | 10 | 10 | 0/10/15 | 5/8/15 |
| Trinidad and Tobago | 10 | 0/5 | 0/8 | 5 |
| Tunisia | 15 | 5 | 5/10 | 10 |
| Turkey | 15 | 5 | 10/15 | 10 |
| Turkmenistan | 18 | 18 | 0 | 0/5 |
| Ukraine | 18 | 18 | 0 | 0/5 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies[1] (%) | | |
| United Arab Emirates | 15 | 5 | 0 | 0 |
| United Kingdom | 10/15 | 0 | 0 | 0 |
| United States | 15 | 10 | 0/10 | 5/8/10 |
| Uruguay | 5 | 0 | 0/10 | 5/10 |
| Uzbekistan | 10 | 0/5 | 0/5 | 5 |
| Venezuela | 10 | 0 | 0/4.95/10 | 5 |
| Vietnam | 15 | 7/10 | 0/10 | 10 |

Notes:

1. Under domestic law implementing the provisions of the EU Parent-Subsidiary Directive, dividends paid to qualifying parent companies in other EU Member States are exempt from withholding tax. To qualify as a parent, a company must hold a direct participation of at least 5% or its acquisition value must be higher than EUR 20 million in the capital of the subsidiary for a continuous period of at least 1 year prior to the declaration of the dividends. If dividends are declared before the participation has been held for a year, there is no exemption from withholding tax, but the parent may apply for a refund if it meets this condition later. However, the exemption from Spanish withholding tax does not apply (i) where the parent is resident in any of the listed tax havens (within the European Union this only applies to Gibraltar) and (ii) where the ultimate parent of the company to which the dividend is paid is resident outside the European Union, i.e. where the majority of the voting rights in the EU parent company is directly or indirectly held by individuals or companies not resident in any EU Member State, unless it can be established that the constitution and operations of the parent company are based on valid economic reasons and substantial business motives.
2. Reduced withholding tax rates on dividends (qualifying companies) are also available under the treaties with non-EU member states, subject to certain conditions and participations.
3. The withholding tax rate on Spanish-source interest is 19% on the gross amount while the following types of interest paid to non-residents are exempt: (i) interest on bank deposits (ii) interest on all types of government bonds (iii) interest on securities issued in Spain by certain international organizations, e.g. the European Investment Bank. The EU Interest and Royalties Directive precludes any taxation on interest payments to associated EU companies.
4. The withholding tax rate on Spanish-source royalties in general, including film royalties, is 24% on the gross amount. However, for EU and EEA residents the applicable rate is 19% on the gross amount. The EU Interest and Royalties Directive precludes any taxation on royalty payments to associated EU companies. Thus, royalty payments by Spanish companies are not subject to withholding tax, provided that the recipient is an associated company of the paying company and is resident in another EU Member State. Two companies are associated companies if (i) one of them holds directly at least 25% of the capital of the other or (ii) a third EU company holds directly at least 25% of the capital of the two companies. In both cases, a continuous minimum holding period of 1 year is required. This exemption will not apply where the ultimate parent of the company to which the royalty is paid is resident outside the European Union, i.e. where the majority of the voting rights in the EU parent company is directly or indirectly held by individuals or companies not resident in any EU Member State, unless it can be established that the constitution and operations of the parent company are based on valid economic reasons and substantial business motives.
5. Effective date: 1 January 2022.
6. Effective date: 9 May 2021 (withholding taxes); 1 January 2022 (other taxes).

# SWEDEN

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Stockholm | Asa Ifvarsson | +46 7 087 283 21<br>asa.ifvarsson@pkfsweden.se |

## CORRESPONDENT FIRM

| City | Name | Contact Information |
|---|---|---|
| Helsingborg | Hans Otto | +46 42 189 980<br>hans.otto@revikonsult.se |

## BASIC FACTS

| | |
|---|---|
| Full name: | Kingdom of Sweden |
| Capital: | Stockholm |
| Main languages: | Swedish |
| Population: | 10.4 million (2022 estimate) |
| Monetary unit: | 1 Swedish krona = 100 ore |
| Internet domain: | .se |
| Int. dialling code: | +46 |

## KEY TAX POINTS

- As from 1 January 2021 corporate tax is levied at a rate of 20.6% (previously at 21.4%) on the worldwide income of companies resident in Sweden and also on profits which arise from activities carried out in Sweden through a branch or an agency.

- In general, output VAT is levied on all domestic sales, but not on export or EU sales.
- Stamp duty of 4.25% is levied on real property, 1.5% if the buyer is an individual.
- Dividends received from other Swedish companies are exempt from tax if the dividends derive from business-related holdings.
- Controlled foreign corporation (CFC) legislation exists to ensure that profits originating from low tax jurisdictions are included in the controlling Swedish company's taxable income.
- Double taxation is generally relieved by providing credits for the foreign tax paid. However, some older Double Taxation Conventions exempt foreign income from Swedish tax if it is taxed abroad.
- Transactions at a non-arm's length price are covered by transfer pricing rules, which allow the tax authorities to make an adjustment to impose arm's length prices where profits have been shifted to a company not subject to Swedish tax.
- There are no withholding taxes on interest, royalties and rent paid from Sweden to non-residents. Dividends paid to a non-resident shareholder are subject to a 30% withholding tax that may be reduced by a double tax treaty.
- Under certain circumstances, dividends paid to a non-resident company are tax exempt provided that the receiving company has held 10% or more of the voting power in the distributing company for 12 months and the receiving company is taxed in the country where it is resident.
- Residents must pay tax on their worldwide income and capital gains. Non-residents are subject to tax only on income from sources in Sweden.
- Capital gains derived by a company are taxed as part of its normal business income although there are special rules for the disposal of shares. Gains on the disposal of shares in resident and non-resident companies are exempt from tax if they constitute a business-related holding. This generally applies to unquoted shares and also to quoted shares held for at least the year prior to the date of disposal and which represent at least 10% of the company's voting rights or considered necessary for the business conducted by the shareholding company or any of its affiliates.

## A. TAXES PAYABLE

### COMPANY TAX

Corporate tax is levied on the worldwide income of companies resident in Sweden and also on profits which arise from activities carried out in Sweden through a branch or an agency. A company is resident for tax purposes when it is registered in Sweden. Royalties received from Swedish licensees are taxable in Sweden as income from a permanent establishment situated in Sweden. Where a treaty exists, the right to tax may be waived or limited. Since 2004 Sweden has adopted Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.

In accordance with the Directive, royalty payments shall be exempt from withholding tax provided that the beneficial owner is a company or a permanent establishment in another Member State and the payor and payee are associated (one holds 25% or more of the capital of the other or a third company holds 25% or more of both companies). The corporate tax rate is 20.6% for fiscal years starting 1 January 2021 or later. The fiscal year depends on the company´s financial year. A split financial year may end on the last day of any month during the calendar year. The assessment year follows the applicable financial year and is for a twelve-month period. Permission from the tax authorities is needed to change from a calendar year to a split financial year or from one split financial year to another split financial year. Tax returns are filed annually and should normally be submitted within six months of the end of the tax year.

### BRANCH PROFITS TAX

A branch's taxable trading profits and capital gains are calculated on the same basis as for Swedish resident companies.

### VALUE ADDED TAX (VAT)

In general, output VAT is levied on all domestic sales but not on export or EU sales. The general rate of VAT for goods and services in Sweden is 25% of the assessed value. Certain goods and services are exempt from tax or taxed at a lower rate. A 12% rate applies to the sale of foodstuffs, restaurant, catering and hotel accommodation. A 6% rate applies to newspapers and periodicals, transport of passengers and some cultural services. Returns for input and output VAT need to be settled each month or quarter with the Swedish tax authorities. However, for companies with a turnover not exceeding SEK 1 million VAT may be reported in an annual VAT return.



### FRINGE BENEFITS TAX

There is no specific FBT.

### SOCIAL SECURITY CONTRIBUTIONS

Employers are liable to pay social security contributions relating to salaries and benefits paid to their employees. The social security fees levied for national social security is 31.42%. For individuals born between 1938 and 1956 the rate is 10.21% and for those born in 1937 or earlier no social security contributions should be paid. For young employees reduced rates might also apply. Employers should also pay a special wage tax at a rate of 24.26% on pension costs.

### LOCAL TAXES

There are no local taxes imposed on companies.

### OTHER TAXES

Stamp duty of 4.25% is levied on real property for companies while the rate is 1.5% if the buyer is an individual. A stamp duty is also levied on mortgage loans at a rate of 0.4%, 1% or 2% of the principal amount of the loan where secured on businesses, aircraft, immovable property or ships.

## B. DETERMINATION OF TAXABLE INCOME

Corporate taxable income is primarily based on the financial accounts. The net profit for the year is adjusted for certain tax-related items. The taxable income of a company is determined using the accruals basis of accounting. Taxable income is based on worldwide income less allowable deductions. Generally, to be deductible, expenditure must be incurred for the purposes of the business. For flow-through entities such as partnerships and limited partnerships, taxable income is determined in a similar way as for corporations. The difference is that they are not taxable persons. Hence, the income is taxed at the partner/owner level. Companies can make provisions to a tax allocation reserve (periodiseringsfond) of up to 25% of taxable income. The provision must be dissolved (added to income) after six years at the latest.

## DEPRECIATION

**Short-life Items**

Equipment and machinery with a value of less than SEK 24,150 or with an expected economic life of three years or less may be fully depreciated in the year of acquisition.

**Machinery and equipment**

(1) Depreciation of up to 30% per annum of the book value at the end of the year may be deducted.

(2) An alternative rule allows a straight-line depreciation of 20% per annum if this results in a lower book value in any year.

(3) If the taxpayer can prove that the real value of machinery and equipment is lower than that derived under both the above depreciation methods, depreciation resulting in the real value may be used instead.

**Intangible assets**

Intangible assets are depreciated in the same way as machinery and equipment, see above. However, it is not necessary to use the same method for all assets, i.e. machinery and equipment may be depreciated by 30% and intangible assets by 20%.

**Buildings**

Depreciation is allowed on an annual straight-line basis calculated on the acquisition cost at the rates of 2% to 5% depending on the type of building. This method is independent of the depreciation made in the financial accounts. An extra depreciation of 2% per annum can be made for up to six years for apartment houses completed 1 January 2017 or later.

## STOCK / INVENTORY

Stock and work in progress is valued at the lower of acquisition cost or market value on a FIFO basis. However, stock may be valued at 97% of its aggregate acquisition value, excluding real property, debt claim and securities.

## CAPITAL GAINS AND LOSSES

Capital gains derived by a company are taxed as part of its normal business income although there are special rules for the disposal of shares. Gains on the disposal of shares in resident and non-resident companies are exempt from tax if they constitute a business-related holding, and corresponding losses will not be deductible. This generally applies to unquoted shares and to quoted shares held for at least the year prior to the date of disposal and which represent at least 10% of the company's voting rights or considered necessary for the business conducted by the shareholding company or any of its affiliates.

## DIVIDENDS

Dividends received from other Swedish companies are exempt from tax if the dividends derive from business-related holdings (using the same definition as above).

## INTEREST DEDUCTIONS

Interest is normally deductible on an accrual basis rather than a cash basis as far as companies are concerned. There are no specific thin capitalisation rules but interest paid between affiliated companies must be at an arm's-length rate. There are certain restrictions on tax deductions for interest payments on intra-group loans for acquisition of shares.

There is also a general limitation on the right to deduct interest expenses if a negative net interest occurs, in which case the deduction limit is 30%. Non-utilised deductions may be carried forward during a period of maximum six years. There is, however, a provision that allows net interest expenses of up to SEK 5 million within a group of companies to be deducted.

Interest expenses on debts to a company located in a jurisdiction that is placed on the EU list of non-cooperative jurisdictions are non-deductible.

## LOSSES

Losses can be carried forward indefinitely, provided there is continuity of ownership. Losses arising on the disposal of portfolio shares may only be offset against gains arising on the disposal of similar shares. Portfolio shares are those where the shareholder has not held 10% of the voting power in the company concerned for the requisite 12-month period.

## FOREIGN SOURCE INCOME

Controlled foreign company rules apply such that some corporate shareholders of foreign legal entities with low-taxed income are taxed on their share of the income as normal Swedish business income. The rules apply where the shareholder has a direct or indirect interest in at least 25% of the capital of voting rights in the foreign legal entity. The net income of a foreign legal entity is considered low taxed if it is not taxed at all or taxed at a rate lower than 55% of the Swedish corporate tax rate (11.33% in 2022).

There are extensive exceptions for foreign legal entities that are domiciled in, and with income from, jurisdictions on the so-called 'white list', although certain types of income received by entities in those jurisdictions are excluded. From 1 January 2008, an exemption from these rules applies to income from a controlled foreign entity that is resident within the EEA if the shareholder can prove that the foreign entity is established in the other country for business reasons and is engaged in real economic activities.

## TAX INCENTIVES

There are no particular tax incentives for companies operating in under-developed areas. However, companies acting in certain thinly populated areas will be charged reduced social security tax.

## C. FOREIGN TAX RELIEF

Double taxation is generally relieved by providing credits for the foreign tax paid. However, some older Double Taxation Conventions exempt foreign income from Swedish tax if it is taxed abroad. Costs related to exempt income cannot be deducted. If international double taxation cannot be avoided by credit or exemption, the tax payer may deduct the foreign tax as a cost or carry forward any surplus credit for five years. Many Swedish Double Taxation Conventions include rules about tax sparing (matching credit). These rules can be used when investing in developing countries.

## D. CORPORATE GROUPS

Consolidated tax returns cannot be filed in Sweden. However, profits may be transferred between the entities in a Swedish group of companies by group contributions. Group contributions are deductible by the contributing company and taxable income of the receiving company. The main requirements for group contributions are:

(a) The companies must be registered in the EU and taxed in Sweden and none of them must be an investment company. Due to discrimination rules, group contributions between Swedish companies are accepted even if a foreign group company holds one of the Swedish companies. Group contributions between a foreign branch in Sweden and a Swedish company are also accepted due to discrimination rules.

(b) The parent company must hold – directly or indirectly – more than 90% of the shares in the group company for the entire fiscal year. If the operation in a company starts during the fiscal year, the parent company must have held the shares from the time when the operation started.

From 1 July 2010, a Swedish resident company may deduct a group contribution paid to its subsidiary which is resident in another EU Member State, provided the parent company holds at least 90% of the shares of the foreign subsidiary and the subsidiary has been dissolved through liquidation. The deductible amount cannot, however, exceed the lower of (i) the amount of the loss of the subsidiary in its final period and (ii) the loss of the subsidiary in the previous year (i.e. the year before liquidation) calculated under the tax rules in both countries in question.

## E. RELATED PARTY TRANSACTIONS

Transactions at a non-arm's length price are subject to transfer pricing rules which allow the tax authorities to make an adjustment to impose arm's length prices. Assets may be transferred between Swedish companies without any tax consequences provided that group contributions between the companies are possible. Interest paid between affiliated companies must be at an arm's length rate if group contribution rules are not applicable.

## F. WITHHOLDING TAX

There are no withholding taxes on interest, royalties and rent paid from Sweden to a receiver abroad (although see the commentary in A. above regarding the deeming of royalty payments by Swedish licensees as income derived from a permanent establishment). Dividends paid to a non-resident shareholder are subject to a 30% withholding tax that may be reduced by Double Taxation Conventions.

Dividends to a company resident within the EU holding 10% or more of the voting power in the distributing company are exempt from withholding tax. Dividends to a company resident in a non-EU-country are also tax-exempt provided that the shares constitute fixed business assets of the receiving company which has held 10% or more of the voting power in the distributing company for 12 months and is taxed in the country where it is resident.

## G. EXCHANGE CONTROL

There is no exchange control in Sweden.

## H. PERSONAL TAX

Swedish residents are subject to tax on their worldwide income and capital gains. Taxable income includes all remuneration received from employers, whether in cash or in kind, such as free food, free accommodation, company cars etc. Pensions, unemployment benefits etc. are also included in the taxable income. Certain costs can be deducted from the income, e.g. travelling costs between work and home as well as expenses incurred during business trips. A foreign national will be liable to tax if he is regarded as resident in Sweden, which will be if he has an essential connection to Sweden, is present in Sweden for a period of more than 183 days or has his principal home in Sweden during the tax year.

Individuals pay both national income tax and municipal income tax. In 2021 taxable income of less than SEK 554,900 will be subject to municipal tax only. The municipal income tax is imposed at a flat rate which varies from region to region (32.24% on average; 29.82% in Stockholm). In addition, a church rate of about 1% should be paid; for an individual who is not a member of a church the rate is lower. For taxable income exceeding SEK 554,900 there is also a national income tax calculated at a rate of 20%. For individuals aged 66 years or more the national income tax is levied on income exceeding SEK 618,700.

Taxable income is reduced by a tax allowance of between SEK 14,200 and SEK 37,200 depending on the income. Individuals over age 65 are entitled to a higher tax allowance. Since 2007 there is also a general tax reduction linked to income from active work (jobbskatteavdrag), the amount is maximized to SEK 2,744 per month.

Non-residents are subject to tax only on income from sources in Sweden. Employment income is taxed at a flat rate of 25%. However, it is possible to apply to be taxed at the normal tax rate as mentioned above. An exemption from taxation applies if the employee is working in Sweden for less than 15 days in a row and less than 45 days in aggregate during a calendar year.

Capital income is taxed separately from income from employment at a rate of 30% and is not subject to municipal income tax. Capital income is comprised of interest, gains from the sale of capital assets, gains from the sale of real estate (tax rate 22% for private homes and 27% for commercial buildings), dividends etc. Interest expenses and capital losses can be set off against capital income. 30% of the net capital loss up to SEK 100,000 can be set off against tax on income from employment. 21% of any excess above SEK 100,000 can be utilised in this way.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Sweden has concluded more than 90 multilateral or bilateral Double Taxation Conventions with other States. These conventions are often renegotiated which means that the withholding tax rates frequently change. A withholding tax rate in a convention where Sweden is one of the parties may also change because of a change in a convention concluded by third parties due to a most-favoured nation provision. Therefore, it is important to consult the relevant treaty to check the withholding tax rates listed in the table below.

| | Dividends[1] (%) | Royalties (%) |
|---|---|---|
| **Treaty countries:** | | |
| Albania | 15/5 | 5 |
| Argentina | 15/10 | 3/5/10/15 |
| Armenia | 0/5/15 | 5 |
| Australia | 15 | 10 |
| Austria | 10/5 | 0/10 |
| Bangladesh | 15/10 | 10 |
| Barbados | 15/5 | 5 |
| Belarus | 10/0/5 | 3/5/10 |
| Belgium | 15/5 | 0 |
| Bolivia | 15/0 | 15 |
| Bosnia and Herzegovina | 15/5 | 0 |
| Botswana | 15 | 15 |
| Brazil | 25/15 | 15/25 |
| Bulgaria | 10 | 5 |
| Canada | 15/5 | 0/10 |
| Chile | 10/5 | 5/10 |
| China | 10/5 | 6/10 |
| Croatia | 15/5 | 0 |
| Cyprus | 15/5 | 0 |
| Czech Republic | 10/0 | 0/5 |
| Denmark | 15/0 | 0 |
| Egypt | 20/5 | 14 |
| Estonia | 15/5 | 5/10 |
| Faroe Islands | 15/0 | 0 |
| Finland | 15/0 | 0 |
| France | 15/0 | 0 |
| The Gambia | 15/0/5 | 5/12.5 |
| Germany | 15/0 | 0 |
| Greece | 0 | 5 |
| Hungary | 15/5 | 0 |
| Iceland | 15/0 | 0 |
| India | 10 | 10 |
| Indonesia | 15/10 | 10/15 |
| Ireland | 15/5 | 0 |
| Israel | 15/5 | 0 |
| Italy | 15/10 | 5 |
| Jamaica | 22.5/10 | 10 |
| Japan | 10/0 | 0 |
| Kazakhstan | 15/5 | 10 |
| Kenya | 25/15 | 20 |
| Korea, Republic of | 15/10 | 10/15 |
| Latvia | 15/5 | 5/10 |
| Lithuania | 15/5 | 5/10 |
| Luxembourg | 15/0 | 0 |
| Malaysia | 15/0 | 8 |
| Malta | 15/0 | 0 |
| Mauritius | 15/0 | 0 |
| Mexico | 15/5/0 | 10 |
| Montenegro | 15/5 | 0 |
| Namibia | 15/0/5 | 5/15 |
| Netherlands | 15/0 | 0 |
| New Zealand | 15 | 10 |
| North Macedonia | 15/0 | 0 |

| | Dividends[1] (%) | Royalties (%) |
|---|---|---|
| Norway | 15/0 | 0 |
| Pakistan | -[2]/15 | 10 |
| Philippines | 15/10 | 15 |
| Poland | 15/5 | 5 |
| Portugal | 10 | 10 |
| Romania | 10 | 10 |
| Russia | 15/5 | 0 |
| Saudi Arabia | 10/5 | 5/7 |
| Serbia | 15/5 | 0 |
| Singapore | 15/10 | 0 |
| Slovak Republic | 10/0 | 0/5 |
| Slovenia | 15/5 | 0 |
| South Africa | 5/15 | 0 |
| Spain | 15/10 | 10 |
| Sri Lanka | 15 | 10 |
| Switzerland | 15/0 | 0 |
| Taiwan | 10 | 10 |
| Tanzania | 25/15 | 20 |
| Thailand | -[2]/15/20 | 15 |
| Trinidad and Tobago | 20/10 | 0/20/- |
| Tunisia | 20/15 | 5/15 |
| Turkey | 20/15 | 10 |
| Ukraine | 10/0/5 | 0/10 |
| United Kingdom | 15/5/0 | 0 |
| United States | 15/0/5 | 0 |
| Venezuela | 10/5 | 7/10 |
| Vietnam | 15/5/10 | 5/15 |
| Zambia | 15/5 | 10 |
| Zimbabwe | 20/15 | 10 |

NOTES:

1. The reduced rate generally applies to dividends paid to non-resident companies with a minimum participation in the Swedish company. The level of participation varies from treaty to treaty.
2. There is no reduction under the treaty – the domestic rate (30%) applies.

## SWITZERLAND

### MEMBER FIRMS

| City | Name | Contact Information |
|---|---|---|
| Zurich | Rilana Wolf-Bayard | +41 44 285 75 00<br>rilana.wolf@pkf.ch |
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| Geneva | Christophe Fischer | +41 22 301 54 40<br>c.fischer@pkf.swiss |

### BASIC FACTS

| | |
|---|---|
| Full name: | Swiss Confederation |
| Capital: | Bern |
| Main languages: | German, French, Italian, Rhaeto-Romanic |
| Population: | 8.76 million (March 2022 / UN estimate) |
| Monetary unit: | Swiss Franc |
| Internet domain: | .ch |
| Int. dialling code: | +41 |

S

## KEY TAX POINTS

- In Switzerland, taxes are governed by federal law and 26 different cantonal tax laws.
- Corporate income tax is payable by Swiss resident companies on corporate net profit.
- Foreign branch income of a Swiss corporation is exempt from Swiss taxation.
- Capital gains on real estate (if a part of business assets) for direct federal tax and several cantonal tax purposes are aggregated with and taxed as part of ordinary income.
- VAT is charged on the domestic delivery of goods and rendering of services and a tax on the importation of goods and services into Switzerland. The standard VAT rate is 7.7%. Special lower rates (2.5% or 3.7%) apply to various services and goods, subject to some exemptions.
- Dividends paid from Swiss capital companies to Swiss residents and non-residents are subject to 35% withholding tax. Shareholders resident abroad may obtain relief under the appropriate double taxation treaty.
- There is no federal withholding tax on interest or royalties (some exceptions apply).
- Deemed distributions may arise to the extent that prices between related parties exceed those on at arm's-length terms. Withholding tax may be applied to the deemed distributions.
- A Swiss resident individual is subject to Swiss federal, cantonal and communal taxes on his worldwide income and net wealth, with the exception of income from investments in foreign permanent establishments and real estate situated abroad. Basically, foreigners are regarded as residents from the date of registration.
- Net wealth taxes, inheritance and gift taxes are levied by most cantons, but they are not levied at federal level.

## A. TAXES PAYABLE

### FEDERAL AND CANTONAL TAXES AND LEVIES

Taxes are governed in Switzerland by federal law and 26 different cantonal tax laws. The cantonal tax laws were harmonised with effect from 1993. Tax declaration procedures and the determination of the taxable income in the various cantons are similar and in line with the federal law. However, the cantons do set their own tax rates. The presence of different tax legislation means that the fiscal burden on a Swiss company depends not only on the size of its income and assets but, to a considerable degree, also on the location of its registered office, its business objects and the nature of its operations. Taxation may vary significantly from one canton to another. On the cantonal level, as a reaction to BEPS, Swiss privileged tax regimes were abolished as per 1 January 2020.

### CORPORATE TAX

Corporate income tax is payable by Swiss resident companies on corporate net profit (i.e. on the profit after taxes). Exceptions to this rule may be found in some cantons where a special tax on capital gains realised on the sale of immovable property may be levied (cf. "key tax points"). Income of Swiss resident companies from business operations, permanent establishments and immovable property situated abroad is exempt from income tax but included in calculating progressive corporate income tax rates. Each resident taxpayer has to file an annual tax return. As a rule, non-resident taxpayers have to file tax returns only if they maintain a permanent establishment or own immovable property in Switzerland including gains on the sale of such property and on income from debts secured by real estate situated in Switzerland.

Cantonal income tax rates are predominantly flat rates. Some cantons use graduated rates. The federal income tax is 8.5% (statutory tax rate applicable on taxable income after taxes, effective tax rate is 7.83%). Effective ordinary corporate tax rates on income vary significantly from one canton/community to another (from approximately 11.9% up to a maximum of approximately 21% including direct federal tax (provisionally calculated in 2021 for 2022 / partially based on the communal and/or cantonal multipliers 2022)). As a measure of TRAF (cf. below), most cantons plan to significantly reduce their corporate income tax rates so that in many cantons tax rates between 12-14% (including direct federal tax) have been made available as of 1 January 2020. An annual capital tax is due at the cantonal and communal level on taxable capital which is usually at least the value of paid-in share capital. The effective capital tax rates vary from 0.01% to 0.52% depending on the canton of residence.

### TRAF - Brief Summary

The Swiss tax reform (TRAF) entered into force on 1 January 2020. This is a core re-arrangement in the Swiss tax system and is fully in line with the international OECD and EU taxation standards.

- The Swiss tax reform provides for the below key principles:
- Abolishment of cantonal tax privileges for holding, domicile and mixed companies;
- Implementation of a patent box regime into cantonal tax laws;
- Optional adoption of a 50% additional R&D cost deduction into cantonal tax laws;
- Optional introduction of a deduction on excess equity (Notional Interest Deduction; NID) for cantons with a high tax rate (e.g. Zurich);
- Rules regarding hidden reserves upon migration to/from Switzerland and transitional rules upon change of status of preferential regime companies;
- Maximum limitation of tax relief may not exceed 70% of profits subject to cantonal tax;
- Optional capital tax relief for cantons as to participations, patents and intra-group loans;
- Adoption of 50% proportionality rule for withholding tax-free repayments of capital contribution reserves for companies listed on the Swiss stock exchange;
- Broadening of the lump-sum tax credit to enable ordinarily taxed Swiss branches of foreign companies to invoke a lump-sum tax credit for foreign withholding taxes subject to certain prerequisites;
- Finally, at the level of individuals, the partial taxation of private dividend income will increase to 70% for business and private assets at federal tax level and to minimum 50% at cantonal level. Also, the 5% transposition threshold for shares assigned to self-owned companies is abandoned.

## CAPITAL GAINS TAX

Capital gains on real estate (if a part of “business assets”) for direct federal tax and several cantonal tax purposes are aggregated with and taxed as part of ordinary income. In other cantons, recaptured depreciation is taxed with ordinary income, while the realised increase in value is subject to a special real estate gains tax. The capital gains on real estate which is a part of “non-business assets” of an individual is always subject to a special real estate gains tax.

Capital gains realised on the sale of investments are (partially) tax exempt, provided:

(1) The sales price exceeds the (historical) acquisition costs of the investment;

(2) The securities sold amount to at least 10% of the sold company’s share capital or entitle the purchaser to at least 10% of the profit or reserves of the sold company;

(3) The investment was held for a period of at least one year.

## BRANCH PROFITS TAX

Foreign branch income of a Swiss corporation is exempt from Swiss taxation. Swiss branches of foreign companies are assessed on the profit and capital attributable to the branch. For income tax purposes branches of foreign companies are treated basically the same way as local corporations. In the context of the TRAF, the Federal Tax Administration does no longer apply the federal practices concerning principal companies and Swiss finance branches to new companies from 2019 (so called privileged tax regimes on the federal level).

## VALUE ADDED TAX (VAT)

VAT is charged on the domestic delivery of goods and rendering of services and a tax on the importation of goods and services into Switzerland. The standard VAT rate is 7.7% as from 2018. Special lower rates (2.5% or 3.7%) apply for various services and goods as from 2018. In addition, various exemptions exist.

## LOCAL TAXES

The municipalities levy income taxes, mostly in the form of annually determined surcharges on the cantonal taxes. The tax rates may differ from one community to another.

## PROPERTY TAXES

Some cantons levy a tax just on the holding of real estate. The tax rates and how this tax is calculated vary from canton to canton.

## CHURCH TAX

Almost all cantons levy a church tax for registered members of one of the respective official religious affiliations. The determination of the religious affiliation is part of a registration process with the municipal authorities. Individuals without religious denomination or members of other than the official Swiss churches (e.g. Muslims, Jews, Anglo-Saxon church members) are not subject to cantonal church tax.

## SOCIAL SECURITY

If an individual is subject to the Swiss social security the following social security contributions are payable on gross salaries:

| Insurance | Contribution rate | | Cap (CHF) |
|---|---|---|---|
| | Employer (%) | Employee (%) | |
| Old age, survivors’ and disability insurance | 5.3 | 5.3 | No cap |
| Unemployment insurance | 1.1 | 1.1 | 148,200 |
| Supplementary unemployment insurance | 0.5 | 0.5 | Above 148,200 |
| Family Compensation Fund | 1 to 3 | 0 | No cap |
| Occupational accident insurance | Premiums are calculated as a permillage (‰) of the income subject to compulsory insurance. They comprise a risk-based net premium and various supplements. For purposes of premium calculation, companies are assigned to various premium tariff categories and levels according to the type of business and specific circumstances | 0 | 148,200 |
| Non-occupational accident insurance | 0 | Premium amounts differ depending on the insured person’s income and the type of company | 148,200 |
| Occupational pension scheme | Depending on pension plan, employer specific | Depending on pension plan, employer specific | |
| Medical insurance | | Depending on coverage, private insurance | |

All social security taxes (except for the medical insurance) are the employer’s responsibility. The employer must withhold and remit the total deduction and deducts the employee’s share from his gross pay. If the individual is self-employed, they basically have to cover the employer’s and the employee’s share, however different contribution rates may be applicable.

## ISSUANCE STAMP DUTY TAX

The issuance and increase of the nominal capital of the following securities are generally subject to issuance Stamp Duty tax:

| | Rate (%) |
|---|---|
| Shares of Swiss corporations | 1* |
| Quotas of Swiss private limited companies | 1* |
| Shares in Swiss co-operative societies | 1* |

* 0% up to a paid-in capital of CHF 1,000,000.

Further, capital contributions made by shareholders and credited to reserves (capital surplus) are subject to 1% issuances Stamp Duty tax. Since 1 March 2012 issuance Stamp Duty tax is no longer due on the issuance of debentures and money market papers.

## SECURITIES TRANSFER STAMP DUTY TAX

The transfer of taxable deeds (securities, debentures) is generally subject to securities transfer Stamp Duty tax if a Swiss securities dealer is involved. The tax rate is 0.15% for Swiss taxable deeds and 0.3% for foreign taxable deeds. Various exemptions exist. Except from Swiss banks and brokers, capital companies with taxable deeds of more than CHF 10 million in their balance sheet qualify as a Swiss securities dealer with regard to Stamp Duty law.

## RADIO & TV FEE

From 1 January 2019 the new device-independent fee will be collected from households and undertakings. It replaces the current device-dependent fee, which was terminated at the end of 2018. In Switzerland, undertakings which are subject to VAT (with registered office, domicile or permanent establishment in Switzerland) and have a global turnover of CHF 500,000 or more are automatically subject to the radio and television fee. These companies will automatically receive an annual bill from the Federal Tax Administration FTA.

## B. DETERMINATION OF TAXABLE INCOME

The starting point for determining taxable income of corporate entities is the net income reported as per the statutory accounts. This means all types of income, including capital gains, are part of the taxable income. The reported profit may be adjusted for tax purposes by adding back e.g. expenses that are not commercially justified such as excessive depreciation and provisions, hidden profit distributions and costs in connection with the purchase or improvement of fixed assets.

## DEPRECIATION

Depreciation of tangible and intangible assets is allowed where 'commercially justified' and recorded in the books. For tax purposes, both the straight-line and the declining balance methods may be used. The use of one method should be constant over the years and should only be changed if absolutely necessary. Safe haven rates have been published by the federal tax authorities, which are considered commercially justified.

## STOCK / INVENTORY

Inventories must be carried at the lower of cost or market value. Cost is generally determined using the FIFO or average method. As a concession, a reserve against stock contingencies may be set up in the books. If this reserve does not exceed one-third of the lower of cost or market value of the inventory at the balance sheet date, it will be admitted by all tax authorities without enquiry.

## CAPITAL GAINS AND LOSSES

See discussion above. As a rule, capital gains realised by corporations are not taxed separately but are added to any other income in the year of realisation and taxed at ordinary tax rates. Exceptions may apply to capital gains realised on the disposal of immovable property. The sale of an investment of at least 20% in another company's share capital by a Swiss company to a foreign or Swiss group company may, under certain circumstances, be made at either book value (tax-exempt restructuring) or fair market value. The sale of an investment of less than 20% in another company's share capital to a foreign affiliated entity or to a Swiss company regardless of the investment may only be completed at fair market value.

Capital gains realised by a foreign shareholder on the sale of a Swiss subsidiary company are not subject to Swiss taxation, except for the sale of Swiss real estate companies, which would be considered as a direct sale of the Swiss properties owned by such companies.



## DIVIDENDS

Dividends received are classified as business income but federal law and all cantonal laws allow a relief of taxes payable if the shareholding company owns more than 10% of the share capital or is entitled to at least 10% of the profit or reserves of the dividend distributing company or if the investment has a fair market value of more than CHF 1 million (qualifying investment). Dividends paid from Swiss capital companies to Swiss residents and non-residents are subject to 35% Swiss withholding tax. Shareholders resident in Switzerland may apply for the notification procedure under certain circumstances or can reclaim the withholding tax. Shareholders resident abroad may obtain relief under the appropriate double taxation treaty or the tax savings agreement between Switzerland and the EU.

## INTEREST DEDUCTIONS

A company may generally deduct all interest paid or accrued during a business year, although loan arrangements between related parties must be made on an arm's length basis. If the funds raised by interest bearing loans are loaned-on to affiliates, an interest spread of one-quarter to one-half per cent is basically required for the Swiss company if lending and on-lending are made in the same currency. Safe haven rates are published annually by the Swiss Federal Tax Administration for loans from and to affiliates.

Thin capitalisation rules apply to reduce the deduction available where the interest relates to monies borrowed from related parties. The Swiss Federal Tax Administration has issued thin capitalisation guidelines in a Circular Letter ("Kreisschreiben"). In general, any interest paid on loans from related parties that are classified as hidden equity are treated as hidden profit distributions, i.e.

may be added back to taxable income and be subject to withholding tax. The excessive portion of the loan, reclassified as equity, may be subject to capital tax.

## LOSSES

A limited loss carry forward mechanism is available (for seven years) for federal and cantonal income taxes (there is an unlimited use of loss carry forward in certain recapitalisation scenarios "Sanierung"). Swiss tax law provides neither for loss carry back nor for the consolidation of profitable and unprofitable group companies.

## FOREIGN SOURCED INCOME

Switzerland has no controlled foreign company legislation and a foreign company may be treated as a conduit only in instances where it is used for tax avoidance purposes. All income reported by a Swiss company is, in principle, subject to Swiss federal, cantonal and communal taxes.

## INCENTIVES

Tax incentives are granted on a case-by-case basis and their extent and duration largely depend on the size of the investment and the importance attributed to the economic development of the canton or region concerned by the cantonal and federal governments. Such an incentive may be either relief or exemption from income and annual capital tax for up to ten years.

Provisions for future expenses relating to R&D payable to third parties are deductible up to a maximum of 10% of net profit, with a ceiling of CHF 1 million (this measure was already applicable before TRAF). Subject to certain conditions, companies are allowed to set up a tax privileged recession reserve up to an amount of 20% of annual gross salaries paid. The amounts are deductible for federal, cantonal and communal tax purposes. Accelerated write-down on fixed asset investments is granted in certain cantons.

At the cantonal and municipal tax level, the TRAF bill provided for two R&D tax incentives new to Switzerland, namely the patent box and the additional R&D deduction:

- The cantons may grant an additional deduction of a maximum of 50% on R&D expenses provided they represent scientific research and science-based innovation within the meaning of the Federal Act on the Promotion of Research and Innovation and have been incurred in Switzerland. Depending on the design used by the cantons, the qualifying expenses can thus – because these expenses are also already fully deductible independently of the additional R&D deduction – be deducted in aggregate by an amount of between 100% and 150%.
- With the patent box, the net profit attributable to patents or comparable rights is to be taxed at a reduced rate. It was mandatory for all cantons to implement the provision. The maximum reduction provided for by law is 90%, but the cantons could also provide for a lower reduction, with some partly opting for this possibility.

A wide variety of non-tax incentives are granted by these regions, such as cash grants, participation in project costs, partial or entire assumption of interest expenses on loans required for realisation of the project, subsidies for training personnel etc.

## C. FOREIGN TAX RELIEF

Double tax relief is granted by means of tax exemption of foreign branch and real property income and by the deduction of any non-recoverable foreign withholding taxes. Based on most double taxation agreements, a credit against Swiss income taxes is granted for the unrelieved portion of foreign withholding taxes on dividends, interest and royalties or similar fees but not for underlying income taxes on dividends received from subsidiaries.

The tax credit is granted for taxes derived from treaty countries under which Switzerland has committed itself to such a tax credit. Foreign taxes of these countries are creditable only if they are irrecoverable and actually paid or, in respect of treaties that provide for a tax-sparing credit, if they are deemed to be paid. Switzerland applies the credit method also for branches as of 1st January 2020.

## D. CORPORATE GROUPS

Each entity in Switzerland is subject to taxes independent from the corporate group and tax returns have to be filed for each Swiss subsidiary and branch. Revenue and capital losses cannot be transferred within a corporate group.

## E. RELATED PARTY TRANSACTIONS

Intra-group transactions are not challenged by the tax authorities if they are made on an arm's length basis. There are neither provisions in tax laws nor any administrative practices that would challenge a transaction solely on the grounds of being made between related parties. However, intra-group transactions, where the consideration paid for goods or services is higher than what an independent third party would be willing to pay or the consideration for goods or services sold is less than what an independent third party would require, may be deemed as hidden profit distributions and be adjusted for determining taxable income. Hidden profit distributions are, in addition, subject to withholding tax in the same way as dividends.

Payments to foreign affiliates in respect of management fees, research and development, general and administrative expenses are deductible, if made on an arm's length basis. They should, however, be specific and identifiable as a commercially justified charge to the Swiss entity.

## F. WITHHOLDING TAX

The company must withhold a tax of 35% and remit this amount to the tax authorities on all cash dividends and dividends in kind, including bonus shares and surplus liquidation proceeds. As per 1st January 2011, reserves that have been paid in directly by shareholders can be distributed withholding tax-free. This tax is in general levied at source. However, it can be applied through the notification procedure under certain circumstances. Most treaties provide for a reduction of the normal 35% rate. Withholding tax on interest is levied at a rate of 35% but only on bonds, bond-like loans and deposits accepted by Swiss banks from non-bank clients. No withholding tax is levied on inter-company loans. There is no withholding tax on royalties.

## G. TAX RULINGS

Obtaining tax rulings is common practice in Switzerland. They are not required but are strongly recommended in cases that are more complex, prior to the implementation of the steps.

## H. EXCHANGE CONTROL

There are, at present, no currency restrictions on inward investments, and the Swiss franc is freely convertible into any other currency. Bank accounts may be maintained in local or foreign currencies either in or outside Switzerland without restriction. There is no distinction between resident and non-resident accounts. If the Swiss accounts are kept in a currency other than Swiss francs (i .e. in a functional currency), exchange gains or losses from the conversion of the functional currency accounts to CHF accounts are no longer taxable or tax deductible since the issuance of a respective federal court law decision in October 2009.

## I. PERSONAL TAX

A Swiss resident individual is subject to Swiss federal, cantonal and communal taxes on his worldwide income and net wealth, with the exception of income from investments in foreign permanent establishments and real estate situated abroad. Basically, foreigners are regarded as resident from date of registration (usually within one week of arrival where the individual intends to stay permanently in Switzerland). The cantons levy a wage source tax on salaries paid by domestic employers to expatriates. The tax is deducted monthly from the expatriate's gross income, including any benefits in kind, based on the cantonal tax table.

Switzerland has adopted the Federal Act on the Revision of the Wage Source Tax, which entered into force on 1 January 2021. The notable changes for Swiss residents are:

- For salaries over CHF 120,000: automatic subsequent ordinary taxation applies;
- If a person residing in Switzerland who is subject to wage source tax has income or assets that are not subject to source tax, a mandatory subsequent ordinary assessment is now carried out.

Individuals resident abroad and drawing income from or owning net assets in the form of a permanent establishment or real estate in Switzerland are subject to Swiss taxes thereon at the rates that would apply to their worldwide taxable income or net assets. The tax liability is, however, limited to their Swiss taxable income and net assets. Income tax is payable on assessable income less allowable deductions. The assessable income must include, in gross income, all compensation received as salary, living and housing allowances, dividends and interests on financial assets, and the fair market value of any benefits in kind.

If an individual Swiss tax payer owns more than 10% of a company, dividends are subject to special tax reductions depending on each cantonal law. The tax rates of direct federal tax on income and all cantonal taxes on income and net wealth are on a progressive basis. The federal tax rates apply separately to single and married taxpayers. These rates are valid as per 1 January 2022. The married taxpayers' rate also applies to registered couples of the same sex living together and to widowed, separated and divorced or single persons living with children who are minors and studying at their expense.

The tax rates (direct federal income tax) for unmarried taxpayers are as follows:

| If taxable Income is between (CHF) | Tax on lower amount is (CHF) | Tax on excess for each further CHF 100 (CHF) |
|---|---|---|
| 0 – 14,500 | -- | 0 |
| 14,501 - 31,599 | -- | 0.77 |
| 31,600 - 41,399 | 131.65 | 0.88 |
| 41,400 - 55,199 | 217.90 | 2.64 |
| 55,200 - 72,499 | 582.20 | 2.97 |
| 72,500 - 78,099 | 1,096.00 | 5.94 |
| 78,100 - 103,599 | 1,428.60 | 6.60 |
| 103,600 - 134,599 | 3,111.60 | 8.80 |
| 134,600 - 175,999 | 5,839.60 | 11.00 |
| 176,000 - 755,199 | 10,393.60 | 13.20 |
| 755,200 or above | 86,848.00 | 11.50 |

Taxable income exceeding CHF 755,200 is subject to a flat rate of 11.50%.

The tax rate (direct federal income tax) for married taxpayers is as follows:

| If taxable Income is between (CHF) | Tax on lower amount is (CHF) | Tax on excess for each further CHF 100 (CHF) |
|---|---|---|
| 0 – 28,300 | -- | 0 |
| 28,301 – 50,899 | -- | 1 |
| 50,900 – 58,399 | 226 | 2 |
| 58,400 – 75,299 | 376 | 3 |
| 75,300 – 90,299 | 883 | 4 |
| 90,300 – 103,399 | 1,483 | 5 |
| 103,400 – 114,699 | 2,138 | 6 |
| 114,700 – 124,199 | 2,816 | 7 |
| 124,200 – 131,699 | 3,481 | 8 |
| 131,700 – 137,299 | 4,081 | 9 |
| 137,300 – 141,199 | 4,585 | 10 |
| 141,200 – 143,099 | 4,975 | 11 |
| 143,100 – 144,999 | 5,184 | 12 |

| If taxable Income is between (CHF) | Tax on lower amount is (CHF) | Tax on excess for each further CHF 100 (CHF) |
|---|---|---|
| 145,000 – 895,799 | 5,412 | 13 |
| 895,800 or above | 103,016 | 11.5 |

Taxable income exceeding CHF 895,900 is subject to a flat rate of CHF 11.50%.

In addition, cantonal and municipal taxes are payable which are considerably higher. The tax rates are dependent on the canton in which the individual is resident. There are also net wealth taxes, inheritance and gift taxes levied by most cantons (with exception of the Canton of Schwyz for inheritance and gift taxes).

## J. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The standard rate of Swiss withholding tax is 35%. Relief, when granted, is generally by way of refund. The table below stipulates the remaining tax for the recipient for each type of income. The information contained therein is valid as per 1 January 2022. On 1 July 2005 the agreement on the taxation of savings income between Switzerland and the EU came into effect. A limited company with a direct participation of 25% or more which is held longer than two years can file a request for the application of the declaration procedure, which results in a 0% rate. Switzerland transfers a retention tax on the interest income of EU tax payers to the EU member states every year. Switzerland and the EU signed an agreement regarding the automatic exchange of information in tax matters in May 2015 which adopts the global standard set by the OECD. It entered into force on 1 January 2017, with the result that financial institutions in Switzerland and the EU member states collect account information on non-tax residents. This account information has been exchanged for the first time in the autumn of 2018.

| | Dividends Portfolio (general rule)[1, 2] (%) | Substantial Holdings[1, 2] (%) | Interest (general rule)[2] (%) |
|---|---|---|---|
| **Domestic rates** | | | |
| Companies | 35 | 0 | 0/3/35 |
| Individuals | 35 | -- | 0/3/35 |
| **Treaty countries:** | | | |
| Albania | 15 | 5 | 5 |
| Algeria | 15 | 5 | 10 |
| Argentina | 15 | 10 | 12 |
| Armenia | 15 | 5 | 10 |
| Australia | 15 | 5 | 10 |
| Austria | 15 | 0 | 0 |
| Azerbaijan | 15 | 5 | 10 |
| Bahrain | 15 | 5 | 0 |
| Bangladesh | 15 | 10 | 10 |
| Belarus | 15 | 5 | 8 |
| Belgium | 15 | 0 | 10 |
| Brazil | 15 | 10 | 10/15 |
| Bulgaria | 10 | 0 | 5 |
| Canada | 15 | 5 | 10 |
| Chile | 15 | 15 | 15 |
| China | 10 | 5 | 10 |
| Colombia | 15 | 0 | 10 |
| Croatia | 15 | 5 | 5 |
| Cyprus | 15 | 0 | 0 |
| Czech Republic | 15 | 0 | 0 |
| Denmark | 15 | 0 | 0 |
| Ecuador | 15 | 15 | 10 |
| Egypt | 15 | 5 | 15 |
| Estonia | 10 | 0 | 0 |
| Finland | 10 | 0 | 0 |
| France | 15 | 0/15 | 0 |
| Georgia | 10 | 0 | 0 |
| Germany | 15 | 0 | 0 |
| Ghana | 15 | 5 | 10 |
| Greece | 15 | 5 | 7 |
| Hong Kong | 10 | 0 | 0 |

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| | Dividends Portfolio (general rule)[1, 2] (%) | Substantial Holdings[1, 2] (%) | Interest (general rule)[2] (%) |
|---|---|---|---|
| Hungary | 15 | 0 | 0 |
| Iceland | 15 | 0 | 0 |
| India | 5 | 5 | 10 |
| Indonesia | 15 | 10 | 10 |
| Iran | 15 | 5 | 10 |
| Ireland | 15 | 0 | 0 |
| Israel | 15 | 5 | 10 |
| Italy | 15 | 15 | 12.5 |
| Ivory Coast | 15 | 15 | 15 |
| Jamaica | 15 | 10 | 10 |
| Japan | 10 | 0/5 | 10 |
| Kazakhstan | 15 | 5 | 10 |
| Korea (South) | 15 | 5 | 5/10 |
| Kosovo | 15 | 5 | 5 |
| Kuwait | 15 | 15 | 10 |
| Kyrgyzstan | 15 | 5 | 5 |
| Latvia | 15 | 0 | 0/10 |
| Liechtenstein | 15 | 0 | 0 |
| Lithuania | 15 | 5 | 10 |
| Luxembourg | 15 | 0/5 | 10 |
| Malawi | 15 | 0 | 0 |
| Malaysia | 15 | 5 | 10 |
| Malta | 15 | 0 | 10 |
| Mexico | 15 | 0 | 10 |
| Moldova | 15 | 5 | 10 |
| Mongolia | 15 | 5 | 10 |
| Montenegro | 15 | 5 | 10 |
| Morocco | 15 | 7 | 10 |
| Netherlands | 15 | 0 | 0 |
| New Zealand | 15 | 15 | 10 |
| North Macedonia | 15 | 5 | 10 |
| Norway | 15 | 0 | 0 |
| Oman | 15 | 5 | 0/5 |
| Pakistan | 20 | 10 | 10 |
| Peru | 15 | 10 | 15 |
| Philippines | 15 | 10 | 10 |
| Poland | 15 | 0 | 0/5 |
| Portugal | 15 | 0 | 10 |
| Qatar | 15 | 5/10 | 0 |
| Romania | 15 | 0 | 0/5 |
| Russia | 15 | 5 | 0 |
| Saudi Arabia | 15 | 5 | 5 |
| Serbia | 15 | 5 | 10 |
| Singapore | 15 | 5 | 5 |
| Slovak Republic | 15 | 0 | 0/5 |
| Slovenia | 15 | 0 | 0/5 |
| South Africa | 15 | 5 | 5 |
| Spain | 15 | 0 | 0 |
| Sri Lanka | 15 | 10 | 10 |
| Sweden | 15 | 0 | 0 |

| | Dividends Portfolio (general rule)[1, 2] (%) | Substantial Holdings[1, 2] (%) | Interest (general rule)[2] (%) |
|---|---|---|---|
| Taiwan | 15 | 10 | 10 |
| Tajikistan | 15 | 5 | 10 |
| Thailand | 15 | 10 | 15 |
| Trinidad and Tobago | 20 | 10 | 10 |
| Tunisia | 10 | 10 | 10 |
| Turkey | 15 | 5 | 10 |
| Turkmenistan | 15 | 5 | 10 |
| Ukraine | 15 | 5 | 10 |
| United Arab Emirates | 15 | 5 | 0 |
| United Kingdom | 15 | 0 | 0 |
| United States | 15 | 5 | 0 |
| Uruguay | 15 | 5 | 10 |
| Uzbekistan | 15 | 5 | 5 |
| Venezuela | 10 | 0 | 5 |
| Vietnam | 15 | 7/10 | 10 |
| Zambia | 15 | 5 | 10 |

NOTES:

1. The rates necessary to constitute a substantial holding vary on a country by country basis. Reference should therefore be made to the individual treaties.
2. Rates are listed as a general rule only. Reference should therefore be made to the individual treaties.

# TAIWAN

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Taipei | Ronnie Chang | +886 2 8792 2628<br>rc@pkf.com.tw |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of China |
| Capital: | Taipei |
| Main languages: | Mandarin Chinese (official), Min Nan Chinese (Taiwanese) |
| Population: | 23.9 million (2022 estimate) |
| Monetary unit: | New Taiwan Dollar (NTD) |
| Internet domain: | .tw |
| Int. dialling code: | +886 |

## KEY TAX POINTS

- Domestic entities are taxed on a worldwide basis, while other entities pay tax only on income sourced in Taiwan. Where a non-resident company has Taiwan-sourced income but no place of business or agent in Taiwan, the company's income is taxed at source under the withholding tax regime.
- Taiwan taxes all profit-seeking enterprises operating in Taiwan with total taxable income over NTD 120,001 at 20% effective 1 January 2018 (but the tax may not exceed 50% of the portion of taxable income over NTD 120,000).
- Profits that are earned in a year but not distributed by end of the following year are subject to 5% advance tax.
- All gains and losses on the disposal of capital assets are taxable as current year income or deductible as expenses with the exception of marketable securities and futures.
- 5% value-added business tax is applied to business entities in most industries under the VAT system. Export sales and export-related services, however, are subject to a zero tax rate. Financial institutions are subject to non-value-added business tax.
- There are no local income taxes.
- Foreign tax suffered on overseas income is creditable against Taiwanese tax subject to a limit of Taiwanese tax payable on such income. Any unused tax credits may not be carried back or forward to other years.
- Domestic corporations paying certain types of income are required to withhold tax between 5% and 21%.
- Individuals are only subject to income tax on Taiwan source income with income derived from foreign sources being exempt from income tax. Residents, both Taiwanese and foreign nationals, pay tax on net consolidated income calculated as the total

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income received from all Taiwan sources less exemptions and deductions.

- If the amount of regular income tax for a company or an individual is less than the amount of basic tax, the total tax payable is the amount of the basic tax.

## A. TAXES PAYABLE

### BUSINESS INCOME TAX

Taiwan taxes all profit-seeking enterprises operating in Taiwan. Domestic entities are taxed on a worldwide basis, while other entities pay tax only on income sourced in Taiwan. Where a non-resident company has Taiwan-sourced income but no place of business or agent in Taiwan, the company's income is taxed at source under the withholding tax regime. Domestic entities include companies that are incorporated under Taiwan Company Law. A domestic company is incorporated when it is duly registered with the central competent authority and issued with an approval letter on its registration. Income tax rates for profit-seeking enterprises are as follows:

- Less than NTD 120,000: 0%
- NTD 120,001 and over: 20%, effective 1 January 2018 (but the tax may not exceed 50% of the portion of taxable income over NTD 120,000).

### TAX IMPUTATION SYSTEM

Effective 1 January 2018, the imputation system was abolished to simplify the income tax system.

### TAX ON INTEREST

Interest received by a resident profit-seeking enterprise is taxable as non-operating income and 10% creditable withholding tax is imposed.

Tax on interest received by a non-resident profit-seeking enterprise is withheld according to the following rules:

(1) For interest from the portion of the pecuniary amount realized by short-term commercial papers at their maturity in excess of the selling price at their initial issuance, 15% of the payment is withheld.

(2) For interest distributed derived from beneficiary securities or asset-backed securities issued in accordance with the Financial Asset Securitization Act or the Real Estate Securitization Act, 15% of the distribution is withheld.

(3) For interest on government bonds, corporate bonds or financial bonds, 15% of the payment is withheld.

(4) For interest derived from repo (RP/RS) trade whereby a taxpayer purchases securities or short-term commercial papers as described above in paragraphs 1 to 3 which shall be the net amount of the sale price at their maturity in excess of the original purchase price, 15% of the payment is withheld.

(5) For all other types of interest, 20% of the payment is withheld.

### TAX ON RETAINED EARNINGS

Retained profits attract an additional 5% income tax. Profits that are earned in a year but not distributed by the end of the following year are subject to 5% advance tax.

### CAPITAL GAINS TAX

All gains and losses on the disposal of capital assets are taxable as current year income or deductible as expenses with the exception of marketable securities and futures.

#### Securities Transactions

The levy of tax on gains derived from the sale of marketable securities was suspended. However, gains from marketable security transactions shall be subject to Income Basic Tax, please see 'Alternative minimum tax' below.

#### Futures Transactions

The levy of tax on gains from transactions of futures under Statute for Futures Transaction Tax was suspended. However, gains from futures transactions shall be subject to Income Basic Tax, please see 'Alternative minimum tax' below.

#### Land and Buildings Transactions

Effective from 1 January 2016, gains or losses on the disposal of land and buildings of resident companies are taxable as current year income or deductible as expenses. Starting from 2021, capital gains on disposal of land and buildings will be subject to income tax under three brackets: 20%, 35%, and 45%, in accordance with the period held by the seller before the transaction took place. However, for non-resident companies, gains on disposal of land and buildings shall be computed separately at a rate of 35% or 45% in accordance with the period held by the seller before the transaction took place.



### BRANCH PROFITS TAX

A foreign company's branch or any other permanent establishment in Taiwan is subject to income tax only on its income from Taiwanese sources. If the foreign enterprise has neither a branch nor a business agent in Taiwan, it is subject to withholding tax on its Taiwanese source income. The repatriation of profits by Taiwanese branches of foreign enterprises is not taxable. It is proposed, but not yet put into practice, that a branch profits tax be imposed on the repatriation of profits by the Taiwanese branch of foreign enterprises so that a branch does not have a tax-preferable treatment over a subsidiary.

### ANTI-TAX-AVOIDANCE CLAUSE

Anti-tax-avoidance rules were put into the Income Tax Act in 2016 as follows:

- For any profit-seeking enterprise and its related parties directly or indirectly holding up to 50% of shares or capital of a foreign affiliated enterprise registered in a low-tax burden country or jurisdiction, or having a significant influence on such a foreign affiliated enterprise, the surplus earnings of the foreign affiliated enterprise shall be recognised as the profit-seeking enterprise's investment income which is calculated according to the ratio and holding period of the shares or capital, and such investment income shall be included in taxable income of the current year.

- Any foreign profit-seeking enterprise established according to foreign law but with a place of effective management in Taiwan shall be deemed a profit-seeking enterprise having its head office within the territory of Taiwan, and shall be subject to profit-seeking enterprise income tax in accordance with the Income Tax Act and other relevant laws.
- To cope with the global minimum tax regime set forth by the OECD and to get better integrated in international standards, the Executive Yuan has set the implementation date for CFC-related regulations as per 1 January 2023, and FY 2023 for for-profit entities.

## BUSINESS TAX

5% value-added business tax is applied to business entities in most industries under the VAT system. Export sales and export-related services, however, are subject to a zero tax rate. Financial institutions are subject to non-value-added business tax. Professional practitioners are not subject to VAT or business turnover tax for service revenue earned. Profit-seeking enterprises (e.g. manufacturers, wholesalers and retailers) are collectors of VAT and are required to pay the net VAT, being taxes collected from sales less taxes paid on purchases and business expenses, to their district tax offices and file returns. Zero rates and exemptions exist for some items.

A 5% non-value-added business tax rate shall apply to banking and insurance enterprises for their sales amounts which are connected with banking and insurance business, but the sales amounts from reinsurance premiums shall be taxed at 1%. A 2% non-value-added business tax rate shall apply to the enterprises for their sales amounts which are connected with investment trusts, securities, futures, commercial paper and pawnshops.

## FRINGE BENEFITS TAX

Although there is no separate FBT, perquisites or other benefits supplementing normal wages and salaries are included in the computation of employment income and are taxable as such. Minor exceptions do exist. See ‘Personal tax’ below.

## LOCAL INCOME TAXES

There are no local income taxes.

## OTHER TAXES

Other taxes are summarized as below.

## CUSTOMS DUTY AND TRADE PROMOTION SERVICE FEE

Customs Duty on taxable imported goods is based on the value of the goods including transport and insurance costs or on the quantity imported with different rates depending on the category of the goods. There are no harbour duties but a ‘Trade Promotion Service Fee’ is payable at rate of 0.0425% or less based on the value of goods, and a ‘Commercial Port Dues’ is payable based on the length of containers or the weight of goods.

## COMMODITY TAX

Commodity Tax is imposed on certain designated commodities whether manufactured locally or imported. Commodity Tax on taxable commodities is based on the value or quantities of commodities manufactured or imported depending on the category of commodities.

## STAMP TAX

Stamp Tax is imposed on business transaction documents, property titles, permits and the like. The following are exempt from stamp duty: all types of instruments used by offshore banking branches, documents executed abroad, receipts for the delivery of goods and certain other transactions. Subject to stamp tax are the following documents: receipts for cash, contracts or deeds for purchase or sale of chattels, contracts or deeds for undertaking jobs and contracts or deeds for sale, exchange, donation or division of real property.

## SECURITIES TRANSACTION TAX

The rate is 0.3% for a transaction in shares or share certificates embodying the right of shares issued by a company limited by shares and 0.1% for corporate bonds or any securities which have been duly approved by the government. Bonds issued by governments are exempt from securities transaction tax. The securities transaction tax levied on corporate bonds and finance bonds are exempted from levy from 1 January 2010 to 31 December 2026.



## FUTURES TRANSACTION TAX

The tax rate for transactions in option contracts or option contracts on futures is not less than 0.1% and not more than 0.6%. The tax rate for transactions in stock index futures contracts, interest rate futures contracts and other futures contracts varies from 0.0000125% to 0.06%.

## LAND TAX

Three types of land tax are imposed: rural land tax, land value tax, and land value increment tax.

(1) Rural Land Tax: Applicable to rural or urban land used for agricultural production. The Rural Land Tax has not been levied since 1987.

(2) Land Value Tax: All land having value is subject to land value tax with a flat rate of 1% applicable to land for industrial use. For residential land meeting certain requirements for self-use, the flat rate is 0.2%. For land reserved for public facilities under urban planning, the rate is 0.6% if the land is used for buildings during the reserved period. Land used for other purposes is subject to a progressive rate of tax ranging from 1% to 5.5%.

(3) Land Value Increment Tax: The sale of land gives rise to tax imposed on the increase in the assessed value since the previous

sale or transfer. Rates vary from 20% to 40% on a progressive scale except for:

(a) Self-use residential land subject to certain conditions is taxed at 10%.

(b) Transfers by inheritance, government approved sales of industrial land and sales followed by replacement purchases in certain circumstances are exempt.

For land that has been owned for a period of over 20 years, its land increment tax on the portion exceeding 20% shall be reduced by 20% to 40%.

## DEED TAX

Deed Tax is imposed on the transfer of real estate at tax rates varying from 2% to 6%. Deed Tax is not imposed on the land where Land Value Increment Tax is imposed.

## BUILDING TAX

Building Tax is levied annually on the assessed value of buildings and improvements at the following rates: 3% to 5% for commercial space, professional offices and private hospitals; 1.5% to 2.5% for premises of non-profit organisations; and 1.2% to 3.6% for residential buildings.

## SPECIFICALLY SELECTED GOODS AND SERVICES TAX

Specifically selected goods and services tax is imposed on the sale, manufacture, and import of specifically selected goods or the sale of specifically selected services within the territory of Taiwan.

Specifically selected goods and services include:

(1) Buildings and land which has been held for a period of no more than two years.

(2) Passenger cars with nine seats or fewer and a selling price or taxable value of not less than NTD 3 million.

(3) Yachts which have a length of not less than 30.48 meters.

(4) Airplanes, helicopters, or ultra-light vehicles with a selling price or taxable value of not less than NTD 3 million.

(5) Turtle shells, hawksbill, coral, ivory, furs, and their products: any of the aforesaid items that has a selling price or taxable value of not less than NTD 500,000.

(6) Any item of furniture with a selling price or taxable value of not less than NTD 500,000.

(7) Membership rights with a selling price of not less than NTD 500,000, except when in the nature of a refundable deposit.

The tax rate is 10%. However, 15% tax will be levied if the holding period of buildings and land is no more than one year.

Effective from 1 January 2016, specifically selected goods and services tax ceased to apply on buildings and land which has been held for a period of no more than two years.

# B. DETERMINATION OF TAXABLE INCOME

In arriving at taxable income, certain expenses are allowed against total income. Expenses relating to the earning of business income are generally deductible to the extent that they are ordinary and necessary business expenses. The expenditure must be incurred in the course of operating a business or subsidiary. Certain foreign enterprises are permitted to calculate their taxable income as a percentage of their net income rather than claiming deductions for expenses. A foreign enterprise engaged in certain sectors (e.g. international transport, construction contracting, technical services, equipment leasing), regardless of whether it has a branch or a business agent in Taiwan, may apply to the Tax Authorities to consider a percentage of its gross business income as taxable. This percentage is 10% for an international transport business and 15% for all other businesses.

The following adjustments are required when calculating taxable income.

## DEDUCTIBLE TAXES

All taxes with the exception of income tax and taxes relating to capital acquisitions are deductible. However, the deduction is only available in the year the taxes are paid or accrued. Fines or penalties under Taiwanese law are not deductible.

## DEPRECIATION

The following methods are acceptable to the Tax Authorities: straight-line, declining-balance, sum-of-year's-digits, production quantity and machine/working hour methods. In specified circumstances, revaluation of fixed assets so as to increase claims for depreciation is allowable. Property with a useful life of less than two years or a value of less than NTD 80,000 is fully deductible in the year the purchase occurs. There is a depreciation limit of NTD 2.5 million on passenger cars.



## STOCK / INVENTORY

Inventory may be valued at cost or the lower of cost or net realized value. Cost may be determined using the specific identification, first-in first-out, moving average, weighted average, or other methods approved by competent authority. Uniformity between book and tax reporting is not required.

## DIVIDENDS

A domestic company which owns shares in another domestic company is, regardless of the percentage of ownership, exempt from business income tax on the dividends from another domestic company.

A domestic company is taxable on dividends received from foreign companies although a unilateral foreign tax credit is generally available subject to the requirement of reciprocal treatment by that foreign country and limited to the lesser of foreign tax paid or the tax which would otherwise have been payable in Taiwan.

## INTEREST DEDUCTIONS

Interest payable on loans necessary for business operations is deductible in the period it is actually incurred. Interest on borrowings from individuals or firms other than financial institutions over the standard rate prescribed by tax offices will be disallowed to the extent of the excess.

**Thin capitalisation**

The excess interest expenditure on the debts owed directly or indirectly by an enterprise to a related party shall not be considered as expenses or losses if the proportion of related party debt-to-equity of the enterprise exceeds the specified ratio of 3:1.

## LOSSES

The carry forward of losses is limited to ten years, while loss carry back is prohibited. In the case of loss carry forwards, these are only available to companies which keep a complete set of accounting records and which file blue returns or returns certified by a CPA.

## FOREIGN SOURCE INCOME

Foreign income of Taiwanese corporations is taxable in Taiwan with double taxation being relieved by way of foreign tax credits.

## TAX INCENTIVES

Based on the Statute of Industrial Innovation, a company may select one of the following incentives for crediting the company's total expenditure on R&D against its business income tax payable. However, this credit shall not exceed 30% of the business income tax payable by the company in that year.

- Up to 15% of the R&D expenses may be credited against the business income tax payable by it in the current year.
- Up to 10% of the R&D expenses may be credited against the business income tax payable by it within three years from the year the R&D expenses incurred.

Based on the Act for the Development of Biotech and New Pharmaceutical Industry, be effective until 31 December 2021, biotech and new pharmaceutical companies are entitled to a deduction from their business income tax liability when undertaking R&D on new drugs and high-risk medical devices, as well as the training of personnel. The deduction is limited to 35% of the total amount invested in R&D and personnel training and may be credited against the business income tax within five years from the year the tax liability is incurred. The total amount of investment credited against the payable corporate income tax in each year shall not exceed 50% of the amount of business income tax payable in a year. However, this restriction shall not apply to the amount to be offset in the last year of the aforesaid five-year period.

Furthermore, enterprises investing in biotechnology and new pharmaceutical companies and holding the shares for more than three years are entitled to a deduction from the business income tax payable for a period of five years starting from the year the tax liability is incurred, up to 20% of the acquisition cost of the shares.

The Act for Promotion of Private Participation in Infrastructure Projects provides tax incentives and government support for a private company investing in government-approved infrastructure projects. The tax incentives include:

- A company may enjoy a five-year tax exemption on business profits derived from government-approved infrastructure projects.
- Corporate shareholders holding registered stock issued by a private company in government-approved infrastructure projects for at least four years can offset the shareholder investment tax credit against their business income tax liability. The tax credit is 20% of the cost of the shares.
- A private company investing in government-approved infrastructure or transportation construction projects may credit 5% to 20% of qualified expenditure incurred against its business income tax liability within five years starting from the year the expenditure is incurred.

Under the Offshore Banking Act, domestic and foreign banks can conduct an offshore banking business exempt from income tax, business tax, stamp duties, and withholding tax on interest.

## ALTERNATIVE MINIMUM TAX

According to the Income Basic Tax (IBT) Act, if the amount of regular income tax for a company or an individual is greater than or equal to the amount of basic tax, the income tax shall be calculated in accordance with the Income Tax Act and if the amount of regular income tax is less than the amount of basic tax, the total tax payable is the amount of the basic tax. According to the Act, capital gains derived from marketable securities and futures and some other income exempted from regular income tax by incentives shall be included in the basic income of the company and subject to IBT.

## C. FOREIGN TAX RELIEF

Foreign tax suffered on overseas income is creditable against Taiwanese tax subject to a limit of the Taiwanese tax payable on such income. Any unused tax credits may not be carried back or forward to other years.



## D. CORPORATE GROUPS

Generally, group taxation is not permitted except for meeting the requirements of consolidated tax returns in Business Mergers and Acquisitions Act.

## E. RELATED PARTY TRANSACTIONS

Royalties, interest and service fees paid to foreign (and Taiwanese) affiliates require adequate supporting transaction vouchers and documents to be deductible. Such payments are subject to withholding tax. Transactions between related parties are subject to Transfer Pricing Guidelines and contemporaneous documentation is required on an annual basis.

## F. WITHHOLDING TAX

Domestic corporations paying certain types of income are required to withhold as follows:

| Recipient | Salaries (%) | Dividends (%) | Interest (%) | Royalties/ rentals (%) | Professional fees/ commissions (%) |
|---|---|---|---|---|---|
| Resident corporations | -- | – | 10 | 10 | 10 |
| Resident individuals | 5[2] | – | 10[1] | 10 | 10 |
| Non-resident corporations | -- | 21 | 15/20[3] | 20 | 20 |
| Non-resident individuals | 18 | 21 | 15/20[3] | 20 | 20 |

Notes:

1. For interest on short-term marketable securities, the final withholding tax rate is 10%.
2. Withholding in accordance with withholding schedule or a flat rate of 5%.
3. See "Tax on Interest" above.

At the level of non-resident corporations, effective from 1 January 2016, the final withholding tax rate for gains from disposal of land and buildings is 45% or 35% in accordance with the period held by the seller before the transaction took place.

## G. EXCHANGE CONTROL

At present there is no limit on genuine trade-related remittances whether inward or outward. For non-trade-related remittances, the long standing controls were relaxed from 1997. Business entities can remit up to USD 50,000,000 (or the equivalent) into or out of Taiwan each year without advance approval from the Central Bank. The limit for individuals remains unchanged at USD 5,000,000 per year. Each remittance in excess of USD 1 million for a corporate or USD 500,000 for an individual requires supporting documentation.

## H. PERSONAL TAX

Individuals are only subject to income tax on Taiwan source income with income derived from foreign sources being exempt from income tax. Residents, both Taiwanese and foreign nationals, pay tax on net consolidated income calculated as the total income received from all Taiwan sources less exemptions and deductions.

Non-residents who stay in Taiwan for no more than 90 days within a calendar year are taxed on their gross income under the withholding tax system without allowance for deductions and exemptions. A non-resident staying in Taiwan over 90 days but less than 183 days within a calendar year who has no Taiwanese source income other than salaries from local employers is not required to file an income tax return if 18% tax on local salaries is withheld. In practice, however, a non-resident may prefer to file an annual tax return voluntarily, without allowance for deductions and exemptions, in order to keep a clean tax record in Taiwan.

Residence is determined on the basis of whether a person is domiciled in Taiwan and lives in Taiwan on a regular basis. An individual will also be considered to reside in Taiwan when, although not domiciled in Taiwan, they reside in Taiwan for 183 days or longer within a calendar tax year. The types of compensation deemed to be taxable income include:

- Cost of living allowance;
- Expatriation premium;
- Relocation allowance;
- Education for dependent children;
- Life insurance premiums exceeding NTD 2,000 per month paid by the employer on the employee's behalf.

Tax-exempt income includes:

- Qualifying professional expatriates' housing provided by the employer may be tax-exempt;
- Meals allowance of up to NTD 2,400 per month;
- Overtime pay for up to 46 hours per month;
- Travel expenses to allow a qualifying professional expatriate employee to return to their home country.

## DEDUCTIONS

A taxpayer may select either the 'standard deduction' or 'itemised deductions' and may, in addition thereto, declare 'special deductions'.

Standard deduction: For 2022, NTD 124,000 for a single taxpayer; NTD 248,000 for a taxpayer and his/her spouse.

Itemised deductions, subject to certain limitations, include:

- Charitable contributions;
- Insurance premiums up to NTD 24,000 per insured person for life or labour insurance;
- Medical and childbirth expenses;
- Disaster losses incurred due to force majeure, if not otherwise covered by insurance;
- Mortgage interest incurred on self-use residential dwelling up to NTD 300,000 per income tax return per year;
- Rent for housing up to NTD 120,000 per income tax return per year. However, no deduction shall be made for taxpayers who have filed the aforesaid mortgage interest on the same tax return.

Special deductions, subject to certain limitations, include:

- Losses from disposal of properties other than land, buildings, securities and futures, not to exceed total gains from disposal of properties in the same taxable year;
- Salary or wage earner's special deduction up to NTD 207,000 per salary or wage earner in 2022;
- Interest income exclusion up to NTD 270,000 per income tax return in 2022;
- Deduction for the disabled up to NTD 207,000 per disabled person in 2022;

- Deduction for higher education of children up to NTD 25,000 per person in 2022;
- Deduction for qualified pre-school children up to NTD 120,000 per child in 2022;
- Deduction for qualified long-term care up to NTD 120,000 per person in 2022.

## EXEMPTIONS

Remuneration for services rendered in Taiwan received from an employer outside Taiwan (with no charge back to a Taiwan entity) by an employee who is a non-resident will be exempt from tax provided the employee stays in Taiwan for no more than 90 days. Remuneration for services rendered in Taiwan received from an employer outside Taiwan is also exempt if received by non-resident directors, managerial officers and technicians of an approved FIA entity who are sent to Taiwan for no more than 183 days in a tax year to undertake preparatory work such as investment planning, plant construction or market surveys.

## PERSONAL EXEMPTION

The personal exemption is NTD 92,000. The exemption amount for taxpayers and spouses that are at least 70 years old is increased by 50%.

## TAX RATE

The tax brackets and rates of resident individual income tax for 2022 are as follows:

| Net taxable income (NTD) | Rates (%) |
|---|---|
| 0 – 560,000 | 5 |
| 560,001 – 1,260,000 | 12 |
| 1,260,001 – 2,520,000 | 20 |
| 2,520,001 – 4,720,000 | 30 |
| 4,720,001 and above | 40 |

## DIVIDEND INCOME TAX

With effect from 1 January 2018, if an individual receives dividends or surpluses from domestic companies, co-operatives and other legal persons then 8.5% of the total amount of dividends and surpluses may be deducted from the consolidated income tax of the current year. However, the threshold amount of annual deduction of each reporting household is capped at NTD 80,000. Alternatively, the taxpayer may choose to calculate the amount of tax payable separately at the tax rate of 28%.

## CAPITAL GAINS TAX

Effective from 1 January 2016, if an individual derives gains from disposal of land and buildings, such gains shall be subject to income tax, the tax payable shall be computed separately at a rate of 15% to 45% in accordance with the period held by the seller before the transaction took place.

## ALTERNATIVE MINIMUM TAX

According to the Income Basic Tax (IBT) Act, the basic tax for individuals is calculated in a similar manner as for companies with items added back to calculate the relevant income, including the following:

- Income derived from overseas sources excluded from gross consolidated income;
- Non-cash donations or contributions deducted from gross consolidated income;
- Insurance payments received by the beneficiary of a life insurance policy or annuity in which the beneficiary and the proposer are not the same person and the life insurance policy and annuities are contracted after this Act coming into force;
- Gains derived from transactions of beneficiary certificates of privately-placed securities investment trust funds;
- The amount of income or deduction which is entitled to reduction, exemption or deduction from the consolidated income tax as may be provided by laws which may be promulgated after the implementation of this Act and thereafter announced by the Ministry of Finance.
- Personal gain from unlisted stock transactions will be reincluded in individual income basic tax starting from Jan 1, 2021.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The following withholding tax rates are applicable to Taiwanese-source dividends, interest and royalties paid to non-residents where the income is not connected with a permanent establishment in Taiwan.

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Non-treaty countries:** | 21 | 15[17]/20 | 20 |
| **Treaty countries:** | | | |
| Australia | 10/15[3] | 10 | 12.5 |
| Austria | 10 | 10 | 10 |
| Belgium | 10 | 10 | 10 |
| Canada | 10/15[4] | 10 | 10 |
| Denmark | 10 | 10 | 10 |
| Eswatini (formerly Swaziland) | 10 | 10 | 10 |
| France | 10 | 10 | 10 |

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| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Gambia | 10 | 10 | 10 |
| Germany | 10/15[5] | 10/15[10] | 10 |
| Hungary | 10 | 10 | 10 |
| India | 12.5 | 10 | 10 |
| Indonesia | 10 | 10 | 10 |
| Israel | 10 | 7/10[11] | 10 |
| Italy | 10 | 10 | 10 |
| Japan | 10 | 10 | 10 |
| Kiribati | 10 | 10 | 10 |
| Luxembourg | 10/15[6] | 10/15[12] | 10 |
| Malaysia | 12.5 | 10 | 10 |
| Netherlands | 10 | 10 | 10 |
| New Zealand | 15 | 10 | 10 |
| North Macedonia | 10 | 10 | 10 |
| Paraguay | 5 | 10 | 10 |
| Poland | 10 | 10 | 3/10[14] |
| Saudi Arabia[15] | 12.5 | 10 | 4/10[16] |
| Senegal | 10 | 15 | 12.5 |
| Singapore | 40[1] | -[2] | 15 |
| Slovak Republic | 10 | 10 | 5/10[14] |
| South Africa | 5/15[7] | 10 | 10 |
| Sweden | 10 | 10 | 10 |
| Switzerland | 10/15[8] | 10 | 10 |
| Thailand | 5/10[9] | 10/15[13] | 10 |
| United Kingdom | 10 | 10 | 10 |
| Vietnam | 15 | 10 | 15 |

NOTES:

1. The treaty limits the aggregate of the corporate income tax and the tax on the dividends to 40% of that part of the taxable income out of which the dividends are declared.
2. The treaty is silent so the domestic rate applies. See Section F above.
3. The reduced 10% rate applies if the dividends are paid to a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
4. The reduced 10% rate applies if the beneficial owner is a company that holds directly or indirectly at least 20% of the capital of the dividend-paying company.
5. The 15% rate applies to dividends distributed by a real estate investment company that is tax-exempt regarding all or parts of its profits or that can deduct the distributions in determining its profits.
6. The 15% rate applies if the beneficial owner is a collective investment vehicle established in Luxembourg and treated as a body corporate for tax purposes in Luxembourg.
7. The reduced 5% rate applies if the beneficial owner directly holds at least 10% of the capital of the dividend-paying company.
8. The reduced 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company.
9. The reduced 5% rate applies if the beneficial owner directly holds at least 25% of the capital of the dividend-paying company.
10. The 15% rate applies if the interest is the distributed income of a real estate investment trust or a real estate asset trust that is tax-exempt regarding all or parts of its profits or that can deduct the distributions in determining its profits.
11. The 7% rate applies to interest paid on any loan of whatever kind granted by a bank of the other territory. The 10% rate applies in all other cases.
12. The 15% rate applies if the beneficial owner of the interest is a collective investment vehicle established in Luxembourg and treated as a body corporate for tax purposes in Luxembourg.
13. The 10% rate applies to interest received by any financial institution (including an insurance company).
14. The lower rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.
15. Effective date: 1 January 2022.
16. The 4% rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment. The 10% applies in all other cases.
17. (i) For interest from the portion of the monetary amount realised by short-term commercial paper at its maturity in excess of the selling price at its initial issuance, 15% of the payment is withheld (ii) For interest distributed from beneficiary securities or asset-backed securities issued in accordance with the Financial Asset Securitisation Act or the Real Estate Securitisation Act, 15% of the distribution is withheld (iii) For interest on government bonds, corporate bonds, or financial bonds, 15% of the payment is withheld (iv) For interest derived from repo (RP/RS) trade whereby a taxpayer purchases securities or short-term commercial paper as described before sub (i) to (iii) which shall be the net amount of the sale price at their maturity in excess of the original purchase price, 15% of the payment is withheld.

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# TAJIKISTAN

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Dushanbe | Sirojiddin Karimov | +992 44 625 22 27<br>info@pkf.tj |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Tajikistan |
| Capital: | Dushanbe |
| Main languages: | Tajik, Russian |
| Population: | 9.95 million (2022 estimate) |
| Monetary unit: | TJS (Tajikistani Somoni) |
| Internet domain: | www.pkf.tj |
| Int. dialling code: | +992 |

## KEY TAX POINTS

- Gross income reduced by the amount of deductions (expenditures) provided by the Tax Code of Tajikistan is subject to corporate income tax at the level of residents.
- Gross income is subject to corporate income tax at the level of a non-resident in case of receiving Tajikistan-source income and not linked with its permanent establishment.
- The VAT rate is 15% on taxable turnover, except for the export of goods and certain reduced tax rates, and 15% on taxable imports. Export transactions of inventories are taxed at a zero rate.
- Capital gains from business assets are taxed at the normal tax rate. Capital gains derived by a shareholder of the corporation when selling his shares are not subject to tax.
- Dividends paid to residents and non-residents are subject to a 12% income tax.
- Income under the simplified regime for individuals registered as a private entrepreneur and legal entities is taxed on net income received in cash at a rate of 6%.
- Income tax is paid by individuals who are residents of Tajikistan on a worldwide basis. Non-resident individuals are required to pay income tax in Tajikistan at a rate of up to 12% and a social tax of 2%. Companies pay social taxes on personal income at a rate of 20%.
- Assets handed as a gift are taxed. Inherited assets are not taxed.
- Other taxes include road user tax, primary aluminium sales tax, annual property tax, vehicle tax and natural resources tax.
- The taxable income of a non-resident individual from employment received from sources in Tajikistan is taxed at a rate of 20%.
- The taxable income of a legal entity is taxed at the following rates:
  - o for activities for the production of goods – 13%;
  - o for the activities of credit and financial organisations and mobile companies – 20%;
  - o for the extraction and processing of natural resources, as well as for all other types of activity, with the exception of the first and second paragraphs of this part – 18%.

## A. TAXES PAYABLE (NATIONAL TAXES)

- Income tax (individuals and legal entities);
- Value added tax;
- Excise taxes;
- Income tax for individuals;
- Social tax;
- Taxes on natural resources;
- Sales tax on primary aluminium.
- Local tax (real estate tax, land tax, vehicle tax).

## CORPORATE INCOME TAX

Corporate income taxpayers are legal entities, with the exception of those that meet the requirements of special taxation regimes. Gross income reduced by the amount of deductions (expenses) provided for by the Tax Code of Tajikistan is subject to corporate income tax at the level of residents.

Gross income from Tajik sources associated with a permanent establishment, minus the amount of deductions provided for by the Tax Code in respect of such income, is subject to tax at the level of a non-resident conducting economic activity in Tajikistan through its permanent establishment.

Gross income is subject to corporate income tax at the non-resident level if income is received from Tajikistan and is not associated with its permanent establishment.

For corporate income tax purposes, the following are not considered income:

- The value of property received by the taxpayer as a share or contribution to the authorised capital;

- The amount of money received by the taxpayer from the placement of shares issued by him.

All documented actual expenditure in the reporting period and associated with receiving the income, except for personal income tax and corporate income tax, expenses related to capital expenditure, penalties and interests paid to the budget of the Republic of Tajikistan, as well as non-deductible expenses pursuant to Article 112 of the Tax Code are deducted from gross income.

The following are exempt from corporate income tax:

- Non-repayable transfers obtained by non-commercial organisations, gratuitous property and grants used for non-commercial activity, as well as membership fees and donations received by them;
- Enterprises other than enterprises engaged in trading, mediatory, supply and sale and procuring activities, where in the reporting tax year:
    - at least 50% of employees are disabled persons;
    - at least 50% of wages and other material support, including in natural form, is spent for the needs of disabled persons.
- Dividends received by a resident enterprise from a resident enterprise;
- New enterprises for manufacturing of goods, starting from the date of initial state registration, upon investment of the following capital to the charter capital of such enterprises during 12 calendar months after the date of state registration for a period of:
    - 2 years, if the investment is more than USD 200,000 and up to USD 500,000;
    - 3 years, if the investment is more than USD 500,000 and up to USD 2 million;
    - 4 years, if the investment is more than USD 2 million and up to USD 5 million;
    - 5 years, if the investment exceeds USD 5 million.

The corporate profit tax return is submitted by 1st April of the year following the reporting year. Payers of corporate profit tax make final calculations and pay taxes at the place of registration no later than 10th April of the year following the reporting calendar year.

## DEDUCTIONS FROM TAXABLE INCOME

Deductions from taxable income include:

1. All expenses incurred in the reporting (tax) period (relating to the reporting period) related to the receipt of such income, including expenses for payment of labour, provision of material and social benefits to employees, income taxed, expenses for payment of purchased raw materials, materials, energy, except for construction costs, acquisition of fixed assets and their installation, as well as other expenses of a capital nature are deducted from gross income.
2. Deductions for charitable payments are allowed at a maximum of 10% of taxable income.
3. Deductions of the expenses for repair of depreciable fixed assets are allowed at a maximum of 10% of the book value of the group, excess costs are included into the fixed asset cost.
4. Losses incurred as a result of entrepreneurial activities can be carried forward to the following 3-year period inclusively and are set off against future periods' profits before tax.

Deductions are made by the taxpayer by way of properly executed documents confirming the costs associated with obtaining gross income.

## DEPRECIATION FOR CORPORATE INCOME TAX PURPOSES

Depreciation on fixed assets used in business activities is deductible. Depreciation on fixed assets and intangible assets not used in business activities is not deductible.

Assets subject to depreciation do not include land, works of art, inventories, including construction in progress and equipment not installed, property which is fully deducted in the current year in determining taxable profits and other non-depreciable assets.

Fixed assets to be depreciated are divided into groups at the following depreciation rates:

| Group | Type of asset | Depreciation rate (%) |
|---|---|---|
| 1 | Instruments, tools and accessories; devices and local data processing facilities; electronic equipment and servers | 12,5 |
| 2 | Trucks, buses, automotive road construction machinery, special vehicles and trailers; machinery and equipment for all industries, foundry, forging equipment and presses, construction equipment, agricultural machinery and equipment, railway, sea, river and air vehicles; containers | 9 |
| 3 | Passenger cars; office furniture, computers, connected equipment and its parts | 8 |
| 4 | Buildings, structures and structures | 7 |
| 5 | Depreciable assets not classified in other categories | 4 |

## VALUE ADDED TAX

A person engaged in an entrepreneurial activity, whose gross income for the previous period does not exceed 12 full successive calendar months and exceeded TJS 1 million within 30 calendar days, will transit to the general taxation system and submit to the tax authority at the place of its registration an application for registration for value added tax (VAT) purposes along with the submission of an application for the transition to the general taxation system.

Legal entities engaged in entrepreneurial activities in the following areas are required to register as VAT payers from the date of state registration:

- Investment funds,
- Professional traders on the stock market;
- Insurance and credit organisations;
- Microfinance organisations;

- Pawnshop;
- Subsoil users;
- Suppliers of primary aluminium;
- Producers of excisable goods;
- Intermediary organisations (that operate on the basis of commission agreements, agency agreements and other intermediary agreements).

The supply of goods, performance of work and provision of services (taxable transaction) are subject to tax, except for the supply of goods, performance of work and provision of services exempt from VAT, which are carried out as part of entrepreneurial activities. Taxable transactions must not include the provision of services or performance of work outside of Tajikistan.

The VAT rate is 15% on taxable turnover, excluding exports and certain reduced tax rates, and 15% on taxable imports. Export operations are taxed at a zero rate.

Until 31 December 2023, taxable VAT transactions related to the performance of construction works and the provision of catering services are taxed at a rate of 7% while educational services are taxed at a rate of 5%, with the exception of taxable import and subsequent supply of imported goods, as well as taxable export, without offset of the paid VAT.

VAT rates for taxable transactions and taxable imports are set from 1 January 2024 to 31 December 2026 at 14% and from 1 January 2027 at 13%.

The VAT return is submitted for each reporting period no later than the 15th day of the month following the reporting period, and the tax is paid within the same time frame.

The following deliveries of goods, work performed and services rendered in the territory of Tajikistan are exempt from VAT added tax:

- Sale or transfer of hotel premises or accommodation for vacationers;
- Sale or transfer of newly built residential premises;
- Sale or lease of real estate used for business purposes;
- Provision of certain financial services for remuneration, the list of which is determined by the Ministry of Finance in agreement with the National Bank and the Tax Committee under the Government of the Republic of Tajikistan, including the transfer of depreciable assets in relation to financial leasing, with the exception of real estate, cars and furniture.

## EXCISE TAXES

Payers of excise tax are individuals, including separate subdivisions of legal entities that carry out taxable transactions. In addition, excise taxpayers are foreign legal entities and individuals engaged in taxable activities in Tajikistan.

The object of taxation is taxable transactions with excisable goods and excisable activities.

Excisable goods are:

- All types of alcohol, alcoholic, non-alcoholic and energy drinks, except for clean drinking water;
- Processed tobacco, industrial tobacco substitutes, tobacco products;
- Nicotine-containing products, nicotine-containing liquid, heated tobacco products, electronic cigarettes and smoke products;
- Mineral-based fuel, oil and oil products; bituminous substances; mineral waxes; liquefied gas;
- Tyres and rubber casings of pneumatic tyres, retreated or used tyres and rubber casings of pneumatic tyres; solid or semi-pneumatic tyres and tyre shells, rubber tyre treads and rim strips;
- Cars and other motor vehicles intended for the carriage of passengers;
- Finished carpet products imported into Tajikistan;
- Any imported water, including carbonated water, products for transportation or packaging of goods made of plastic: corks, caps and other closures imported into Tajikistan;
- Jewellery made of precious metals and precious stones, as well as their parts made of precious metals and/or covered with precious stones.

Activities for the provision of excisable services represent a range of services in the field of telecommunications, including:

- Public mobile cellular services of all standards (mobile cellular services);
- Data transmission services (including telegraph communications and IP telephony), including through a network of operators;
- Telematics services, including via the internet;
- International (long distance) telephone communication services through a network of operators.

Excise tax rates for excisable goods are determined by the Government of Tajikistan in accordance with the Commodity Nomenclature of Foreign Economic Activity. Excise tax rates may be set as a percentage of the value of excisable goods or as a fixed amount per unit of measurement of excisable goods in physical terms.

**Tax rates**

1. Excise tax rates for excisable goods are established by the Government of Tajikistan in accordance with the Commodity Nomenclature for Foreign Economic Activity of Tajikistan.
2. Excise tax rates are established as a percentage (ad valorem) of the cost of excisable goods and (or) in a fixed (absolute) amount per unit of measurement of excisable goods in physical terms.
3. Excise tax rates for alcoholic products are determined depending on the volume of (one hundred percent) alcohol contained in it.
4. The rate of excise tax for the provision of excisable services in the field of telecommunications is set at 7% of the tax base.

The following are exempt from excise duty:

- Alcoholic drinks produced by an individual for own consumption on the basis of the list and within the limits established by the Government of Tajikistan;
- Import by an individual of two litres of alcoholic beverages or two boxes (400 pcs.) of cigarettes, jewellery in the amount of 4 units (at a price not exceeding 150 calculated indicators) for their own consumption, as well as for persons entering Tajikistan by car - the contents of the fuel tank;
- Goods in transit through the territory of Tajikistan;
- Temporary importation of goods into the territory of Tajikistan, with the exception of goods intended for re-export.
- Excisable goods, except for alcohol and tobacco products, imported into Tajikistan as part of humanitarian assistance, as well as imported for free transfer to charitable organisations for the purpose of eliminating the consequences of natural disasters, accidents, catastrophes and for free transfer to state bodies of the Republic of Tajikistan;
- Export of excisable goods, if such export meets the requirements established by Article 287 of the excise duty Code;
- Import of new cars directly by legal entities and individual entrepreneurs operating on the basis of a certificate (the date of issue of which does not exceed one year, with a mileage of up to ten thousand kilometres) of headings 8702, 8703, 8704 and 8705 in the amount of 50% of the rates established by the Government of Tajikistan.

## B. PERSONAL INCOME TAX

Payers of personal income tax are resident and non-resident individuals.

Citizens of Tajikistan, individuals who applied for citizenship of the Republic of Tajikistan or for permanent residence in Tajikistan without asking for Tajikistan citizenship are considered residents of Tajikistan.

An individual, who is actually in the territory of Tajikistan for less than 182 days in any sequential following 12-month period, is considered a non-resident of Tajikistan. If a non-resident individual is actually in the territory of Tajikistan for more than 182 days during the calendar year, from the 183rd day this individual will be considered a resident of Tajikistan.

- The object of personal income tax for individuals - residents is the difference between gross income and deductions provided for by the Tajikistan Tax Code. Gross income of an individual consists of:
  - For individuals who are residents of Tajikistan, from sources of Tajikistan and from sources outside Tajikistan;
  - For non-resident individuals of Tajikistan, from sources in Tajikistan;
- Gross income received by an individual is divided into the following types: income received in the form of wages, income from activities that is not work for hire, and any other income.

### INCOME RECEIVED IN THE FORM OF WAGES

When determining the personal income tax rate for an individual resident of Tajikistan, the amount of personal deduction for each taxpayer needs to be taken into account. This amount is not subject to tax (according to the Law of Tajikistan “On the state budget of the Republic of Tajikistan for 2019”, the amount of personal deduction is TJS 128). The personal income tax rate in excess of the amount of personal deduction is 12%. From income received in the form of wages by individuals - residents of Tajikistan at their main place of work, social tax is also withheld at a rate of 2%.

A single declaration on income tax and social tax on income in the form of wages of individuals, taxes withheld at source, is submitted by the 15th day of the month following the reporting month.

Income in the form of wages and other income received by individuals - non-residents of Tajikistan, is subject to income tax at a rate of 20%.

Withholding tax returns are submitted by the 15th day of the month following the reporting month.

### INCOME OF INDIVIDUALS FROM ACTIVITIES NOT RELATED TO WORK FOR HIRE

The following income from non-entrepreneurial activity of an individual shall be an income of an individual from activity not related to work for hire:

- Income from interest: 12%;
- Dividends: 12%;
- Income from the rent of property or gain from the sale of property: 15%;

Income in the form of wages, dividends, interest, winnings, royalties and other income, received by an individual and previously taxed at the source of payment in Tajikistan shall be deducted from the taxable income, received during the tax period.

The following income of individuals is not subject to personal income tax:

- The value of gifts received from legal entities, as well as prizes (winnings) at contests and competitions, including in the form of cash, if
  - the value of gifts received from legal entities does not exceed 100 calculation indexes a year;
  - The value of prizes (winnings) awarded at international contests and competitions does not exceed 500 calculation indexes a year
- The value of prizes (winnings), awarded at republican contests and competitions not exceeding 100 calculation indexes a year.
- Increase in the value from the sale or any other form of alienation of:
  - Residential buildings (premises), which served as the main place of residence of a taxpayer for at least 3 years prior to alienation;
  - Other immovable property owned by a taxpayer for at least 2 years prior to the date of alienation.

## C. OTHER TAXES

### SOCIAL TAX

Payers of social tax are legal entities that pay wages to resident individuals performing work for hire (hereinafter referred to as the insurer) and to non-resident individuals receiving wages (hereinafter referred to as the insured).

The object of taxation for the purposes of social tax for the insurer is the wages paid to employees, and for the insured the amount received for the work performed for hire.

The social tax rate is payable to the budget; the rate of 20% is applied to the insurer and the rate of 2% is applied to the insured.

The following are exempt from paying social tax:

- Income of individuals who are not citizens of Tajikistan, but perform work and provide services to diplomatic and consular missions of Tajikistan abroad;
- Income of foreign citizens from employment within the framework of the implementation of investment projects of the Government of Tajikistan;
- Income exempt from personal income tax.

### ROAD USER TAX

Road user tax has been cancelled.

### LOSSES

Losses may be carried forward up to 3 years and are offset against future taxable income. Losses may not be carried back.

### VEHICLE TAX

Vehicle owners and/or users are subject to vehicle tax.

Are subject to vehicle tax: self-propelled machines and mechanisms, floating vehicles and locomotives used on railways, subject to state registration and / or registered in Tajikistan.

The objects of taxation are registered with the Automobile Inspection Department of the Ministry of Internal Affairs and the Inspectorate for State Supervision of Agricultural Machinery of the Ministry of Agriculture.

Tax rates are set for vehicles and/or motor vehicles and mechanisms (per 1 horsepower of engine power) per year.

Import and further supply of new cars (the date of issue of which does not exceed one year, with a mileage of up to ten thousand kilometres) of headings 8702, 8703, 8704 and 8705 directly by legal entities and individual entrepreneurs operating on the basis of a certificate , are exempt from paying 50% of the VAT rate.

### PROPERTY TAXES

Real estate taxes paid for the use (ownership) of land and/or real estate:

- Land tax;
- Property tax

Land tax is paid by land users to whom land plots are transferred for lifetime inheritable, perpetual, fixed-term use or lease, or land users who actually use land plots, with the exception of land users who comply with the conditions of the simplified tax regime for agricultural producers.

Are subject to land tax: lands of settlements, lands outside settlements, taking into account the quality, cadastral valuation of land, purpose of use and environmental characteristics, the ownership of which is determined by the land legislation of Tajikistan.

Tax rates per hectare of land in the context of regions and cities (districts), taking into account cadastral zones and types of land, including land of settlements, land under forests and shrubs of settlements and agricultural land, are established every 5 years by the Government of Tajikistan at the proposal of the authorised state body for land management, agreed with the Tax Committee under the Government of Tajikistan.

### PROPERTY TAX

Property taxpayers are the owners (users) of real estate subject to tax.

The objects of taxation are buildings, residential buildings, premises, cottages, garages, other premises and buildings located on the territory of Tajikistan, as well as objects under construction since the end of operations (hereinafter referred to as real estate).

The tax rate on real estate objects is determined depending on the area occupied by the real estate object and the purpose of its use, as a percentage of the indicator for calculations with regulatory coefficients by city and district.

### TAXATION OF ELECTRONIC SERVICES PROVIDED BY FOREIGN PERSONS

1. Electronic services include services provided through the information and communication network, including the information and communication network of the internet - automatically using information technology.
2. Taxpayers are foreign persons who directly or through intermediaries provide electronic services to individuals, legal entities, individual entrepreneurs of the Republic of Tajikistan and permanent establishments of foreign legal entities, the place of sale of which is the territory of the Republic of Tajikistan.
3. The tax base is defined as the cost of providing electronic services by foreign persons without taking into account the amount of tax. When determining the tax base, the cost of electronic services rendered in foreign currency is recalculated at the official rate of the National Bank of Tajikistan on the day of the transaction in which full (partial) payment for these services was received.
4. The tax period is a calendar quarter.
5. The amount of tax is determined using a rate of 18% and is paid at the time the tax return is filed.

## TAXATION OF ISLAMIC BANKING

1. Taxation of Islamic banking is applied to operations of credit and financial organisations that carry out operations in accordance with the principles, standards of Islamic finance, as well as agreements within the framework of the Law of Tajikistan "On Islamic banking" (hereinafter referred to as Islamic banking activities).
2. Passive Islamic financing - financing in which the principal amount, income or profit (for passive financing) is not paid in accordance with the requirements of the financing agreement in accordance with the instructions of the National Bank of Tajikistan.
3. Credit and financial institutions engaged in Islamic banking activities are required to keep records of income and expenses in accordance with the Law of Tajikistan "On Accounting and Financial Reporting" and on an accrual basis, as well as for individual transactions (muzaraba, musharaka and wakala) on a cash basis.
4. In the event that a financial institution, along with common banking operations, also carries out Islamic banking operations, it is obliged to maintain separate accounting records for banking operations and Islamic banking operations.

## SIMPLIFIED TAXATION SYSTEM

The simplified taxation system for small businesses is a special tax regime under which small businesses pay corporate income tax at the level of legal entities or personal income tax at the level of individual entrepreneurs in a simplified way.

Taxpayers whose gross income is calculated on a cash basis for the previous calendar year and did not exceed TJS 1 million can apply the simplified taxation system.

A taxpayer paying tax under the simplified taxation system is not a payer of:

- Income tax, excluding income tax withheld at source;
- Tax on road users;
- Personal income tax directly related to the income of an individual entrepreneur acting on the basis of a certificate, with the exception of income, the tax on which is withheld at the source of payment;
- VAT, excluding VAT on goods imported into the customs territory of Tajikistan and non-resident VAT collected at the source of payment.

Taxpayers under the simplified system are:

- Persons whose entrepreneurial activity began in the current calendar year, regardless of the fact of official state registration of such persons;
- Persons whose gross income for the previous calendar year did not exceed TJS 1 million.

Taxpayers have the right to pay tax under the simplified regime on the difference between income and expenses if they submit an application to the local tax authorities in the prescribed form within the following deadlines:

1) newly created taxpayers - within 5 working days after state registration;
2) current taxpayers - until December 31 of the calendar year.

Subject to tax: gross proceeds calculated on a cash basis, received from the sale of goods, as well as non-operating income received during the reporting period as part of entrepreneurial activity, with the exception of income received as a result of employment in relation to an individual entrepreneur, from whom tax is withheld at the source of payment.

If a taxpayer supplies goods (works, services), but payment for the goods (works, services) provided is delayed by the buyer for 6 calendar months, for the purposes of calculating tax under the simplified system, these goods (works, services) are considered paid to the taxpayer.

The tax period is a quarter. The tax rate under the simplified system is set at the following rates:

1) For the operations of taxpayers from gross income – 6%.
2) For the operations of taxpayers from the difference between income and expenses:
   a) For activities related to the production of goods – 13%;
   b) For other activities – 18%.

The calculated amount of tax under the simplified system is payable, and the tax return is submitted quarterly, but no later than the 10th day of the month following the tax period. Payment of tax under the simplified system is made to the local budget at the place of registration of the taxpayer.

The benefits provided for corporate income tax also apply to the simplified taxation system.

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## TAXES ON USERS OF NATURAL RESOURCES

1. When using natural resources, including their use within the framework of an agreement on the use of natural resources and (or) the use of water for the generation of electrical energy, taxes are charged and paid.
2. Taxes for the use of natural resources consist of:
   - signing bonus;
   - commercial discovery bonus;
   - royalties for mining;
   - royalties for water;
   - export rent.

### Signature bonus

The signature bonus is paid by the person who won the competition for the right to use natural resources or received the right to use natural resources on the basis of direct negotiations and (or) a licence (permit) for the extraction of natural resources or geological exploration in accordance with the legislation of the Republic of Tajikistan.

**Commercial Discovery Bonus**

1. Taxpayers of the commercial discovery bonus are users of natural resources who have applied to the authorised state body in the field of geology for the commercial discovery of minerals in the contractual territory in the course of operations on the use of natural resources within the framework of the obtained licenses (permits) for the use of natural resources.
2. The commercial discovery bonus is paid by users of natural resources on the basis of the following licences (permits):
   - for the extraction of minerals in the following cases
     - o for each commercial discovery of mineral resources in the contractual territory, previously announced by this user of natural resources in the relevant territory under an exploration license (permit);
     - o for the discovery in the course of additional exploration of a deposit, leading to an increase in the volume of extraction of minerals originally established by the authorised state body in the field of geology;
     - o for each commercial discovery of other minerals in the course of additional exploration of a deposit of recoverable reserves approved by the authorised state body in the field of geology;
   - for combined exploration and production for each commercial discovery of minerals in the contractual territory, including for the discovery during additional exploration of deposits, leading to an increase in the recoverable reserves of minerals initially established by the authorised state body in the field of geology.
3. Under licences (permits) for exploration of mineral deposits that do not provide for their subsequent extraction, the commercial discovery bonus is not paid.

**Royalties for mining.**

Mining royalty payers are users of natural resources who perform the following actions within the framework of each issued license (permit) for the use of natural resources:

- extraction of minerals, including from technogenic mineral formations;
- processing of minerals with the extraction of useful components from them.

**Royalty for water**

Payers of royalties for water are persons who use water in the Republic of Tajikistan to generate electricity.

**Export rent**

Export rent payers are persons exporting concentrates of precious, ferrous, non-ferrous, rare, radioactive metals, mining and chemical raw materials, precious stones, raw materials from fake stones of primary processing, raw cotton, cotton fibre, cotton yarn and thread, cocoon, silk thread, wool and leather from the Republic of Tajikistan.

## D. CURRENCY REGULATION

Currency transactions between residents and non-residents are executed without restrictions, except for cases with introduction of special procedures for currency operations, which can last for no more than six months and are set by the President of Tajikistan upon the proposal of the National Bank (hereinafter "NBT").

Currency operations between residents are prohibited, except for the following cases:

1. Operations where one of the parties is the NBT or the Ministry of Finance;
2. Operations (transactions) with currency assets executed by the authorised banks and authorised persons with foreign currencies, based on license received or other normative and legal acts for currency regulations.
3. Payment of bank services for bank transactions, as well as payment of penalties under agreements on provision on bank services in foreign currency;
4. Depositing or opening saving accounts cash in foreign currency by physical persons in their own name or in the name of other physical persons;
5. Purchase, sale, payment of income or redemption of securities of residents and non-residents, expressed in foreign currency;
6. Payment and transfer of cash funds under export (import) contracts upon using transferrable letters of credit;
7. Payment of costs for business trips abroad;
8. Transfer of currency assets between physical persons for charitable purposes;
9. Transfer or receiving of currency assets to charitable organisations (from charitable organizations);
10. Operations on contracts of freight forwarding, transportation of goods and hiring (freight, charter) for provision of services on the side of the sender or expeditor, carrier, freighter on export of goods from Tajikistan or import into Tajikistan or the transit of goods through the territory of Tajikistan, as well as on goods insurance contracts;
11. Payment of taxes and other mandatory payments foreseen by the legislation of Tajikistan to the Republican budget;
12. Following operations of individuals:
    - Donation of currency assets to the Republic of Tajikistan, state authorities and local bodies of state authority;
    - Donation of currency assets to physical persons and legal entities;
    - Leaving for inheritance or receiving as inheritance of the currency assets;
    - Transfer of foreign currency to Tajikistan and from Tajikistan without opening a bank account;
    - Buying and selling as well as exchange of cash foreign currency from the authorised bank or authorised person.

Exchange transactions with foreign currencies are carried out by the authorised banks. Residents and non-residents can exchange foreign currency in Tajikistan only through authorised banks and authorised persons, following the procedures set by the NBT.

Import of foreign currency in cash and securities expressed in foreign currency on documentary form to Tajikistan by residents and non-residents is carried out without any restrictions, following requirements of the customs legislation of Tajikistan.

Export of foreign currency in cash and securities expressed in foreign currency on documentary form to Tajikistan by residents and non-residents is carried out in accordance with normative and regulative acts of the NBT and customs authorities.

Residents can open without any limitations bank accounts (deposit, saving, etc.) in foreign currency in authorised banks and they also can open bank accounts (deposit, saving, etc.) in foreign banks. Residents (except authorised banks), who opened such accounts should inform the NBT and tax bodies within ten days.

Non-residents can open in authorised banks bank accounts (deposit, saving, etc.) in national and foreign currency, and they can make transfers without any limitations in foreign and national currency from their accounts in foreign banks to their accounts in authorised banks, as well as from their accounts in authorised banks to their accounts in foreign banks. They can make transfers in foreign currency between his/her accounts without any limitations, following Tajikistan legislation.

Residents and non-residents engaged in activities with foreign currency operations on the territory of Tajikistan have to submit statements, information and supporting documentation about these operations to the currency regulation bodies, currency control bodies and agents in accordance with procedures prescribed by the normative and legislative acts of the currency regulation authorities.

## E. INVESTMENT ACTIVITIES

Attracting investments is essential for the successful development of the economy. The national policy of Tajikistan is aimed at creating comfortable conditions for investment activities in the country.

The legislative framework of Tajikistan foresees a number of tax privileges and special regimes for investors. Tax and financial incentives allow attracting of investments to certain sectors of the economy.

Foreign investors are entitled to bring in investments in the following forms:

- Establishment of enterprises, fully owned by foreign investors, as well as branch and regional offices belonging to foreign legal entities or by acquisition of right of ownership of operating enterprises;
- Establishment of legal entities of Tajikistan with involvement of Tajikistan citizens or by acquisition of shares of the operating enterprises;
- Acquisition of shares and bonds and other securities, established by Tajikistan legislation.

Acquisition of concession rights to use state-owned assets and natural resources on the territory of Tajikistan independently or involving Tajikistan legal entities as well as Tajikistan citizens and in other forms is not prohibited by Tajikistan legislation.

Investors are entitled to:

- Open bank accounts in national and/or foreign currency in banks and other credit institutions on the territory of Tajikistan in line with existing Tajikistan legislation;
- Use income from operations at their own and sole discretion after payment of taxes and other mandatory payments.

Foreign investors are guaranteed the right to transfer out of Tajikistan their income in foreign currency, gained on the lawful bases as a result of investment and operational activities. Investors, within the framework of their investment activities, have the right to exchange the national currency of Tajikistan into any other freely convertible currency without any constraints, as well as to purchase foreign currency and other foreign currency operations pursuant to Tajikistan Law “On Currency Regulations and Currency Control”. The property of investors is not subject to nationalisation. The government secures the equality of rights between foreign and domestic investors, preventing discrimination of the rights of investors on the grounds of their citizenship, nationality, language, gender, race and religion.

Establishment of Free economic zones are an example of a real dedicated governmental support to investors. For the purpose of capital investment attraction, tax and customs incentives are proposed to residents of free economic zones, who can be both foreign investors and domestic entrepreneurs. It is planned that free economic zones will foster production of goods and provision of services, and, at the same time, through utilisation of domestic capacity with attraction of new technologies, new jobs will be created and exporting potential of the country will be increased. There are currently four Free economic zones functioning in Tajikistan – “Sugd”, “Pyandzh”, “Dangara” and “Ishkashim”.

The Law “On free economic zones” provides a set of guarantees and a special legal regime for entities of economic activities of the free economic zones, in particular, Article 12 provides state guarantees, and Chapter 4 of the law prescribes specific conditions for taxation, currency circulation, customs regime, labour relations and other conditions on the territory of the free economic zone.

Within the Free economic zones, any business activities, irrespective of the form of ownership, are exempted from all types of taxes stipulated by the Tax Code, except for social tax and personal income tax.

Goods placed on the territory of Free economic zones with the intention to be exempted from customs duties and taxes, as well as bans and restrictions of economic nature established by normative legal acts, are considered outside the Tajikistan customs territory.

Fundamental normative legal acts, stipulating guarantees to protect the rights of investors, are:

- Law of the Republic of Tajikistan «On investments» No.1299 dated 15 March 2016;
- Law of the Republic of Tajikistan «On investment agreements» No. 944 dated 19 March 2013;
- Law of the Republic of Tajikistan «On Free economic zones» No. 140 dated 11 March 2011;
- Law of the Republic of Tajikistan «On currency regulation and currency control» No. 494 dated 12 June 2013;
- Tax Code of the Republic of Tajikistan, No. 901 dated 17 September 2012;
- Customs Code of the Republic of Tajikistan, No. 1209 dated 3 November 2004.

## F. LICENSING OF SEPARATE TYPES OF ACTIVITIES

Tajikistan legislation establishes a list of activities, the implementation of which is prohibited without a licence to carry out the licensed activity with mandatory compliance with licensing requirements and conditions, issued by the licensing authority to a legal entity or an individual entrepreneur.

Regulation of relations arising in connection with the licensing of separate types of activities are carried out in accordance with Tajikistan law “On licensing of separate types activities” No. 37 dated 17 May 2004.

Licensed types of activities include types of activities, the implementation of which may result in violation of rights, legal interests, health of citizens, defence and security of the state, cultural heritage of the people of Tajikistan the regulating of which may not be implemented by any other method, (for example, by methods of standardisation, certification, attestation etc.).

The constitutional principle of single economic space is implemented in the Law on Licensing by establishment of single licensing requirements and conditions, single licensing procedures on the whole territory of Tajikistan and single list of licensed activities.

**Licensing requirements and conditions:**

- Mandatory for all licensed activities - compliance with Tajikistan legislation, environmental, epidemiological, sanitary, fire norms and rules, as well as provisions on licensing of specific types of activity;
- Additionally, with regards to activities that require special expertise for their implementation - qualification requirements for the license applicant and licensee, in particular, qualification requirements for employees of the legal entity or individual entrepreneur;
- Additionally, with regards to activities that require special conditions for their implementation, - compliance with the said special conditions of the object in which or through which the activities are implemented (buildings, structures, processing equipment).

The list of additional licensing requirements and conditions in respect of the licensed activity is determined by the provision on the peculiarities of licensing of separate types of activities approved by the Resolution of the Government of Tajikistan.

Licensing on the entire territory of Tajikistan, supervision over compliance with licensing requirements and conditions, suspension and renewal of the licence, the formation and maintenance of the register of licences are the responsibility of the appropriate licensing authority.

Currently, in Tajikistan there are more than 70 types of licensing. They represent a variety of activities of organisations for implementation, for which obtaining a permit (license) is necessary. Law on Licensing of separate types of activities classifies licensing under the following types:

- Medical/health;
- Construction;
- Environmental;
- Fire;
- Pharmaceutical activities;
- Entrepreneurship activity;
- Production;
- Activities of the organisations;
- Banks;
- Environmental protection.

Economic and other activities related to the use of natural resources that have or might have a harmful effect on the environment, are allowed, as a rule, based on special licenses. Activities requiring a licence for their implementation, as well as the form of the license is determined by law. Conventional types of such activities are all kinds of special environmental management, including, for example, subsoil water intake for industrial purposes, the release of pollutants into the atmosphere, the discharge of wastewater, etc.

In accordance with environmental laws, various forms of documents are used implementing the functions of the licence. In addition to the licenses, the following permissions are applied:

- Permission for release of harmful substances into the atmosphere;
- Permission for special water use;
- Permission on the use of animal and plant life;
- Permission on the use of forest;
- Permission for import and export of wastes to be re-used;
- Permission on the normalisation of the production, use, destruction and disposal of waste;
- Licence for the collection, use, neutralisation, transportation and disposal of hazardous waste;
- Licence for activities related to sources of ionising radiation and the use of radioactive substances;
- Licence for activities related to the use of substances and equipment that deplete the ozone layer.

Despite the variety of forms of documents used in this field, due to the implementation of the same function, they are covered by the term “licensing”.

## G. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 12 | 12 | 12 | 15 |
| Individuals | 25 | -- | 25 | 25 |
| **Treaty countries:** | | | | |
| Austria | 10 | 5 | 8 | 8 |
| Azerbaijan | 10 | 10 | 10 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Bahrain | 8 | 8 | 8 | 8 |
| Belarus | 15 | 15 | 10 | 15 |
| Belgium[2] | 15 | 15 | 0/15 | 0 |
| Canada[2] | 15 | 15 | 15 | 0/10 |
| China | 10 | 5 | 8 | 8 |
| Cyprus[2] | 0 | 0 | 0 | 0 |
| Czech Republic | 5 | 5 | 0/7 | 10 |
| Denmark[2] | 15 | 15 | 0 | 0 |
| Finland | 15 | 5 | 0/10 | 5 |
| Germany | 15 | 5 | 0 | 5 |
| India | 10 | 5 | 10 | 10 |
| Iran | 10 | 10 | 10 | 8 |
| Italy[2] | 15 | 15 | 0/– | 0 |
| Japan[2] | 15 | 15 | 10 | 0/10 |
| Kazakhstan | 15 | 10 | 10 | 10 |
| Korea (South) | 10 | 5 | 8 | 10 |
| Kyrgyzstan | 10 | 5 | 10 | 10 |
| Latvia | 10 | 0/5 | 0/7 | 5/10 |
| Luxembourg | 15 | 0 | 12 | 10 |
| Malaysia[2] | 15 | 15 | 15 | 10/15 |
| Moldova | 10 | 5 | 5 | 10 |
| Netherlands[2] | 15 | 15 | 0 | 0 |
| Norway[2] | 20 | 20 | 0/– | 0 |
| Pakistan | 10 | 5 | 10 | 10 |
| Poland | 15 | 5 | 10 | 10 |
| Romania | 10 | 5 | 10 | 10 |
| Russia | 10 | 5 | 10 | 0 |
| Saudi Arabia | 10 | 5 | 8 | 8 |
| Spain[2] | 18 | 18 | 0 | 0/5 |
| Sweden[2] | 15 | 15 | 0 | 0 |
| Switzerland | 15 | 5 | 10 | 5 |
| Thailand | 10 | 10 | 0/10 | 5/10 |
| Turkey | 10 | 10 | 10 | 10 |
| Turkmenistan | 10 | 10 | 10 | 10 |
| Ukraine | 10 | 10 | 10 | 10 |
| United Arab Emirates | 0 | 0 | 0 | 10 |
| United Kingdom | 10 | 5 | 0/10 | 7 |
| United States[2] | –[1] | –[1] | –[1] | 0 |
| Uzbekistan | 10 | 5 | 10 | 10 |

Notes:

1. No reduction under the treaty, the domestic rate applies.
2. Treaties concluded with the former USSR. In practice Tajikistan does not apply the former conventions. The following countries continue to apply the USSR treaty in relations with Tajikistan: Belgium, Cyprus, Japan, the Netherlands, Spain and Sweden. Canada does not apply the former conventions. No official statement from Malaysia on the applicability of the treaty. The UK has clarified that the treaty will cease to apply to residents of Tajikistan in respect of corporation tax for profits arising on or after 1 April 2014, and in respect of income tax and capital gains tax for income and gains arising on or after 6 April 2014.

# TANZANIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Dar es Salaam | Mustansir Gulamhussein | +255 22 2152501/3/4<br>mgulamhussein@pkfea.co.tz |

## BASIC FACTS

| | |
|---|---|
| Full name: | United Republic of Tanzania |
| Capital: | Dodoma |
| Main languages: | Swahili, English |
| Population: | 62.70 million (2022 estimate) |
| Monetary unit: | Tanzanian Shilling (TZS) |
| Internet domain: | .tz |
| Int. dialling code: | +255 |

## KEY TAX POINTS

- Corporate tax is payable by Tanzanian companies on their worldwide taxable income at the rate of 30%.
- Value Added Tax is generally charged at the standard rate of 18% on any supply of goods or services in mainland Tanzania.
- The maximum employment tax rate is 30%.
- There are several sources of income that are subject to withholding taxes, generally at rates from 2% to 15%.
- Tax refunds are supposed to be claimed from TRA within three years from the date of overpayment.

## A. TAXES PAYABLE

## CORPORATE TAX

Residential Status:

A company is resident in Tanzania if for the year of income:

a) It is incorporated, formed or established in Tanzania;

b) Has its place of effective management (day-to-day management) in Tanzania.

**Income tax Rates:**

| | |
|---|---|
| Resident company | 30% |
| Non-resident company<br>• Total income<br>• Repatriated income | 30%<br>10% |
| Newly established plant for assembling motor vehicles, tractors, fishing boats or out boats engine and having a performance agreement with the government | 10% |
| Newly established entities dealing in manufacture of sanitary pads and having a performance agreement with the government | 25% for 2 consecutive years from 1 July 2019 to 30 June 2021. |
| A corporation with perpetual unrelieved loss for three consecutive years of income (with an exemption for agricultural companies and companies engaged in the provision of health and education) | 0.5% of turnover |
| Newly-listed company with at least 30% of shares issued to the public | 25% for the first three years |
| Newly established entity dealing with manufacture of pharmaceutical or leather products having performance agreement with the government of Tanzania | 20% for the first consecutive years from the year of commencement of production |

Bonds issued by the East African Development Bank are tax exempt.

For Individuals, where the turnover exceeds TZS 100 million the taxpayer is obliged to prepare audited financial statements in respect of his/her business. If the individual has sales of TZS 100 million or less it will be taxed as follows:

| Presumptive Individual Income Tax | | |
|---|---|---|
| **Annual Turnover (TZS)** | **Tax Payable (incomplete accounting records) (TZS)** | **Tax Payable (complete accounting records) (TZS)** |
| 0 – 4,000,000 | NIL | NIL |
| 4,000,000 – 7,000,000 | 100,000 | 3% of the annual turnover in excess of 4,000,000 |
| 7,000,000 – 11,000,000 | 250,000 | 90,000 plus 3% of the turnover in excess of 7,000,000 |
| 11,000,000 – 14,000,000 | 450,000 | 230,000 plus 3% of the turnover in excess of 11,000,000 |
| 14,000,000 – 100,000,000 | N/A | 450,000 plus 3.5% of the turnover in excess of 14,000,000 |

T

## TAXATION OF INSURANCE

General insurance business should be treated separately from the life insurance business for tax purposes.

General insurance business shall include:

- Any other amounts;
- Premiums derived during the year of income by the person as insurer, including as re-insurer, in conducting the business; and
- Proceeds derived during the year of income by the person under any contract of re-insurance in respect of proceeds.

The following are deducted, together with any other amounts deductible;

- Proceeds incurred during the year of income by the person as insurer, including as re-insurer, in conducting the business; and
- Premium incurred during the year of income by the person under any contract of re-insurance.

Life insurance business shall include:

- Any other amounts;
- Premium derived during the year of income by the person as insurer, including as re-insurer, in conducting the business; and
- Proceeds derived during the year of income by the person under any contract of re-insurance.

Only expenses of managing the business's investments (including commission) are deductible. The following amounts shall not be deductible;

- Proceeds incurred during the year of income by the person as insurer, including as re-insurer, in conducting the business; and
- Premium incurred during the year of income by the person under any contract of re-insurance.

## TAXATION OF TRUSTS

A trust or unit trust is liable for tax, however, it will be taxed separately from its beneficiaries and trustees. Assets owned and liabilities owed by a trust or a trustee in the capacity of trustee (other than as a bare agent) shall be treated as owned or owed by the trust and not any other person. Amounts derived and expenditure incurred by a trust or a trustee in the capacity of trustee (other than as a bare agent), shall be treated as derived or incurred by the trust and not any other person.

Distributions of a trust or unit trust shall be included in calculating the income of the Trust's Beneficiary.

Where the trust is an Individual's testamentary incorporated for purposes of Social protection of Settlor's surviving minor dependants, the distribution shall not include the trust's discharge of its primary obligations.

## TAXATION OF PARTNER

A partnership business is not subject to tax but partners in a partnership are taxed by using individual tax rates and their taxable income is determined by taking the partner's share of any partnership income and deducting the partner's share of any partnership loss, for a year of income of the partnership ending on the last day of or during the year of income of the partner.

## CAPITAL GAINS TAX (CGT)

Gains from the disposal of investment assets such as land, building, licence or concessional rights on reserved land, shares and securities situated in Tanzania by non-residents are taxed at the single instalment rate of 20% regardless whether the disposal is made inside or outside Tanzania. For residents in Tanzania the same is taxed at a single instalment rate of 10%, the disposal is taxed on the net gain realised. Acquisition costs are deducted from the gross selling price.

However, for companies the net gain realised shall be taxed effectively at a corporation tax rate of 30% with the single instalment tax creditable. Nonetheless, the revenue authority's current approach on the determination of a net gain realised is the higher of the consideration and the net worth of the assets.

A person is required to inform the Commissioner General of TRA within 14 days from the date of the realisation of the interest and make the single instalment payment within 30 days or any time prescribed the Commissioner General from the date of realisation.

However, disposals of the following are exempt from CGT:

- Property used as the individual's private residence for three years prior to the sale, capital gains are exempt up to TZS 15 million (USD 8,250);
- Business assets, depreciable assets and trading stock;
- Shares or securities in DSE (Dar es Salaam Stock Exchange) held by residents or non-residents where shareholding is less than 25%;
- Agricultural land with value less than TZS 10 million; and
- Units in approved collective schemes.

Tanzania imposes tax when there is a change in control aimed at taxing offshore share transfers. Where the underlying ownership of an entity changes by more than 50% as compared with that ownership at any time during the previous three years, the entity shall be treated as realising any assets owned and liabilities owed by it immediately before the change. The gain on realisation will be subject to income tax at a rate of 30%.

## BRANCH PROFITS TAX

Where a branch of a foreign company operates in Tanzania, a branch profits tax at the rate of 30% of taxable income and 10% repatriated income (branch remittance tax) applies.

## DIVIDENDS TAX

Gross dividends of a resident company, controlling 25% or more of the shares, will be taxed at 5% when paid to a resident company and 10% when paid to a non-resident company. Any corporation that is listed on the Dar es Salaam stock exchange (DSE) and paying dividends to a resident or non-resident entity will be taxed at the rate of 5%. Dividends other than mentioned above will be taxed at the rate of 10% for resident or non-resident companies.

T

## GAMING TAX

Income derived from gaming by a gaming licensee who has paid gaming tax under Gaming Act is exempt from income tax. Tanzania Revenue Authority administer and collect gaming taxes, below are tax rates under the Gaming Act:

| Detail | Rates | Returns |
|---|---|---|
| Land based Casinos | 12% on net winning<br>18% on gross gaming revenue | Weekly |
| Internet Casinos | 25% on gross gaming revenue | Weekly |
| Sports betting Operators | 25% on gross gaming revenue | Monthly |
| SMS Lotteries | 25% on gross gaming revenue | Monthly |
| Slot Machines | TZS 100,000 for each slot machine | Monthly |
| National Lotteries | 20% on gross gaming revenue | Monthly |
| Forty Machine Sites | 25% on gross gaming revenue | Monthly |
| Gaming winnings from Casino | 20% on gross winnings | Monthly |
| Virtual Games | 10% on gross gaming revenue | Monthly |

## VALUE ADDED TAX (VAT)

Tanzania imposes a VAT rate of 18% on any supply of goods or services in mainland Tanzania where it is a taxable supply made by a taxable person in the course of, or in furtherance of, any business carried on. Exports of goods and services are generally categorized as zero rated supplies. Tanzania also has various exemptions.

VAT registration is triggered when the value of taxable supplies in a twelve month period is or is expected to exceed TZS 100 million or TZS 50 million in a six month period. Professional service providers are required to be VAT registered regardless of the value of supplies provided.

A VAT registered person is required to file VAT returns and make the payment on a monthly basis. The deadline for filing and remitting VAT is on or before 20th day of the following month. Where the due date falls on a Saturday, Sunday or a public holiday, the VAT return shall be lodged on the first working day following a Saturday, Sunday or public holiday.

Ancillary transport services such as stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services and the storage of transported goods or goods to be transported are charged VAT at the rate of 0%.

Supply of precious metals, gemstones and other precious stones by a small scale miner at the designated Mineral and Gem House shall be exempted.

VAT exemption is provided on imports by a Government entity or supply to a Government entity of goods or services which are to be used solely for implementation of a project funded by the Government or concessional loan, non-concessional loan or grant through an agreement between the Government or United Republic of Tanzania and another Government, donor or lender of a concessional loan. The grant is supposed to be approved by the Minister. The exemption will only be applicable if the exemption order is gazetted by the Minister and specify goods or services that are eligible for exemption, commencement and expiry date of the exemption.

## FRINGE BENEFITS TAX

Employees are taxed on the value of fringe benefits as determined in accordance with a separate schedule to the Income Tax Act (the ‘fifth schedule’), which quantifies the car benefit. The other benefits include a housing benefit and loans that are provided for less than a 12-month period and do not exceed 3 months basic salary. The tax imposed on the individual is in accordance with the tax brackets and rates applicable to natural persons.

## RAILWAYS DEVELOPMENT LEVY (RDL)

RDL is charged at the rate of 1.5% of CIF value on importation of goods and on those goods entered for home consumption. However, the RDL shall not apply to the imported items from within member states of the East African Community.

## SKILLS & DEVELOPMENT LEVY (SDL)

Skills and development levy is a tax borne by the employer who employs ten or more employees and shall pay SDL at a rate of 4% of gross remuneration payable monthly.



However, SDL is not charged to a Government department or a public institution which is wholly financed by the Government, diplomatic missions, the United Nations and its organisations, international and other foreign institutions dealing with aid or technical assistance, charitable organisations, local government authority, farms employers whose employees are directly and solely engaged in farming and shall not include employees, who are engaged in the management of the farm or processing of farming products, registered educational institutions (private schools including nursery, primary and secondary schools; vocational, educational and training schools; universities and higher learning institutions) and religious institutions whose employees are solely employed to administer places of worship or give religious instructions or generally to administer religion.

## WORKERS COMPENSATION FUND (WCF)

WCF is a contribution borne by both private and public employers. It is charged based on the total employees’ monthly salary (i.e. basic salary plus all common periodic allowances). The applicable rate is 0.6% for private sector employers and 0.5% for public sector employers.

## PENSION CONTRIBUTIONS (NSSF AND PSSSF)

Employers and employees are required to contribute to the approved pension fund scheme. It is mandatory for an employer to withhold an employee’s contribution. The standard contribution amount is 20% per month (10% contributed by the employer and

10% contributed by the employee) that is computed on the basic salary if being made to PSSSF (public sector employees) or gross salary if being made to NSSF (private sector employees).

### STAMP DUTY

Stamp Duty is levied on the acquisition of real property or rights in or to such property, on share transfer of a company and on a lease agreement located within Tanzania. The tax is computed at a rate of 1% on the fair market value of the property, but never on a value lower than the sales price. Due date is 30 days from the date an instrument is executed.

### CITY SERVICE LEVY

Companies are subject to a service levy at the rate of 0.3% of turnover net of VAT and the excise duty in respect of their activities. The levy is collected by the Local Government Authority within the area of jurisdiction of the authority.

### OTHER TAXES & LEVIES

These include, amongst others, Customs, Importation and Excise Duties.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company is determined by deducting expenditure incurred in the production of income and other allowable expenses and allowances from the company's income. How the income is determined as well as allowable expenses and allowances that a company may deduct from that income is detailed further below.

### INCOME FROM A BUSINESS

"Business" includes a trade, concern in the nature of trade, manufacture, profession, vocation or isolated arrangement with a business character and a past, present or prospective business, but excludes employment. If the activities of the company are in line with the above definition of a 'business' according to the Tanzania tax laws, the company will be treated as conducting a business and its taxable income will be subject to tax at a rate of 30%. Taxable income is determined by taking business income and deducting allowable expenditure as explained below.

### INCOME FROM INVESTMENT

A corporation's income from investment is its income from activities not directly related to its business. This class of income may include dividends, interest and rent which are not the core business of a corporation. Income from investments is calculated as follows: -

- From total returns on investment;
- Deduct any income which has been subject to a final withholding tax and exempt dividends;
- Deduct current expenses deductions;
- Add net capital gains (i.e. capital gains minus capital losses);
- Deduct any loss carry forward from previous year.

### GENERAL PRINCIPLES OF DEDUCTIONS

The corporation is not allowed to deduct the expenses of the following nature in determining its taxable income:

- Expenditure incurred by employee or employer in the maintenance of himself or herself, his or her family or establishment, or for any other personal or domestic purpose;
- Expenditure of a capital nature that secures a benefit lasting longer than twelve months or incurred in respect of natural resource prospecting, exploration and development;
- Bribes and expenditure incurred in corruption practice;
- Fines and penalty fines and similar penalties payable to a government or a political subdivision of a government of any country for breach of any law or subsidiary legislation;
- Expenditure to the extent to which incurred by a person in deriving exempt amounts or final withholding payments.

### INTEREST AND FINANCE CHARGES

Interest incurred in the production of income is a deductible expense. Where the loan or instrument in respect of which interest is incurred complies with certain requirements, such interest is deemed to be incurred on a day-to-day basis. Exempt-controlled resident entities may deduct interest but to a limit not exceeding the sum of interest equivalent to a debt-to-equity ratio of 7:3. The ITA defines an exempt-controlled resident entity as an entity that is resident and at any time during the year of income 25% or more of the underlying ownership of the entity is held by approved retirement funds, charitable organizations, non-resident persons or associates of such entities or persons.



### TRADING STOCK

All trading stock on hand at the end of the tax year must be added to income while all trading stock on hand at the beginning of the year is deducted. Trading stock is valued at the lower of cost or the net realisable value.

### REPAIR AND MAINTENANCE EXPENDITURE

For the purposes of calculating a person's income for a year of income from any business, there shall be deducted all expenditure to the extent it is incurred during the year of income, by the person and in respect of the repair or maintenance of depreciable assets owned and employed by the person wholly and exclusively in the production of income from the business. No deductions are available for expenditure improving the assets but that expenditure may be included in the cost of the assets if certain requirements are met.

## RESEARCH AND DEVELOPMENT EXPENDITURE

In accordance with the Income Tax Act 2004 research and development expenditure is deductible if it is incurred by a person in the process of developing the person's business and improving business products or process and includes expenditure incurred by a company for the purposes of an initial public offer and first listing on the Dar es Salaam Stock Exchange but excludes any expenditure incurred that is otherwise included in the cost of any asset used in the use in any such process.

## GIFT TO PUBLIC AND CHARITABLE INSTITUTIONS

For the purpose of calculating a person's income for a year of income from any business, deduction shall be made of:

- Amounts contributed during the year of income to a charitable institution or social development project;
- Any donation made to Educational institutions;
- Amounts paid to local government authorities which are statutory obligations or government directives to support community development projects.
- The deductions available for a year of income shall not be more than 2% of the person's income from the business.

## DEPRECIATION ALLOWANCE FOR DEPRECIABLE ASSETS

For the purposes of calculating a person's income for a year of income from any business, there shall be deducted in respect of depreciation of depreciable assets owned and employed by the person during the year of income wholly and exclusively in the production of the person's income from the business the allowances granted under the schedule below.

| Class | Depreciable Assets | Rates |
|---|---|---|
| 1* | Computers and data handling equipment together with peripheral devices, automobiles, buses and minibuses with a seating capacity of less than 30 passengers, goods vehicles with a load capacity of less than 7 tonnes; construction and earth-moving equipment | 37.5% |
| 2* | Buses with a seating capacity of 30 or more passengers, heavy general purpose or specialized trucks, trailers and trailer-mounted containers; railroad cars, locomotives and equipment; vessels, barges, tugs and similar water transportation equipment; aircraft; other self-propelling vehicles; plant and machinery (including windmills, electric generators and distribution equipment) used in agriculture or manufacturing; specialized public utility plant and equipment; and machinery or other irrigation installations and equipment | 25% |
| 3* | Office furniture, fixtures and equipment; any asset not included in another Class | 12.5% |
| 4** | Deleted. | |
| 5** | Buildings, structures, dams, water reservoirs, fences and similar works of a permanent nature used in agriculture, livestock farming or fishing farming. | 20% |
| 6 | Buildings, structures, and similar works of permanent nature other than those mentioned in Class 5 | 5% |
| 7 ** | Intangible assets other than those in Class 4. | Over Useful life of asset |
| 8 ** | Plant and machinery (including windmills, electric generators and distribution equipment) used in agriculture. Equipment used for prospecting and exploration of minerals or petroleum. | 100% |

NOTES:

* Pools of depreciable assets calculated according to diminishing value balance method.

** Pools of depreciable assets calculated according to straight line method.

Mining and oil and gas operations companies are granted depreciation allowance as follows:

(a) The whole of deprecation allowance expenditure incurred in respect of mineral or petroleum operations during a year of income shall be placed in a separate pool.

(b) The depreciation allowance shall be granted with respect to each pool at the rates provided below:

| Year of Income | Depreciation Allowance |
|---|---|
| First Year | 20% of expenditure |
| Second Year | 20% of expenditure |
| Third Year | 20% of expenditure |
| Fourth Year | 20% of expenditure |
| Fifth Year | 20% of expenditure |

(c) The depreciation allowance granted with respect to a particular year of income shall be taken in that year and shall not be deferred to a later year(s) of income.

- The restriction for capital allowance on non-commercial vehicles is TZS 30 million.
- Plant and machinery used in manufacturing shall qualify for initial allowance of 50% on the cost of the asset (i.e. 25% in the year when an asset is employed and the remaining 25% in subsequent year).

## LOSSES ON REALISATION OF BUSINESS ASSETS AND LIABILITIES

For the purposes of calculating a person's income for a year of income from any business, there shall be deducted any loss of the person from the realization during the year of income of the following:

- A business asset of the business that is or was employed wholly and exclusively in the production of income from the business;
- A debt obligation incurred in borrowing money, where the money is or was employed or an asset purchased with the money is or was employed wholly and exclusively in the production of income from the business;

- A liability of the business other than a debt obligation incurred in borrowing money, where the liability was incurred wholly and exclusively in the production of income from the business.

## LOSSES FROM A BUSINESS OR INVESTMENT

For the purposes of calculating the income of a person (other than a partnership or a foreign permanent establishment) for a year of income from a business or investment, there shall be deducted:

- Any unrelieved loss of the year of income of the corporation from any other business or investment; and,
- Any unrelieved loss of a previous year of income of the corporation from any business or investment;
- A person may deduct an unrelieved loss when computing taxable income in the case of a loss incurred in dealing with speculative transactions.

## TAX LOSS

Where an entity has a chargeable income in the current year and is making losses for four previous consecutive years, there is a loss restriction where an amount equal to only 70% of the chargeable income can be offset from the carry-forward losses. However, this shall not apply to a corporation conducting an agricultural business or engaged in the provision of health or education.

## INTEREST RECEIVED

Interest received (or accrued) is included in gross income. Where the loan or instrument in respect of which interest is received complies with certain requirements, such interest is deemed to accrue on a day-to-day basis.

## FOREIGN SOURCED INCOME

Tanzania resident individuals and corporate entities are subject to tax in Tanzania on their worldwide income. However, this general principle may be overridden by the provisions of a double tax treaty or certain unilateral relief provisions contained in Tanzania's tax legislation. A comprehensive set of rules govern the determination of the source of income.

## INCENTIVES

In Tanzania there is an enacted law called the Tanzania Investment Act 1997, the Act has set up a one-stop investment centre to coordinate, encourage, promote and facilitate investment in Tanzania and to advise the Government on investment policy and related matters. The Tanzania Investment Centre (TIC) assists all investors to obtain permits, authorisation etc. required by other laws to set up and operate investments in Tanzania. There are two categories of investors; normal investors and strategic investors depending on the value of investment. The strategic investors enjoy more incentives than normal investors. With a Tanzania Investment Centre (TIC) certificate the investor qualifies for tax exemptions on certain items. The other categories of investments that enjoy incentives include:

**Some of the Export Processing Zone (EPZ) tax incentives include the following:**

- Exemption from corporation tax for 10 years;
- Remission of Customs duty, Excise duty, other tax for goods used as raw materials, equipment, machinery etc. directly related to the manufacturing activities;
- Exemption from payment of all taxes and levies imposed by the local government authorities for products produced for a period of 10 years;
- Exemption from pre-shipment or destination inspection requirements;
- On site customs inspection of goods in the EPZ;
- Entitlement to an initial automatic immigration quota of up to five persons during the start-up period.

**Special Economic Zone (SEZ):**

SEZ provides incentives depending on the category of the investor. Some of the incentives include the following:

- Exemption from payment of taxes and duties for machinery, equipment, heavy duty vehicles, building and construction materials and any other goods of capital nature to be used for the purpose of the development of the SEZ infrastructure;
- Exemption from payment of stamp duty on any instrument executed in or outside the SEZ related to transfer, lease or hypothecation of any movable or immovable property in or situated within the special economic zone or any document, certificate, instrument, report or record related to any activity, action, operation, project, undertaking or venture in the SEZ;
- Exemption from payment of VAT on utility charges;
- Exemption from pre-shipment or destination inspection requirements;
- On site customs inspection of goods within SEZ;
- Treatment of goods destined into SEZ as transit cargo.
- Remission of customs duty, VAT and any other tax charged on raw materials and goods of capital nature related to the production in the SEZ;
- Provision of business visa at the point of entry to key technical, management and training staff for a maximum of two months; thereafter the requirements to obtain a residence permit according to the Immigration Act, 1995 shall apply.

**Special Strategic Investment Status may be granted to the projects which meet the following criteria:**

a) A minimum investment capital should not be less than USD 300 million or the equivalent in Tanzania Shillings;
b) Investment capital transactions should be done through registered local financial and insurance institutions;
c) It should create direct local employment of at least 1,500 with enough number of senior positions; and
d) Being capable of generating reasonable foreign exchange earnings, producing reasonable import substitute goods or supply of facilities necessary for development in the social, economic or financial sector.

e) A strategic project is exempt from income tax payable if it is approved by the cabinet. However, the exemption is not applicable to a strategic project where the total tax payable for the entire project does not exceed TZS one billion.

## C. BUSINESS LICENCE

Business license shall be issued or renewed by the local authority upon presentation of a tax clearance certificate from the revenue authority.

## D. FOREIGN TAX RELIEF

A resident corporation may claim foreign tax credits in a year of income for any foreign income tax paid by a corporation to the extent to which it is paid with respect to the corporation's taxable foreign income for the year of income. Foreign tax credits claimed shall be calculated separately for each year of income and shall not exceed the average rate of Tanzania income tax of the corporation for the year of income applied to the corporation's taxable foreign income. However a corporation may elect to relinquish a foreign tax credit available for a year of income and claim a deduction for the amount of the foreign income tax but otherwise no deduction is available for foreign income tax.

## E. CHARITABLE ORGANISATIONS

A "charitable organisation" or "religious organisation" means a resident entity of a public character that satisfies the following conditions:

- Its membership shall be open to the general public who have common interests;
- The intention shall not be profit making;
- No distribution of profits generated out of its charitable business;
- Surplus shall be re-invested solely for original charitable function; and
- Relief of poverty or distress of Tanzanians by providing education, public health, water, road development.

An entity to be qualified as a charitable or religious organisation should have a confirmatory ruling by the Commissioner stating that it is a charitable/ religious organisation.

For the purposes of calculating the income of a charitable organisation or religious organisation for any year of income from its charitable business:

(a) There shall be included, together with any other amounts required to be included under other provisions of the Income Tax Act, all gifts and donations received by the organisation; and,

(b) There shall be deducted, together with any other amounts deductible under other provisions of the Income Tax Act:

  i. Amounts applied in pursuit of the organisation or religious organisation's functions (referred to above) by providing reasonable benefits to resident persons or, where the expenditure on the benefits has a source in Tanzania, persons resident anywhere; and,

  ii. 25% of the organisation or religious organisation's income from its charitable business (calculated without any deduction under subparagraph (i) above) and any investments.

## F. WITHHOLDING TAXES (WHT)

There are several sources of income that are subject to withholding taxes as follows:

| | Resident (%) | Non-Resident (%) |
|---|---|---|
| Dividends: | | |
| • By resident companies to resident companies controlling 25% of shares or more | 5 | N/A |
| • From DSE listed companies | 5 | 5 |
| • Other companies | 10 | 10 |
| Interest | 10 | 10 |
| Royalties | 15 | 15 |
| Technical and management service to mining oil and gas companies | 5 | 15 |
| Rental: | | |
| • Land and buildings | 10 | 15 |
| • Air craft lease | 10 | 10 |
| • Other assets | N/A | 15 |
| Natural resources payments | 15 | 15 |
| Services fees[1] | 5 | 15 |
| Payment for goods to the Government of Tanzania | 2 | N/A |
| Insurance premium | N/A | 5 |
| • Commission on mobile money transfer<br>• Fee, commission or any other charges to a commercial bank or digital payment agent | 10 | N/A |
| A non-resident person receives a payment in conducting a business of land, sea or air transport operator or charter without permanent establishment in Tanzania | N/A | 5 |
| Annual Director's fees (other than full time service director) | 15 | 15 |
| Other withholding payments | 15 | 15 |

NOTES:

1. For residents, the professional service fee (i.e. legal, accountancy, medical, theatrical performance, sports, exhibition, private security and any entertainment) will be subject to WHT, where technical service fees in relation to mining and oil and gas companies is a final tax (which includes permanent establishment for those purposes);

   For non-residents, services subject to WHT are not restricted to professional services.

Exemptions:

1. Interest from treasury bonds issued not less than 3 years ago and listed on the Dar es Salaam Stock Exchange (DSE) from 1 July 2021;
2. Relief may apply for government projects.

WHT on companies involved in construction will be based on the ratio of 3:2 for materials and service respectively. The ratio is applicable where there is no split between the equipment and service element in the invoice.

## G. RELATED PARTY TRANSACTIONS

## TRANSFER PRICING

The Tax Administration (Transfer Pricing) Regulations 2018 were issued by way of a gazette notice published on 27 April 2018. The regulations revoked the Income Tax (Transfer Pricing) Regulations, 2014. The regulations apply to taxpayers dealing with related parties located both inside and outside the United Republic of Tanzania. The regulations address the potential mismatch between profit allocation and distribution of risks, assets and functions across the associated enterprises. The Regulations require corporations to provide documented evidence that an arm's-length amount was paid for goods (both tangible and intangible) and services between related parties.

### Documentation requirement

Entities whose total related party transactions within a particular year exceed TZS 10 billion are mandatorily required to submit a Transfer Pricing documentation at the time of submitting their tax returns.

For the rest of the entities with related party transactions, the Transfer Pricing documentation should be prepared before filing the tax returns and should be submitted within 30 days upon request by the Commissioner.

### Stiff penalties for non-compliance

The penalties for any transfer pricing adjustment made as part of a tax audit is 100% of the tax underpaid.

Failure to comply with the regulations is an offence, and upon conviction, the taxpayer is liable to imprisonment for a maximum of 6 months and/or a fine of not less than TZS 52.5 million or both.

### Advance Pricing Arrangements

The regulations also provide that a taxpayer can request the Commissioner to enter into an Advance Pricing Arrangement ("APA"). Basically these APAs can be unilateral, bilateral or multilateral based on the taxpayer's request and they determine in advance the prices of the future controlled transactions over a fixed period of time, but not exceeding five years of income.

## H. EXCHANGE CONTROL

Under the Investment Act 1997, investors are guaranteed unconditional transferability (through any authorised dealer in freely convertible currency) of net profits, foreign loan services, royalties, fees and technology transfer charges, emoluments of foreign personnel and repatriation of capital, after taxes on the sale of the investment. However, all transactions in foreign currency are regulated by the Foreign Exchange Act which permits any person, resident or not, to:

- Hold any amount of foreign currency;
- Sell any amount of specified foreign currency to an authorised dealer;
- Open and maintain a foreign currency account with a bank which is an authorised dealer.

## FOREIGN LOANS

The Bank of Tanzania (BoT) requires that all foreign loans borrowed by the private sector are registered with the BoT. The loan registration has to be done within 14 days after approval of the loan by the lender. The BoT shall provide a unique Debt Record Number which shall be used while making repayments. Without the registration, there is a risk of repayments being blocked by the BoT and penalties for non-compliance.



## J. PERSONAL TAX

Effective 1 July 2020, the tax rates are as follows (on annual income):

| Individual Employment Income (TZS) | Tax Rates |
|---|---|
| Up to 3,240,000 | 0% |
| 3,240,001 – 6,240,000 | 9% |
| 6,240,001 – 9,120,000 | 20% |
| 9,120,001 – 12,000,000 | 25% |
| Over 12,000,000 | 30% |

Note: Secondary employment is chargeable at a rate of 30%

Deductions available to salaried employees and full-time service directors are restricted to the following:

- Exempt amounts and final withholding payments;
- On-premises cafeteria services that are available on a non-discriminatory basis;

- Medical services, payment for medical services, payments for insurance for medical services or payments that are:
  - o Available with respect to medical treatment of the individual, spouse of the individual and up to four of their children; and,
  - o Made available by the employer (and any associate of the employer conducting a similar or related business) on a non-discriminatory basis;
- Any subsistence, travelling, entertainment or other allowance that represents solely the reimbursement to the receipt of an amount expended by him wholly and exclusively in the production of his income from his employment or services rendered;
- Benefit derived from the use of motor vehicle where the employer does not claim any deduction or relief in relation to the ownership, maintenance or operation of the vehicle;
- Benefit derived from the use of residential premises by an employee of the Government or any institution whose budget is fully or substantially out of Government budget subvention;
- Payment providing passage of the individual, spouse of the individual and up to four of their children to or from a place of employment which corresponds to the actual travelling cost where the individual is domiciled more than 20 miles from the place of employment and is recruited or engaged for employment solely in the service of the employer at the place of employment;
- Retirement contributions and retirement payments exempted under the Public Service Retirement Benefits Act, 1999;
- Payment that it is unreasonable or administratively impractical for the employer to account for or to allocate to their recipients;
- Allowance payable to an employee who offers intramural private services to patients in a public hospital;
- Housing allowance, transport allowance, responsibility allowance, extra duty allowance, overtime allowance, hardship allowance and honoraria payable to an employee or the Government or its institution whose budget is fully or substantially paid out of Government budget subvention;
- In calculating an individual's gains or profit from payment for redundancy or loss or termination of employment, any payment received in respect of a year of income which expired earlier than five years prior to the year of income in which it was received, or which the employment or services ceased, if earlier such payment shall, for the purposes of calculation of the tax payable thereon, be allocated equally between the years of income in which it is received or, if the employment or services ceased in an earlier year between such earlier year of income and the five years immediately preceding such year of income in which such payment is so received or as the case may be, such earlier year of income in which the employment or services ceased, and each such portion allocated to any such year of income shall be deemed to be income of that year of income in addition to any other income in that year of income;
- Donation made by an employer as per section 12 of the Education Fund Act is exempted from tax, which shall be subject to the commissioner general's approval.
- If the contract is for a specified term, the amount included in gains or profits shall not exceed the amount which would have been received in respect of the unexpired period of such contract and shall be deemed to have accrued unevenly in such unexpired period;
- If the contract is for an unspecified term and provides for compensation on the termination thereof, such compensation shall be deemed to have accrued in the period immediately following such termination at a rate equal to the rate per annum of the gains or profits from such contract received immediately prior to such termination; and,
- If the contract is for an unspecified term and does not provide for compensation on the termination thereof, any compensation paid on the termination thereof shall be deemed to have accrued in the period immediately following such termination at a rate equal to the rate per annum of the gains or profits from such contract received immediately prior to such termination, but the amount so included in gains or profits shall not exceed the amount of three years' remuneration at such rates.

## K. MINERAL AND PETROLEUM TAX REGIME

- Mining and oil and gas companies are taxed at the same fixed corporate tax rate of 30% of taxable income but as per the Finance Act 2016;
- Ring-Fencing rules: applicable to each separate mineral operation and each mineral right constitute a separate mineral operation (subject to special considerations relating to the interactions of the prospecting and mining licence and extension of mining licences);
- Transfer pricing: applied to ring-fenced activities of the same business person;
- Loss restrictions: offset of brought forward losses limited to 70% of current year profits, with any balance carried forward, it is applicable to mineral operations, processing, smelting and refining activities;
- Alternative minimum tax: not applicable;
- Capital allowance: 20% straight line on all assets used in mining operations; jointly holding of mineral rights: treated for tax as a partnership;
- Disclosure of subcontractors: all persons contracted and subcontracted (list names, nature of subcontracted work and duration of work). Failure to comply will result to a punitive fine not exceeding 25% of the quantum payable under the project or a fine of not exceeding TZS 60 million, whichever is greater.

## L. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) | Management and technical fees (%) |
|---|---|---|---|---|
| **Non-treaty countries** | 10 | 10 | 15 | 15 |
| **Treaty countries:** | | | | |
| Canada | 20/25[1] | 15 | 20 | 20[4] |
| Denmark | 15[1] | 12.5 | 20 | 20[4] |

| | Dividends (%) | Interest (%) | Royalties (%) | Management and technical fees (%) |
|---|---|---|---|---|
| Finland | 20[1] | 15 | 20 | 20[4] |
| India | 52/10[1] | 10 | 10 | 0 |
| Italy | 10[1] | 15 | 15 | 15 |
| Norway | 20[1] | 15 | 20 | 20[4] |
| South Africa | 10/20[1] | 10 | 10 | 15[5] |
| Sweden | 15/25[1] | 15 | 20 | 20[4] |
| Zambia | 0[3] | 0[3] | 0[3] | 0 |

Notes:

1. The 10% domestic withholding tax rate for dividends applies unless the tax treaty rate is lower, in which case the lower treaty rate applies (specifically for a substantial shareholding under the India treaty, see also note 2).
2. The 5% rate applies if the beneficial owner is a company that owns at least 25% of the shares of the paying company.
3. Dividends, interest and royalties are exempt from withholding tax in Tanzania where the recipient is a Zambian resident and the income is subject to tax in Zambia.
4. The 15% domestic withholding tax rate for management, professional and technical fees applies unless the tax treaty rate is lower, in which case the lower treaty rate applies, that is specifically the case for India and Zambia (both 0%). For Canada, Denmark, Finland, Norway and Sweden, the 15% domestic rate will apply as it is lower than the treaty rate.
5. Tanzania levies a 15% withholding tax on technical services rendered by a South African resident company without a permanent establishment in Tanzania. The South Africa-Tanzania treaty precludes the TRA from levying this withholding tax under the general profits article. However, the TRA's view, in the absence of a specific article offering relief with regard to technical service fees is that Tanzania may levy the withholding tax. This is not in line with the OECD guidelines, which provide that the general profits article would apply in the absence of a specific article.

Tanzania has signed DTTs with the East Africa Community (Kenya, Uganda, Rwanda, & Burundi), South Korea and Zimbabwe but these have yet to be ratified.

# THAILAND

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| • Bangkok | Philip Bond | +66 2 108 1591 (ext. 103) |
| • Eastern Seaboard | | +44 759 686 1029 (WhatsApp) |
| • Phuket | | philip.bond@pkf.com |
| • Sriracha | | |

## BASIC FACTS

| | |
|---|---|
| Full name: | Kingdom of Thailand |
| Capital: | Bangkok |
| Main languages: | Thai |
| Population: | 70.24 million approximately (2022 estimate) |
| Monetary unit: | Baht (THB) |
| Internet domain: | .th |
| Int. dialling code: | +66 |



## KEY TAX POINTS

- The tax residency of a company is determined by the place where the company is located i.e., Thai tax resident companies are those incorporated in Thailand. Companies incorporated outside Thailand are non-resident companies.
- A resident company is subject to Corporate Income Tax (CIT) on its worldwide income and gains. Non-resident companies are subject to CIT on their Thai sourced income and gains. The current CIT rate is 20%.
- The tax residency of an individual is determined by the period in which the individual is present in Thailand. Resident individuals are those who are present in Thailand for at least 180 days in a calendar year. Resident individuals are subject to income tax on Thai sourced income and income arising or earned overseas if remitted to Thailand in the year in which it is derived. Non-resident individuals are subject to tax on income from sources in Thailand. Personal income tax is calculated using progressive tax rates from 0% to 35%.
- Thailand relies on a self-assessment system and capital gains are treated as part of normal assessable income.
- A 10% profit remittance tax is imposed on profits remitted out of Thailand by Thai branches of foreign companies.
- Thailand has many Double Tax Agreements (DTAs), currently with 58 countries, which provide for the elimination of double taxation using credit or exemption methods. The DTAs also provide for the exchange of information between treaty partners, including under a Mutual Agreement Procedure. Thailand is a member of the OECD/G20 Inclusive Framework on BEPS.

- By virtue of either Thai domestic tax laws or a relevant DTA, credit relief is provided for overseas taxes against taxation in Thailand up to a maximum of the Thai tax on the overseas income concerned so as to mitigate double taxation.
- To encourage Thailand as a regional hub of investment, the Thai Government has introduced several preferential tax regimes to attract multinational enterprises to establish international and regional headquarters, trading centers, and treasury centers in Thailand. International Business Centers have effectively replaced Regional Operating Headquarters, International Headquarters, and International Trade Center structures.
- Thai domestic tax laws do not include provisions on Controlled Foreign Corporations (CFCs) or thin capitalisation.
- Value Added Tax (VAT) is levied on the supply of goods and provision of services in Thailand and on the importation of goods into Thailand. A service performed abroad but made use of in Thailand is also deemed to be a provision of services in Thailand. The standard rate of VAT is 7%. Certain supplies may be zero-rated or exempt.
- From 1 September 2021, the submission of VAT returns has been required in Thailand by overseas digital service providers or operators of electronic platforms who have annual revenue in excess of THB 1.8 million.
- Individuals or companies with ownership and/or usage rights over land and buildings (including condominium units) are subject to pay an annual land and building tax.
- Specific Business Tax (SBT) is imposed on certain transactions that are not subject to VAT from 2.5% to 3% plus a local tax levied at 10% of the SBT rate resulting in an effective SBT rate of 2.75% to 3.3%
- Stamp Duty is payable on certain types of instruments from THB 1 Baht to THB 200 per THB 1,000 of document value or a fixed amount specified by the Thai Revenue Code (TRC).

## A. TAXES PAYABLE

### CORPORATE INCOME TAX

Juristic persons (broadly companies and partnerships) in Thailand are subject to tax on their worldwide income whereas non-resident companies are taxed on profits or income derived from Thailand.

- A foreign company which does not carry on business in Thailand is subject to a final withholding tax on certain payments (types of assessable income) made from or in Thailand i.e., dividends, interest, rentals, royalties, and service fees. Generally, the rate of withholding tax is 15% except for dividends, which is 10%, although rates can change through the application of a relevant Double Tax Agreement (DTA).
- The corporate income tax (CIT) rate for companies is 20%.
- However, a reduced rate of CIT can apply subject to certain conditions i.e., where the paid-in capital of a company is below THB 5 million at the end of an accounting period and income from the sale of goods / provision of services does not exceed THB 30 million:
  - 0% rate applies where the net taxable profit is below THB 300,000.
  - 15% rate applies where the net taxable profit is 300,001 to THB 3 million.
  - 20% rate applies where the net taxable profit is in excess of THB 3 million.
- Foundations, associations, and foreign companies carrying on the business of international transportation services are subject to CIT on gross income generally at a rate of 3% on fares, fees, and other benefits collectible in Thailand with respect to such carriage before the deduction of any expenses.
- **Juristic Person**

  The term 'juristic person' appears throughout Thai tax law and includes a company, a registered partnership, any unincorporated joint venture and any trading or profit-seeking activity carried on by a foreign government or its agency or by any other juristic body incorporated under a foreign law.

**Administration:**

A company must file two corporate income tax returns each year, and if it has taxable profits, it will also have to make two payments of corporate income tax, one in respect of each tax return.

- Mid-year return (PND 51):

  A mid-year corporate income tax return must be submitted to the Thai Revenue Department (TRD) within two months from the mid-point (half-way) date of an accounting period. The return is based on an estimate of the company's taxable profits and income tax liability for the year, and, where an annual estimated corporate income tax liability arises, a payment of 50% of the liability must be made when the mid-year return is filed. This prepaid corporate income tax is creditable against the annual corporate income tax liability.
- Final return (PND 50):

  An annual corporate income tax return must be submitted to the Revenue Department within 150 days from the end of the accounting period (together with the respective audited financial statements and any tax payment due).
- Accounting period:

  The ordinary fiscal year for the submission of a corporate income tax return is a 12-month period ending 31 December. However, with the consent of the Director-General of the Thai Revenue Department (TRD), a company may choose a different accounting period as its fiscal year-end for the purpose of determining taxable income.

**Use of a foreign currency as the functional currency:**

The Thai Revenue Code (TRC) allows the application of a foreign currency for CIT purposes. A corporate entity wishing to use another currency as its functional currency (other than the Thai currency) for corporate income tax purposes, must:

- Notify the Thai Revenue Department (TRD) of the foreign functional currency and that this will be used in its financial statements and corporate income tax computations;
- Use the functional currency from the first day of the financial year of the corporate entity's notification to the TRD;

- Continue to use the functional currency for future financial years; and,
- Not change the use of the functional currency unless the approval of the TRD is firstly obtained.

## PETROLEUM INCOME TAX

The Thai Petroleum Acts (PA) and the Petroleum Income Tax Acts (PITAs) regulate the exploitation of Thailand's in-situ petroleum reserves. Companies subject to tax under the PITAs are exempt from taxes and duties on income imposed under the Thai Revenue Code (and any other laws).

The term "petroleum" is defined to have a wide meaning and includes crude oil, natural gas, natural gas liquids and the like but does not include shale oil or other means by which oil is extracted from rocks by the application of heat or chemical processes.

Petroleum exploration and production activities in Thailand are pursued by international companies either under a concession, a production sharing contract, or a service contract (please note, service contracts are taxed under the Thai Revenue Code not the PITAs).

The annual net profit from petroleum operations of a 'concession holding' company is subject to income tax at the rate of 50%. The annual net profit of the petroleum business of a company operating under a production sharing contract is subject to income tax at the rate of 20%.

**Branch Profits Remittance Tax:**

The ordinary branch profits remittance tax provisions under the Thai Revenue Code are not applicable to Thai taxpayers operating under the PITA legislation and branch profits may be remitted out of Thailand without further tax.

## CAPITAL GAINS TAX

Capital gains are treated as normal assessable income for tax purposes. Gains are normally computed by deducting the cost of an asset from its sale proceeds. There is no separate capital gains tax return required in Thailand.

## BRANCH PROFITS TAX

There is no specific branch profits tax in Thailand.

A branch is subject to a tax rate of 20% on its net profits (very broadly, accountancy net profits usually closely relate to taxable income) and a further 'branch profits remittance tax' of 10% applies to the remittance out of Thailand of after-tax branch profits, so the overall effective Thai tax rate is 28% (20% corporate income tax on net profits and 10% of remitted after-tax profits of 80%).

## VALUE ADDED TAX (VAT)

Value Added Tax (VAT) is levied on the supply of goods and provision of services in Thailand and on the importation of goods into Thailand. A service performed abroad but made use of in Thailand is also deemed to be a provision of services in Thailand.

**<u>Administration</u>**

- **Registration**

  Any person or entity that regularly supplies goods or provides services in Thailand and has an annual turnover exceeding THB 1.8 million is subject to VAT registration in Thailand although certain businesses are exempt from VAT.
- **Late-registration penalties**

  Any person who becomes liable to VAT, and fails to register, is subject to a late registration penalty of 200% of the VAT payable (for each month that person failed to register).
- **Exemption from VAT registration**

  There are no provisions which provide exemption from VAT registration under the Thai Revenue Code (TRC). Normally businesses making mainly exempt supplies are not required to register for VAT because their turnover of taxable supplies is below the annual registration threshold.
- **VAT returns**

  A taxpayer must file monthly VAT returns (Forms PP30) by the 15th day of the following month. Any VAT due must also be paid by this date. Please note, a monthly VAT return must still be filed with the Thai Revenue Department (TRD) even if the return is a 'nil' return and no VAT is due.
- **Reverse charge mechanism**

  Broadly, where goods or services are supplied by a non-resident, non-VAT registered overseas provider (temporarily carrying on a business in Thailand), to a recipient in Thailand, the recipient must self-assess VAT under the reverse charge mechanism. The reverse charge mechanism effectively transfers the VAT liability from the supplier to the recipient of the supply.

  The recipient must assume that VAT is included in the non-resident provider's invoice and make a VAT withholding of 7% from the payment. The withheld VAT should then be paid to the TRD by the 7th day of the month following the month of the payment (of the income) together with the submission of a VAT Return (Form PP36) providing details of the withheld VAT. If the recipient is a registered taxpayer, the VAT paid is considered input VAT and may be claimed as such by them.
- **VAT compliance penalties**

  Penalties are levied where a VAT return is filed late, or VAT is paid late, or the VAT rules are not complied with (including errors and omissions), or where there has been VAT fraud or VAT evasion.
  - Where a VAT return is filed late, a penalty (fine) is levied of 100% of the amount of VAT payable or due in the tax month.
  - Where VAT is paid late, a penalty is levied of 100% of the unpaid VAT. In addition, a monthly interest surcharge is levied of 1.5% of the unpaid VAT (capped at 100% of the VAT shortfall). Depending on when the taxpayer pays (as long as they haven't received a notice of call for examination), the penalty may be substantially reduced.

**VAT rate and documents**

- **Rate of VAT**

  The standard rate of VAT is 10%, however it is currently reduced to 7% until 30 September 2023 (unless extended further by the government). Exports are zero-rated and certain goods and services are exempt including basic groceries, education, healthcare, interest, leasing immovable property, and real estate sales.

- **VAT invoices**

  VAT invoices (containing the required information specified under the TRC) must generally be issued by each taxpayer for all taxable supplies, including exports. Full VAT invoices are not required however for retail transactions with private customers where summary tax invoices may be issued (please note, approval from the TRD is required if the summary tax invoices are to be issued through a cash registering machine).

  VAT invoices may be issued in paper or electronic format (to issue e-tax invoices requires approval from the TRD). VAT invoices are required to support a claim for input tax deduction.

- **Credit notes**

  A credit note (used to reduce the VAT on a supply) must refer to the invoice it is reducing and contain generally the same information as a VAT invoice (as specified under the TRC).

**Recent VAT developments**

- **Digital Service Providers and Electronic Platform Operators:**

  From 1 September 2021, overseas digital service providers and operators of electronic platforms will have to register for VAT if they have an annual revenue in excess of THB 1.8 million. Such VAT registered entities are likely to always be in a VAT liability/payment position because they will charge VAT (Output VAT) on their sales but have little to no purchases (Input VAT) to offset.

  For overseas digital service providers and operators of electronic platforms to be required to register for VAT, three further conditions need to be present:

  i) The digital services are provided from overseas;

  ii) Services are provided by electronic means and are used in Thailand; and,

  iii) The recipient of the service is not a VAT registrant.

## SPECIFIC BUSINESS TAX (SBT)

Specific Business Tax (SBT) was introduced in 1992 and replaced Business Tax. It is imposed on certain types of businesses whose value added is difficult to define such as banking, finance, credit foncier, life insurance, pawnshops, and real estate. Such businesses are considered to be outside the VAT system and therefore are not subject to VAT.

SBT is operated similar to VAT with monthly returns (Form PT 40) required to be completed and filed with the Thai Revenue Authority.

| Business | Tax Base | Tax Rate |
|---|---|---|
| Banking, finance, and similar business | Interest, discounts, service fees, other fees, profits from foreign exchange | 3.0 % |
| Life insurance | Interest, service fees and other fees | 2.5 % |
| Pawn brokerage | Interest, fees, remuneration from selling overdue property | 2.5 % |
| Real estate | Gross receipts | 3.0 % |
| Factoring | Interest, discounts, service fees and other fees | 3.0 % |

Please note, a local tax at 10% of the SBT rate is also imposed resulting in an effective SBT rate of between 2.75% and 3.3%

## CUSTOMS DUTY

Customs Duty is imposed on imported and certain exported goods. It is administered under the Customs Act and the Customs Tariff Decree. Three areas establish the amount of Customs Duty to be paid on imported goods or products, namely, classification, valuation, and origin:

- **Classification**

  Imported goods into, and certain exported goods out of, Thailand, are classified under Thailand's Harmonised Commodity Classification and Coding System (HTN) which provides tariff headings and commodity codes for goods and products which are linked to Customs Duty rates.

  Thailand's HTN is based on the Association of Southeast Asian Nations (ASEAN) Harmonised Tariff Nomenclature 2017 (HTN), which in turn is based upon the Harmonised Commodity Classification and Coding System Convention. Each HTN Code is an eight 8 digit number; the first 4 digits relate to the heading (identifies the category of the item) and the next 4 digits relate to the sub-heading (and provides the reference to the specific good or product, and its condition or state)

  The classification of goods for Customs tariff (HTN) purposes is administered by the Thai Customs Department.

- **Valuation**

  In setting Customs Duty rates for goods classified under the HTN system, Thailand adopted the principles of the World Trade Organization's (WTO) Valuation Agreement. The WTO Valuation Agreement aims for a fair, uniform, and neutral system for the valuation of goods for Customs purposes - a system that conforms to commercial realities, and which outlaws the use of arbitrary or fictitious customs values.

  Customs rates are set based on a specific or an ad valorem valuation basis.

  - On a specific basis, a specific tariff is levied as a fixed charge per unit based on the weight, volume, or quantity of the import, whichever is greater.

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- On an Ad valorem basis, an ad valorem tariff is levied as a fixed percentage of the value of the commodity (goods) imported with rates ranging from 0% to 80%. “Ad valorem” is Latin for “according to value” i.e., in proportion to the estimated value of the goods or transaction concerned.

Broadly, Customs rates are applied to the cost, insurance, and freight (CIF) value of imports whilst for exports they are applied to the free on board (FOB) amount. Customs tariff (HTN) rates are administered, and notified, by the Ministry of Finance.

- **Origin**

  It is important to establish the origin of goods because additional Customs Duty may apply where goods have originated from a country which is subject to trade defence measures (anti-dumping or anti-subsidy measures) or safeguards. Equally, proof of origin of a particular good or commodity may make it eligible for a preferential import Customs Duty rate, for example, where an international ‘free trade’ or ‘preferential trade’ agreement has been entered into with the respective origin country (i.e., a bilateral agreement exists).

  The origin of goods may be evidenced by a certified and legalised Certificate of Origin (form) for the purposes of supporting a claim to a preferential tariff when goods are imported into Thailand under the Generalised Systems of Preferences (GSP). Without such a certificate from a GSP country, the import will be subject to the HTN tariff.

  **Importing – Certificates of Origin (and China)**

  The ‘rule of thumb’ for any importer is to always ensure that the required licences and documents are available for presentation to Thai Customs when required. For example, if importing some items from China to Thailand, to qualify for lower import duty a Certificate of Origin (Form E) is required which has been approved by the China Council for the Promotion of International Trade.

  **Exporting – Thai Certificates of Origin**

  The Thai Chamber of Commerce (Board of Trade of Thailand) is the Thai agency authorised to issue a (Thailand) Certificate of Origin and provides a 24-hour online professional service which also includes a commercial document certification (CF / Legalisation) service.

Thailand is a member of the Association of South-East Asia Nations (ASEAN) and reduced its Customs Duty in line with the Common Effective Preferential Tariffs programme. The ten member countries to the ASEAN agreement are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

Thailand also currently has Free Trade Agreements (FTAs) with Australia, Brunei, Cambodia, Chile, India, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, Peru, Philippines, Singapore, and Vietnam.

**The Arm’s length nature of the Customs Value:**

The transaction value of imported goods (Customs Value) is objectively calculated by the Thai Customs Department and based on unconnected third party pricing i.e., it is pricing that would be agreed between independent parties operating at “arm’s length” from one another. As such it is comparable to the Comparable Uncontrolled Price (CUP) pricing method set out in the OECD’s Transfer Pricing Guidelines. Notably, the Government would not benefit if the Customs Department were to artificially increase the Customs Value since this would create a higher cost base and reduce the profits chargeable to corporate income tax for the Thai Revenue Department (tax authority) i.e., the two Government departments are in conflict, the Customs Department would like a high value, whilst the Thai Revenue Department would like a low value – so there is no benefit to the Government as a whole in the Customs Value being anything other than an objective arm’s-length third-party value.

## EXCISE TAX

Excise Tax is levied on the sale of a certain services and goods (whether manufactured or locally imported) that are considered ‘luxuries’ or which are considered harmful to human health or the environment. Excise Tax is consumption tax that arises when goods are imported, or for locally manufactured goods, at the time when they leave the factory (except if they are leaving for storage purposes).

Excise Tax is calculated based on specific rates (with reference to the weight, volume, and quantity of the goods or cycle of service) or based on ad valorem rates (based on a percentage calculation with reference to the Suggested Retail Price, SRP).

- The Excise Tax rate may be reduced from the ceiling rate or standard rate by reference to the ‘List of Excise Tariffs’ appended to the Excise Tariff Act B.E. 2560 (2017).
- The level of carbon dioxide ($CO_2$) emissions can have an impact on the Customs rate applied with respect to certain motor vehicles and motorcycles i.e., the Customs rate is adjusted based on the grams of carbon dioxide ($CO_2$) emissions per kilogram and cylinder capacity of such vehicles.

Before locally manufactured goods leave the factory or leave a bonded warehouse, the manufacture must submit a return and pay the Excise Tax due.

**Municipal Tax:**

A Municipal Tax is also levied by the Excise Department on goods and services that are subject to Excise Tax at a rate of 10% of the Excise Tax payable.

## STAMP DUTY

Stamp Duty is a tax on instruments (documents) and not on transactions or persons. Only instruments listed in the Stamp Duty Schedule are subject to Stamp Duty and include such documents as agreements for the transfer of land, agreements for the transfer of stock, leases, debentures, mortgages, life assurance policies, annuities, powers of attorney, promissory notes, letters of credit, cheques, etc.

Stamp Duty is paid using the Thai Revenue Department’s e-Filing system which allows taxpayers to pay Stamp Duty online by submitting a form (Form Or Sor 9) via the Thai Revenue Department’s website (www.rd.go.th) or via the Revenue Department’s Application Programming Interface. Stamp Duty must be paid through the e-Filing system before or within 15 days from the date of execution of an instrument.

The rate of Stamp Duty varies depending on the type of instrument (document) but generally:

1) Stamp Duty ranges from THB 1 Baht to THB 200 per THB 1,000 of document value e.g., a rental contract for THB 50,000 for one year would be subject to a Stamp Duty charge of 1 Baht per THB 1,000 of contract value = THB 50,000 x 1/1000 = THB 50 Stamp Duty; or,
2) Stamp Duty is applied at a fixed amount specified in the schedule attached to Chapter VI of Title II of the Thai Revenue Code.

Those liable to pay Stamp Duty are those associated with the instrument, for example, the person executing the instrument, the holder of the instrument or the beneficiary as prescribed under Chapter VI of Title II of the Thai Revenue Code.

## INHERITANCE TAX

The Inheritance Tax Act B.E. 2558 (2015) ('IHTA-2015') introduced inheritance tax into Thailand with effect from 1 February 2016.

- **Liability to inheritance tax**

  Under the IHTA-2015, the following are liable to inheritance tax:
  - A person of Thai nationality.
  - An individual (natural person) of non-Thai nationality who has a domicile in Thailand according to the law on immigration.
  - A person of non-Thai nationality who receives an inheritance which comprises of an asset situated in Thailand.
  - A Juristic person (company) registered in Thailand or established under the laws of Thailand, or a Thai shareholder who holds more than 50% of the registered and paid-up capital of such a company.
- **Exemption from inheritance tax**

  The following are exempt from inheritance tax:
  - Where the value of an inheritance does not exceed THB 100 million.
  - A legal spouse to the inheritance owner.
  - Receipt of an inheritance from an owner who died before the date of enforcement of the Inheritance Tax Act (1 February 2016).
  - A government agency or legal entity who has received an inheritance for education, religious or public purposes.
  - Any person or international organisation under commitments between Thailand and the United Nations, or according to international laws or contracts or reciprocal arrangements with other countries.
- **Inheritance Tax rates**

  Only the value of an inheritance which exceeds THB 100 million is subject to inheritance tax at the following rates:
  - 5% = for parents and descendants.
  - 10% = for other heirs.
- **Assets subject to Inheritance Tax**

  The following assets are subject to inheritance tax when inherited (and the inheritance exceeds THB 100 million):
  - Deposited money, or other forms of wealth, where the heir has the right to withdraw it from a financial institution or claim it from a person holding the deposit;
  - Immovable property;
  - A registered vehicle;
  - Securities in accordance with the Securities and Exchange Act; and,
  - Financial assets to be prescribed by a Royal Decree.
- **Administration - Inheritance Tax Returns and Payments**

  Where an inheritance exceeds THB 100 million, an inheritance tax return must be filed within 150 days from the day of receiving the inheritance (and any tax paid). Where an inheritance tax return is not filed, or not filed by the deadline, both fines and criminal penalties can apply.

## GIFT TAX

In 2015, the Revenue Code Amendment Act (No. 40) B.E. 2558 put in place laws that subject gifts to personal income tax in Thailand, whilst also providing thresholds to exempt certain gifts. Gift Tax applies to gifts made by people who are still alive and to assets or the amount given to ascendants, descendants, parents, spouse, or others based on the value of the gift that exceeds the respective threshold; which depends on the donor and type of gift. Where a gift does not exceed the annual threshold, it is exempt from personal income tax:

Threshold:

- THB 20 million - For a gift of immovable (real estate) property received by a lawful child.
- THB 20 million - For a gift received by a person who is an ascendant, descendant, or spouse.
- THB 10 million - For a gift received by a person who is not an ascendant, descendant, or spouse on traditional occasions or established custom ceremonies.
- Exempt when in compliance with Ministerial Regulations - For a gift received by a person who intends to use the gift for religious, educational, or public benefit purposes.

Gifts which exceed the respective threshold are subject to Gift Tax at a rate of 5%.

## LOCAL TAXES

## SIGNBOARD TAX

The Signboard Tax Act B.E. 2510 (1967) provides that any sign (signboard) or billboard which displays a name, trademark, or product to promote, advertise or provide information about a business, is subject to an annual Signboard Tax ranging from THB 5 to THB 520 per 500 cm², depending on various factors including the language used.

The owner of such a sign or billboard is required to file a Signboard Tax Return (Phor Phor 1) with the Thai Revenue Department by 31 March each year and pay the tax due within 15 days from:

- The date of installation of a taxable sign or billboard;
- The date a change is made to an existing taxable sign or billboard; or,
- The date of receipt of an Assessment Order.

Where an owner fails to file a Signboard Tax Return with the Thai Revenue Authority a surcharge is levied between 10% to 24% of the Signboard Tax payable.

## PROPERTY TAXES

Individuals or companies with ownership and/or usage rights over land and buildings (including condominium units) are subject to pay an annual Land and Building Tax in accordance with the Land and Building Tax Act B.E. 2562 ('LBTA') to their local district tax office.

A Tax Assessment is raised by the tax authority in February of each year and payable within two months, by the end of April of that same year. Individuals or companies who fail to pay the Land and Building Tax can be subject to a penalty of between 10% to 40% of the unpaid tax, and in addition, a monthly fine ranging from 0.50% to 1% of the unpaid tax, until paid.

The Land and Building Tax Assessment is calculated by reference to the property's appraisal value in accordance with the Appraisal Value Schedule issued under the 'Property Appraisal for the State Benefits Act, B.E. 2562' (Property Appraisal Act) in which a property's appraisal value must reflect the use and type of property and be in accordance with its actual market value. The tax rate applied to a property's appraisal value varies and depends on factors such as the type of property (occupied, vacant) and its usage (agricultural, residential, commercial, industrial, etc).

For 2022, the Land and Building Tax rates range from 0.01% to 0.7%.

## B. INTERNATIONAL TAXATION

Non-resident companies are those incorporated under foreign laws. They are treated as carrying on business in Thailand if they have a 'taxable presence' in Thailand. Resident companies subject to CIT in Thailand can access Thailand's DTAs.

## TAXABLE PRESENCE

A taxable presence generally refers to either a fixed place through which the business is carried on (e.g., an office, a branch, or any other physical place of business) or a dependent agent acting on behalf of the non-resident company to carry on business in Thailand (e.g., an employee, a representative, or a go-between). Please note, the concept of a 'taxable presence' under the Thai Revenue Code (TRC) is broader than that of a 'permanent establishment' (PE) under a Double Tax Agreement (DTA).

## OECD COMMENTARIES

Although Thailand is not a member of the OECD, the Commentaries on the Articles of the OECD Model Tax Convention on Income and Capital play an important role as a secondary source for interpreting Thailand's DTAs. The OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations also assist in the interpretation of Thai legislation.

## MANAGEMENT AND SERVICES AGREEMENTS

A foreign company will often provide services to its Thai subsidiary under a Services Agreement (or Management Agreement). Time and care should be taken in the drafting of such agreements to ensure that they reflect what is actually being provided and that the prices charged are reflective of third-party arm's length values. Notably, the Thai Revenue Department will scrutinize such agreements and normally considers them from four different positions:

- Transfer Pricing;
- Withholding Tax;
- Value Added Tax (VAT); and,
- Does the service create a taxable presence (PE) of the overseas company in Thailand?

The Company in Thailand may claim a tax deduction for management fees, service fees, royalties, and interest charges paid to its overseas related parties (affiliates) subject to the amounts being exclusively incurred for the purpose of acquiring profits or for the business in Thailand, and being determined on an arm's length, third-party basis.

## CONTROLLED FOREIGN COMPANIES (CFC)

The Tax Laws of Thailand contain no tax provisions or rules in respect of CFCs. Thailand does not have any controlled foreign company (CFC) legislation, which is normally designed to tax holding companies on the profits of their overseas subsidiary companies that are located in low-tax territories (countries).

## TAX STRUCTURING

Thailand protects its national interests and as such a company designated as a 'Thai company' by virtue of 51% of its shares held by Thai nationals will have no (or very little) restrictions applied to its business activities. By contrast, unless operating through a Board of Investment incentive or a US company under the Treaty of Amity, a majority foreign owned company will be required to register, and operate in accordance with, the Foreign Business Act (FBA).

There are measures which can be taken to minimize the impact of the FBA on business operations through the use of one or two Special Purpose Vehicles (SPV's) interposed between the local Thai target company and the overseas investor company and the use of common shares and preference shares.

## MERGERS AND ACQUISITIONS

Often, an integral part of restructuring or tax structuring will involve a merger transaction (transfer of the entire business of one company to another company and the subsequent liquidation of the 'empty' company) or an acquisition of a target or certain subsidiaries or the disposal of a company or certain subsidiaries (carve out).

It important that, whatever company you are buying or selling in Thailand, or whatever merger transaction is being undertaken, that proper planning is followed and all the necessary documentation is in place, and each step is executed in a timely manner.

## C. DETERMINATION OF TAXABLE INCOME

### PROFITS CHARGEABLE TO CORPORATE INCOME TAX (CIT)

The net taxable profit of a company in Thailand is calculated by reference to the net profit shown in the financial statements prepared in accordance with applicable accounting standards on an accruals basis and making required adjustments in accordance with the provisions of the Thai Tax Law (principally the Thai Revenue Code). Such adjustments include disallowing deductions (expenses) which have not been incurred for the purpose of acquiring profits, or for the business in Thailand, and making additional deductions prescribed under the Tax Law.

The resulting taxable net profit for the respective period can then be reduced further by any available reliefs or tax losses, with any balance then remaining being subject to corporate income tax (CIT) at 20% (although a different CIT rate can apply depending on circumstances – see above).

### DIVIDEND INCOME

Where a company listed on the Stock Exchange of Thailand (SET) receives a dividend from a Thai company, the dividend income is treated as exempt income for the SET listed company if the shares are held for three months before and three months after the dividend was received.

Where a company is not listed on the SET and receives a dividend from a Thai company, such dividend income is treated as exempt income for the company receiving the dividend if it holds 25% or more of the total shares with voting rights of the Thai company, without any direct or indirect cross-shareholding, and the shares are held for a minimum of three months before and three months after the date of receipt of the dividend. Where the shares are held for the required period, but the other conditions are not satisfied i.e., the cross-shareholding or 25% shareholding conditions are not met, then only 50% of the dividend income is exempt from tax.

Offshore dividend income is exempt from corporate income tax where the Thai company owns at least 25% of shares with voting rights in the foreign company paying the dividend (and the shares have been held for at least six months prior to the date of receipt of the dividend, and the dividend has been paid out of profits subject to a tax rate of at least 15% in the foreign jurisdiction).

### INTEREST INCOME

Interest income is taxed as normal assessable income for tax purposes on an accrual basis.

### ROYALTY INCOME

Royalty income is taxed as normal assessable income for tax purposes on an accrual basis.

### CAPITAL GAINS

As mentioned above, capital gains are treated as normal assessable income and included within the income (profits) chargeable to corporate income tax of the respective accounting period.

### DEPRECIATION

When a company first establishes its accounting depreciation policy to write off the original cost of an asset over its useful economic life, and the rates to be used, it could be beneficial if the depreciation policy also considered the maximum rates of depreciation prescribed for each respective class of asset under the TRC.

A company can adopt any generally accepted accounting method and deduction rate for its depreciation, although the straight-line method is most commonly used. Depreciation for tax purposes is based on the accounting depreciation per class of asset subject to the respective maximum annual rates prescribed by the TRC. The maximum annual depreciation rates specified under the Thai Tax Law are as follows:

- Permanent buildings = 5% (over 20 years).
- Temporary buildings = 100% (over 1 year).
- Acquisition costs of depletable natural resources = 5% (over 20 years).
- Acquisition costs for leases:
  - Without a written lease agreement or with a written lease agreement that has a renewal clause which permits continual renewals indefinitely = 10% (over 10 years).
  - With a written lease agreement that does not provide for renewal, or it provides for renewal but only for a definite limited period = 100% divided by the total number of years of the original and renewable lease periods.
- Cost of acquisition of the right in a process, formula, goodwill, trademark, business licence, patent, copyright, or any other right:
  - If the period of use is unlimited = 10% (over 10 years).
  - If the period of use is definite and limited = 100% divided by the number of years of use.
- Other assets including equipment, vehicles, and research and development (R&D) costs which, by their nature, can deteriorate or depreciate in value, other than land and inventory = 20% (over 5 years).

Please note:

1. Although passenger cars and buses with no more than a 10-seating capacity have an annual 20% maximum depreciation rate, the depreciable cost value cannot exceed TBH 1 million.
2. For hire-purchase contracts, depreciation in a certain period must not exceed the instalments paid during that period.
3. Land is generally not depreciable.
4. Special depreciation methods for certain assets:

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(a) The original cost of machinery and equipment used for research and development (R&D) may be initially depreciated at 40%, with the remaining balance depreciated at a maximum rate of 20% per year.

(b) Computer software and hardware may be depreciated within three accounting periods (years).

5. Special depreciation method for small companies:

   Companies and juristic partnerships with fixed assets (excluding land and with a value of no more than THB 200 million) and less than 200 employees are entitled to use the following special depreciation methods:

   (a) The cost of machinery and equipment may be initially depreciated at 40%, with the remaining balance depreciated at a maximum rate of 20% per year.

   (b) The cost of computer software and hardware may be initially depreciated at 40%, with the remaining balance depreciated within three accounting periods (years).

   (c) The cost of factory buildings may be initially depreciated at 25%, with the remaining balance depreciated at a maximum rate of 5% per year.

## INTEREST EXPENSE

Interest on loans taken out for the purpose of acquiring profits, or for the business in Thailand, is allowed as a tax deductible expense subject to it complying with the Thai transfer pricing rules. Where interest is incurred on loans used for the construction or installation of fixed assets, and there is a period of time before the asset is ready for its intended use, the interest should be capitalised and treated as capital expenditure and deductible for tax purposes in the form of depreciation.

### Thin Capitalisation

There are no thin capitalisation rules in Thailand. However, where a company has been provided with incentives and privileges, for example, by the Board of Investment (BOI) or the Industrial Estates Authority (IEA), a condition may apply which stipulates that a certain debt-to-equity ratio should be maintained.

## BAD DEBTS

Ministerial Regulations prescribe the rules, procedures, and conditions to be followed for a debt to be written off and claimed as an expense deduction for tax purposes.

## CHARITABLE DONATIONS

Charitable donations are allowed as a deductible tax expense if the donation paid is for a public charity or for a public benefit up to, but not exceeding, 2% of net profits. Donations paid for the purpose of education or athletics are allowed as a deductible tax expense up to, but not exceeding, 2% of net profits.

## ENTERTAINMENT EXPENSES

Entertainment expenses are allowed as deductible expenses for tax purposes up to the lower of either 0.3% of gross revenues or 10 million Baht.

## PENALTIES AND FINES

Tax penalties, surcharges, criminal fines, and income tax are not allowed as deductions when calculating taxable net profits.

<u>Supreme Court (No. 1109/2559) ruling on 26 February 2016</u>

Before 18 March 2017 (the effective date the new ruling from the Supreme Court case No. 1109/2559 came into force), tax penalties and surcharges were only disallowed if they related to the TRC. If they related to other taxes not governed by the TRC they were treated as deductible expenses. This was in accordance with the Board of Taxation's Ruling No. 10/2528 (BTR 10/2528). In 2005 however, the Thai Revenue Department (TRD) disallowed a deduction claimed by a company in respect of Customs Department penalties (which was against normal practice and the BTR 10/2528 since penalties imposed by the Customs Department are not governed by the TRC). The dispute was then brought to the Central Tax Court and then went to the Supreme Court. The Supreme Court (No. 1109/2559) ruling on 26 February 2016 was consistent with the Central Tax Court's view that the penalties were not deductible for corporate income tax purposes. It held that such penalties were not exclusively incurred for the purpose of acquiring profits or for the purpose of the taxpayer's business and accordingly should be disallowed. Therefore, following the ruling (effective from 18 March 2017), all penalties, criminal fines, and surcharges under all tax laws and for all types of taxes are not deductible for tax purposes.

## NON-DEDUCTIBLE EXPENSES

Broadly, if an expense is not incurred in acquiring profits or for the business in Thailand, it will not be allowed as a deduction for corporate income tax purposes. Non-deductible expenses include, but are not limited to, the following:

- Reserves and provisions (some exceptions apply).
- Contributions to any fund, except contributions to a provident fund in accordance with the rules, procedures and conditions prescribed by a Ministerial Regulation.
- Any artificial or fictitious expense or any expense not actually incurred or any payment or expense where the identity of the recipient cannot be proved by the payer.
- Capital expenditure, or expenditure incurred for the addition, change, expansion, or improvement of an asset but not for repair in order to maintain its present condition.

## TAX LOSSES

Net taxable losses from accounting periods no longer than five years preceding the current accounting period may be utilised to reduce current period taxable profits.

- Board of Investment (BOI) promoted business:

The BOI can grant a company certain incentives and privileges which can include exemption from corporate income tax for up to eight years. During the tax exempt years, taxable losses incurred are caried forward and available to be utilised against taxable profits arising from the end of the tax free period for up to five accounting periods, which is consistent with the normal five year carry forward condition.

Net tax losses of a current accounting period cannot be carried back to reduce the taxable profits of a previous accounting period i.e., the carry-back of losses is not permitted.

## D. FOREIGN TAX RELIEF

Where an amount of foreign tax has been paid on overseas income received, a foreign tax credit is available, subject to certain conditions, up to the amount of the Thai tax that would have been payable had the income been derived in Thailand. The rules apply whether or not Thailand has a relevant Double Tax Agreement (DTA) with the overseas country from which the income is derived.

## E. GROUP TAXATION FOR COMPANIES

A corporate group in Thailand is not recognized for taxation purposes and, even where there is common ownership either directly or indirectly of companies in Thailand, there are no provisions which exist in the TRC which permit group loss relief or submission of group tax returns. Every company in Thailand is taxed as a separate, stand-alone legal entity.

## F. RELATED PARTY TRANSACTIONS

Although Thailand is not an OECD member country, its transfer pricing rules are based on the arm's length principle and the OECD Guidelines.

## TRANSFER PRICING REPORTING OBLIGATIONS

Where an entity has an annual total revenue of THB 200 million or less, it will be exempt from the transfer pricing information reporting requirements. However, it will still have an obligation to ensure that all its transactions, especially those with related parties, are conducted on an arm's length basis and that:

- Contemporaneous transfer pricing documentation is prepared and maintained to support the arm's length pricing basis of each respective related party transaction; and,
- Such contemporaneous transfer pricing documentation can be made available to the TRD if requested.

For accounting periods starting on or after 1 January 2021, where an entity has an annual total revenue of THB 200 million or more, it is required to provide the following (although for a company meeting certain conditions, it will not have to provide a benchmarking analysis):

1. A Transfer Pricing Disclosure Form which should be filed with its annual Corporate Income Tax (CIT) Return; and,
2. A Local File that provides more detailed explanations about the relationships, nature of transactions, pricing methods, and other information disclosed in the Transfer Pricing Disclosure Form and annual CIT Return. The requirements of a Local File follow the requirements outlined in Annex II to Chapter V of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. However, there are slight deviations as the TRD require some additional information.
3. A Country-by-Country (CbC) Report is required where a multinational enterprise has total consolidated revenues exceeding THB 28 billion, carries on business in Thailand, and does not satisfy the local filing exemption conditions. The CbC Report provides high-level data on the global allocation of the multinational enterprise's income and taxes.

Transfer pricing documentation must be prepared in the Thai language. Please note, under the Thai Revenue Code, a Tax Assessment Officer can request transfer pricing documentation within a 5 year period following the submission of the Transfer Pricing Disclosure Form.

**Master File**

The current Transfer Pricing documentation requirements for companies do not include the preparation or submission of a Master File; which typically provides explanations about the relationships, nature of transactions, pricing methods and other information for all companies in the worldwide group of companies.

## TRANSFER PRICING – PRICING METHODS

Thailand follows the five transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:

- Comparable Uncontrolled Price (CUP) Method;
- Cost-Plus Method;
- Resale Price Method;
- Profit Split Method;
- Transactional Net Margin Method (TNMM).

In addition to the above, a different pricing method can be used for transfer pricing purposes where it can be demonstrated that the other method is more applicable, and it would not be appropriate to use any of the above five methods. Where a different transfer pricing method is to be used in place of one of the above methods, a taxpayer must notify the Thai Revenue Department in writing of the other method within the accounting period of its first use.

## TRANSFER PRICING – PENALTIES

Where a taxpayer fails to comply with the transfer pricing reporting requirements, or submits inaccurate or incomplete information, a penalty of up to THB 200,000 will apply for each infringement. The penalty is separate and in addition to any transfer pricing adjustment, penalty, and/or surcharge, if any, which has resulted from a transfer pricing audit by Tax Officers of the Thai Revenue Department (TRD).

## TRANSFER PRICING STUDIES

The content of a transfer pricing study should broadly follow Chapter V of the OECD Guidelines, with an emphasis toward the

Transactional Net Margin Method (TNMM). A transfer pricing study can be completed in Thai or English (with a Thai translation). The TRD prefers the use of local comparables in a benchmarking study.

## G. WITHHOLDING TAX

### PAYMENTS TO RESIDENTS

Withholding tax applies to certain payments made to resident individuals at the following rates:

1. Employment income/hire of work = 0% - 35% (depending on level of income and applicable allowances).
2. Interest = 15%.
3. Dividends = 10%.
4. Royalties = 5 - 15%.
5. Rents = 5% (but not applicable if an individual is the payer of income).
6. Prizes = 5%.
7. Service and professional fees = 3% (but not applicable if an individual is the payer of income).
8. Public entertainer remuneration = 5%.
9. Advertising fees = 2% (but not applicable if an individual is the payer of income).
10. Capital Gains = 0 - 35% (but not applicable for sales of shares on the SET).

Withholding tax applies to certain payments made to **resident corporations and branches of foreign companies** at the following rates:

1. Interest = 1% if paid to local companies and 10% if paid to associations or foundations.
2. Dividends = 10%.
3. Royalties = 3% if paid to local companies and 10% if paid to associations or foundations.
4. Rents = 5% if paid to local companies and 10% if paid to associations or foundations.
5. Prizes = 5%.
6. Service and professional fees = 3% if paid to local companies and 10% if paid to associations or foundations.
7. Hire of work = 3% if paid to a local company or a registered branch of a foreign company in Thailand and 5% if paid to a foreign company that does not have a registered branch in Thailand but carries on business in Thailand.
8. Advertising fees = 2% if paid to local companies.

NOTES:

a) 10% withholding tax on dividends does not apply if the recipient of the dividend is a listed company or is a Thai company holding at least 25% of the shares with voting rights in the company paying the dividends without any cross-shareholding, either directly or indirectly.

b) Government agencies are required to withhold tax at the rate of 1% on all types of income paid to Thai companies.

### PAYMENTS TO NON-RESIDENTS

Where the non-resident recipient of income is in a country which does not have a Double Tax Agreement (DTA) with Thailand, withholding tax is deductible from the payment of certain income. Dividends are subject to 10% withholding tax whereas interest, royalties, rent, management fees, consultancy payments, capital gains, and similar payments attract withholding tax at 15%.

Subject to the terms of an applicable tax treaty (DTA), withholding taxes must usually be deducted from dividends, interest, and royalties (see Section J below).

## H. EXCHANGE CONTROL

Exchange control regulations are in place to broadly govern the receipt and payment of funds by residents and non-residents, and the import and export of goods.

## I. PERSONAL TAX

Personal Income Tax (PIT) is a direct tax levied on the taxable income of a person. A 'person' means an individual, an ordinary partnership, a non-juristic body of persons, a deceased person, and an undivided estate. In general, a person liable to PIT must compute his or her tax liability, file tax returns and pay tax, if any, on a calendar year basis.

Taxpayers are classified into 'resident' and 'non-resident'. A 'resident' means any person residing in Thailand for a period or periods aggregating 180 days or more in any tax (calendar) year. A resident of Thailand is liable to pay tax on income from sources in Thailand regardless of where the money is paid, as well as on the portion of income from foreign sources that is brought into Thailand in the same year that the foreign income is derived. A 'non-resident' is subject to PIT only on income from sources in Thailand.

Income chargeable to PIT is called 'assessable income' which is divided into eight categories under the TRC. The term covers income both in cash and in kind. Therefore, any benefits provided by an employer or other persons, such as rent-free housing or the amount of tax paid by the employer on behalf of the employee, are also treated as assessable income of the employee for the purposes of PIT if they are ascertainable in terms of money. Certain PIT deductions and allowances can be offset against assessable income in order to arrive at the net assessable income subject to personal income tax.

Net assessable income is taxed at progressive PIT rates, as follows:

0% - THB 0 to THB 150,000

5% - THB 150,001 to THB 300,000

10% - THB 300,001 to THB 500,000

15% - THB 500,001 to THB 750,000

20% - THB 750,001 to THB 1,000,000

25% - THB 1,000,001 to THB 2,000,000

30% - THB 2,000,001 to THB 5,000,000

35% - THB Over 5,000,000

## J. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The table below is for general guidance only. It is only intended to provide a general outline of the rates of withholding tax that apply to dividend, interest, or royalty payments under the existing Double Tax Agreements (DTAs) which Thailand has with other countries. In all cases, the relevant DTA must be consulted for more detailed information and to confirm the rates provided below remain current and have not been subject to change through any updating of DTA's as a result of Thailand joining the OECD/G20 Inclusive Framework on Base Erosion Profit Shifting (BEPS).

The table below sets out the lower of the relevant DTA rate and the applicable domestic rate on dividends, interest, and royalty payments.

| | Dividends[1] (%) | Interest[2] (%) | Royalties[3] (%) |
|---|---|---|---|
| Non-treaty countries | 10 | 15 | 15 |
| **Treaty countries:** | | | |
| Armenia | 10 | 10/15 | 15 |
| Australia | 10 | 10/15 | 15 |
| Austria | 10 | 10/15 | 10/15 |
| Bahrain | 10 | 10/15 | 15 |
| Bangladesh | 10 | 10/15 | 5/10/15 |
| Belarus | 10 | 10/15 | 15 |
| Belgium | 10 | 10/15 | 5/15 |
| Bulgaria | 10 | 10/15 | 5/15 |
| Cambodia | 10 | 10/15 | 10 |
| Canada | 10 | 10/15 | 5/15 |
| Chile | 10 | 10/15 | 10/15 |
| China | 10 | 10/15 | 15 |
| Cyprus | 10 | 10/15 | 5/10/15 |
| Czech Republic | 10 | 10/15 | 5/10/15 |
| Denmark | 10 | 10/15 | 5/15 |
| Estonia | 10 | 10 | 8/10 |
| Finland | 10 | 10/15 | 15 |
| France | 10 | 3/10/15 | 5/15 |
| Germany | 10 | 10/15 | 5/15 |
| Hong Kong | 10 | 10/15 | 5/10/15 |
| Hungary | 10 | 10/15 | 15 |
| India | 10 | 10/15 | 15 |
| Indonesia | 10 | 10/15 | 15 |
| Israel | 10 | 10/15 | 5/15 |
| Italy | 10 | 10/15 | 5/15 |
| Japan | 10 | 10/15 | 15 |
| Korea | 10 | 10/15 | 5/10/15 |
| Kuwait | 10 | 10/15 | 15 |
| Laos | 10 | 10/15 | 15 |
| Luxembourg | 10 | 10/15 | 15 |
| Malaysia | 10 | 10/15 | 15 |
| Mauritius | 10 | 10/15 | 5/15 |
| Myanmar | 10 | 10 | 5/10/15 |
| Nepal | 10 | 10/15 | 15 |
| Netherlands | 10 | 10/15 | 5/15 |
| New Zealand | 10 | 10/15 | 10/15 |
| Norway | 10 | 10/15 | 5/10/15 |
| Oman | 10 | 10/15 | 15 |
| Pakistan | 10 | 10/15 | 10/15 |
| Philippines | 10 | 10/15 | 15 |

| | Dividends[1] (%) | Interest[2] (%) | Royalties[3] (%) |
|---|---|---|---|
| Poland | 10 | 10/15 | 5/15 |
| Romania | 10 | 10/15 | 15 |
| Russia | 10 | 10 | 15 |
| Seychelles | 10 | 10/15 | 15 |
| Singapore | 10 | 10/15 | 15 |
| Slovenia | 10 | 10/15 | 10/15 |
| South Africa | 10 | 10/15 | 15 |
| Spain | 10 | 10/15 | 5/8/15 |
| Sri Lanka | 10 | 10/15 | 15 |
| Sweden | 10 | 10/15 | 15 |
| Switzerland | 10 | 10/15 | 5/10/15 |
| Taiwan | 5/10 | 10/15 | 15 |
| Turkey | 10 | 10/15 | 15 |
| Ukraine | 10 | 10/15 | 15 |
| United Arab Emirates | 10 | 10/15 | 15 |
| United Kingdom | 10 | 10/15 | 5/15 |
| United States | 10 | 10/15 | 5/8/15 |
| Uzbekistan | 10 | 10/15 | 15 |
| Vietnam | 10 | 10/15 | 15 |

NOTES:

1. The lower rate generally applies if certain conditions are met including having a specified minimum percentage of equity in the company paying the dividend.
2. The lower rate generally applies to interest to which a financial institution is beneficially entitled.
3. The lower rate generally applies to payments made as consideration for the right to use any copyright of literary, artistic, or scientific work.

# TOGO

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Lomé | Dieudonné Djetaba | dieudonne.djetaba@pkfbage.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | The Togolese Republic |
| Capital: | Lomé |
| Main languages: | French, Ewe, Kabye |
| Population: | 8.66 million (2022 estimate) |
| Monetary unit: | West African CFA franc (XOF) |
| Internet domain: | .tg |
| Int. dialling code: | +228 |

## KEY TAX POINTS

- The corporate income tax rate is 27%.
- A 1% alternative minimum tax applies on total turnover – exclusive of VAT – realised during the last financial year. The amount cannot be lower than FCFA 20,000 for taxpayers subject to the normal tax regime.
- VAT is levied at a standard rate of 18%.
- Ordinary losses incurred during a tax year are considered deductible expenses of the following tax year up to 50% of the net profits of that year. The remaining losses may be carried forward indefinitely. Loss carry-back is not allowed.
- Dividends paid to non-resident companies are subject to a 13% final withholding tax on the gross amount, subject to the application of a double tax treaty. A reduced 7% withholding tax rate applies to dividends distributed by companies listed on a stock exchange within the WAEMU approved by the CREPMF.
- Interest derived by a non-resident company is subject to a 13% final withholding tax on the gross amount, subject to the application of a double tax treaty.
- Royalties and technical assistance fees paid to non-resident companies are subject to a 20% final withholding tax rate on the gross amount, subject to the application of a double tax treaty.
- Management fees and technical service fees paid to non-resident companies are subject to a 20% withholding tax rate.

## A. TAXES PAYABLE

### COMPANY TAX

Resident companies are subject to corporate income tax on income arising from all operations including investment income and capital gains. Residents are taxed on a territorial basis on their business income and on a worldwide basis in respect of investment income.

Non-resident companies are subject to corporate income tax on Togo-sourced income.

The corporate income tax rate is 27%.

A 1% alternative minimum tax applies on total turnover – exclusive of VAT – realised during the last financial year. The amount cannot be lower than FCFA 20,000 for taxpayers subject to the normal tax regime.

### CAPITAL GAINS TAX

Capital gains are either included in taxable income and taxed at the standard corporate income tax rate or are subject to a withholding tax.

### BRANCH PROFITS TAX

Branch profits tax is levied on the profits of branches of foreign companies in addition to the corporate income tax rate. The rate is equal to the withholding tax rate on dividends, i.e. 13%.

### VALUE ADDED TAX (VAT)

VAT is levied at a standard rate of 18%. This rate has been in effect since 1996. Effective 1 January 2019, the reduced rate of 10% that was applicable to certain supplies, e.g. sugar, pasta and farming equipment, has been cancelled.

A zero rate applies for exports.

## B. DETERMINATION OF TAXABLE INCOME

Companies are taxed on industrial and commercial profits, non-commercial profits, and income from land, securities, and other assets. Capital gains realised by companies on the sale of assets/real estate are regarded as taxable income and are subject to income tax.

### DISALLOWED EXPENSES

Expenses and costs incurred for the purpose of operating a business generally are deductible, including the following: rents, personnel and labour costs, direct and indirect remuneration paid in respect of work, interest paid to shareholders, royalties, management fees, technical assistance fees, and research costs paid by a Togolese company or a Togolese PE of a foreign company and fees and remuneration paid to intermediaries.

Royalties for the transfer of operating licences, trademarks, manufacturing processes or formulas and other similar valid rights are deductible within the limit of 5% of the amount of turnover excluding taxes. All hotel and restaurant expenses, and justified gifts are allowed as a deduction within the limit of 3% of the amount of turnover excluding taxes. Payments made to sports and cultural associations, works of philanthropic, educational, cultural, scientific or social character recognised by the competent authority, are deductible within the limit of 1% of the amount of turnover excluding taxes. The deduction of technical assistance fees is limited to 25% of the taxable profit for the current fiscal year.

The following expenses are also non-deductible:

- Corporate income tax or income tax, the alternative minimum tax and the tax on company cars;
- The attendance fees and ordinary fees allocated by joint stock companies to directors and members of the supervisory board;
- Amounts of settlements, fines, confiscations and all kinds of penalties arising from the infringement of legal, economic and tax provisions;
- Expenses incurred on luxury goods or items;
- Expenses resulting from the purchase, lease or any transaction made with a view to obtaining the disposal of recreational or pleasure residences, as well as the maintenance of such residences;
- Lump-sum payments in respect of representation and travel costs to executives and managers if the actual recurring expenses of this nature have already been reimbursed;
- The amortisation of passenger cars for the fraction of one third corresponding to non-professional use and the amortisation of domestic equipment and furniture put at the disposal of the managers and members of the staff free of charge and not taxed as benefits in kind;
- Provisions allocated by the company for its own insurance.



### DEPRECIATION

Depreciation and amortisation deductions are available, calculated on the basis of the normal wear and tear of assets used in business activities.

As a general principle, under the OHADA Uniform Act Relating to Accounting, depreciation is compulsory for all tangible fixed assets, except for land.

In profitable tax years, the amount allocated to the depreciation of assets must be, at least, equal to the depreciation allowance computed according to the straight-line method and taking into account their normal useful life. In loss-making years, depreciation can be deferred and claimed in the profitable year, subject to certain conditions.

The Tax Code allows two methods of depreciation: the straight-line method and the accelerated depreciation method.

## INTEREST DEDUCTIONS

Interest paid by a company to its shareholders and to third parties is deductible subject to the following cumulative conditions:

- The interest rate may not exceed the BCEAO rate increased by three percentage points;
- The share capital must be fully paid up; and
- The loans on the basis of which interest is computed may not exceed 30% of EBITDA.

## LOSSES

Ordinary losses incurred during a tax year are considered deductible expenses of the following tax year up to 50% of the net profits of that year. The remaining losses may be carried forward indefinitely.

Loss carry-back is not allowed.

## C. FOREIGN TAX RELIEF

Unilateral double taxation relief is not granted under domestic tax law in respect of foreign tax.

The credit method mechanism applies to companies located in Togo with respect to taxes on income from movable capital paid abroad (and recorded as such), but only if a double tax treaty is in force with the foreign country.

## D. CORPORATE GROUPS

There is no specific regime applicable to groups of companies.

## E. RELATED PARTY TRANSACTIONS

The arm's-length principle applies to transactions between resident and non-resident related parties. Taxable income is determined based on the same conditions applicable between independent enterprises for similar transactions and under similar conditions. Any deviation from the arm's-length principle that results in reducing the taxable income in Togo will trigger an adjustment of those profits.

TP documentation (master file and local file) needs to be prepared within three months from the submission of annual financial statements to the tax authorities.

TP documentation needs to be drafted in French and applies to anyone who meets the following conditions:

- Companies established in Togo whose annual turnover (excluding taxes) or gross assets on the balance sheet exceeds FCFA 20 billion;
- Companies established in Togo holding at the end of the financial year, directly or indirectly, more than 50% of the capital or voting rights of a company whose annual turnover (excluding taxes) or gross assets on the balance sheet, exceeds FCFA 20 billion;
- Companies established in Togo which are owned or controlled, at the end of the financial year, directly or indirectly, for more than 50% of their capital or their voting rights by a company whose annual turnover (excluding taxes) or gross assets on the balance sheet, exceeds FCFA 20 billion.

TP documentation is required even if the above conditions are not met and the local company has transactions with local or foreign affiliates companies (according to the definition of Togo legislation).

Only transactions exceeding FCFA 50 million must be disclosed.

## F. PERSONAL TAX

The following progressive rates are applicable as from 1 January 2019:

| Taxable income (FCFA) | Rate (%) |
|---|---|
| Up to 900,000 | 0.5 |
| 900,001 – 4,000,000 | 7 |
| 4,000,001 – 6,000,000 | 15 |
| 6,000,001 – 10,000,000 | 25 |
| 10,000,001 – 15,000,000 | 30 |
| Over 15,000,000 | 35 |

## G. WITHHOLDING TAX

- Dividends paid to non-resident companies are subject to a 13% final withholding tax on the gross amount, subject to the application of a double tax treaty. A reduced 7% withholding tax rate applies to dividends distributed by companies listed on a stock exchange within the WAEMU approved by the CREPMF.
- Interest derived by a non-resident company is subject to a 13% final withholding tax on the gross amount, subject to the application of a double tax treaty.
- Royalties and technical assistance fees paid to non-resident companies are subject to a 20% final withholding tax rate on the gross amount, subject to the application of a double tax treaty.
- Management fees and technical service fees paid to non-resident companies are subject to a 20% withholding tax rate.

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 7/13[4] | 7/13 | 0/13 | 20 |
| Individuals | 3/13 | -- | 0/13 | 20 |
| **Treaty countries:** | | | | |
| France | --[2] | --[2] | --[2] | --[3] |
| WAEMU[1] | 10 | 10 | 15 | 15 |

Notes:

1. West African Economic and Monetary Union (French acronym: UEMOA): member countries of the WEAMU are Benin, Burkina Faso, Guinea-Bissau, Ivory Coast, Mali, Niger, Senegal and Togo.
2. No reduction under the tax treaty. The domestic rate is applicable.
3. Royalties paid for the use of immovable property or for the working of mines, quarries or other natural resources shall be taxable only in the Contracting State in which such property, mines, quarries or other natural resources are situated.

   Copyright royalties and proceeds or royalties from the sale or grant of licenses for the use of patents, trademarks, secret processes and formulae paid in one of the Contracting States to a person having his fiscal domicile in the other Contracting State shall be taxable only in the latter State.
4. Dividends paid to non-resident companies are subject to a 13% final withholding tax on the gross amount, subject to the application of a double tax treaty. A reduced 7% withholding tax rate applies to dividends distributed by companies listed on a stock exchange within the WAEMU approved by the CREPMF.

# TRINIDAD AND TOBAGO

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Port of Spain | Renée-Lisa Philip | +1868 235 5063<br>rlphilip@pkf.co.tt |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Trinidad and Tobago |
| Capital: | Port of Spain |
| Main languages: | English |
| Population: | 1.41 million (2022 estimate) |
| Monetary unit: | Trinidad and Tobago Dollar (TTD) |
| Internet domain: | .tt |
| Int. dialling code: | +1868 |

## KEY TAX POINTS

- Resident companies are liable to corporation tax on their worldwide income. Other companies are taxed on their income from sources generated within Trinidad and Tobago. The standard rate of corporation tax is 30%. However, this can be varied if there is a double tax treaty.
- Although the basic rate of VAT is 12.5%, some items such as exports and some basic foodstuffs are charged at the rate of 0% and some services such as real estate transactions as well as financial and insurance services are VAT exempt.
- Stamp Duty is levied on several documents, and also on transfers of commercial or residential real estate charged at rates of 0%, 2%, 5%, 7%, 7.5% and 10%.
- Certain entities are not liable to taxation, by virtue of their status as a not-for-profit or religious organisation or those governed by specific legislations that grant them tax-free status.

## A. CORPORATION TAX

This is a tax on business profits accruing in Trinidad & Tobago. Resident companies (those controlled from Trinidad and Tobago, wherever they are incorporated) are liable to corporation tax on their worldwide income. Other companies are taxed on their income from sources in Trinidad and Tobago. The standard rate of corporation tax is 30%. However, this can be varied if there is a double tax treaty.

The rates of corporate income tax on the chargeable profit of companies are as follows:

T

| | Rate (%) |
|---|---|
| Standard rate | 30 |
| Companies engaged in the liquefaction of natural gas, transmission and distribution of natural gas, the physical separation of liquids from natural gas, the manufacture of petrochemicals and the wholesale marketing and distribution of petroleum products | 35 |
| Commercial banks | 35 |
| Insurance companies – long-term insurance business | 15 |

A credit is given against the company's corporation tax liability for any business levy paid. See section on business levy. 'Income-generating' expenses i.e. expenses that are wholly and exclusively incurred in the production of the income, are deductible when calculating taxable income. Allowable deductions include:

- Specific bad debts;
- Contributions paid to an approved pension fund for the benefit of employees;
- Lump sum payments made to an employee for past services;
- Employer contributions to national insurance;
- Management charges paid limited to 2% of total allowable expenditure (excluding management fees)
- 150% of promotional expenses incurred wholly and exclusively in creating or promoting exports to foreign markets;
- 150% of expenditure incurred in the promotion of art and culture;
- 150% of expenditure incurred in the promotion of sporting activity;
- Audio/Visual/Video Production, Fashion, and Production Company Allowances - 150% of expenditure to a maximum of TTD 12,000,000;
- Covenanted donations to charity limited to 15% of total income;
- Employee training and re-training limited to 150% of expenditure;
- 150% tax allowance to businesses that create employment in technology industry up to a maximum of TTD 3,000,000;
- 150% allowance to businesses that engage in technological solutions and digitalisation, up to a maximum of TTD 3,000,000;
- 150% tax allowance to businesses that invest in tech start-up companies and new tech businesses up to a maximum of TTD 3,000,000.

Non-resident companies trading in Trinidad and Tobago through a permanent establishment are subject to a further withholding tax of 5% of their taxable profits less allowances for corporation tax paid. The tax is payable regardless of whether net profits are remitted back to head office. Trading losses may be carried forward indefinitely for relief against future profits. Trading losses cannot be utilised against the profits of earlier years.

## B. INCOME TAX

Income from all sources, after allowable deductions, is taxed at a rate of 25% up to a chargeable income of TTD 1,000,000 and 30% for every dollar beyond TTS 1,000,000. Non-residents are not entitled to tax deductions. Allowable deductions include the following:

- Personal Allowance – TTD 72,000;
- Contributions to pension plans/annuities and 70% of national insurance contributions – limited to TTD 50,000;
- Alimony - 100% of contributions;
- Tertiary education expenses – limited to TTD 72,000 per year per household;
- First time home ownership – limited to TTD 25,000 per year;
- Capital Expenditure of approved guesthouse – 100%;
- Covenanted donations to charity – limited to 15% of total income;
- Venture Capital Tax Credits - limited to 25% of investment;
- Travelling Expenses - limited to 2/3 of expenditure;
- Solar Water Heating Equipment Tax Credit – 100% of expenditure;
- Compressed Natural Gas Kit and Cylinder – 25% of expenditure; and
- Severance Pay – Tax exemption up to TTD 300,000.

Individuals who are resident and domiciled in Trinidad and Tobago are liable to income tax on their worldwide income. Those who are resident but not domiciled in Trinidad and Tobago are liable to income tax on their income arising in Trinidad and Tobago and on any income brought into the country from abroad. Ordinary dividends received by resident individuals from resident companies are exempt from tax. Non-resident individuals are taxed on their income from sources in Trinidad and Tobago.

## C. BUSINESS LEVY

This tax is levied on all taxable businesses except petroleum companies and those with annual turnover under TTD 360,000. Business levy is charged on gross sales, i.e. all income received in the ordinary course of business activities, before allowing any deductions for business expenses. The rate of the Business Levy is 0.6% of the gross sales/receipts. The Business Levy is not payable in the first three years after a company is first registered. Business levy is payable quarterly before the end of each quarter. Payments of Business Levy are deductible from the Corporation Tax liability. However, if Business Levy exceeds corporation tax, no refund of business levy is granted. All taxable non-individual entities are liable to this levy.

## D. CAPITAL GAINS TAX

There is no capital gains tax on disposal of an asset after twelve months of acquisition.

## E. NATIONAL INSURANCE

Employees and employers must pay national insurance. Contributions are calculated based on established wage classes. The maximum employee contribution is TTD 7,181.20 per year. The employer pays twice that of the employee.

## F. HEALTH SURCHARGE

The employee's contribution is approximately TTD 429 per year. Employers do not contribute.

## G. VALUE ADDED TAX (VAT)

This tax is levied on the selling price of goods and services and on the value of goods imported into Trinidad and Tobago. Businesses must register for VAT if their annual sales exceed TTD 500,000. Although the basic rate of VAT is 12.5%, some items such as exports and basic foodstuffs are charged at the rate of 0% and some services such as real estate transactions as well as financial and insurance services are VAT exempt. Businesses, other than those making exempt supplies, can recover the excess of VAT paid on purchases over VAT received on sales.

## H. GREEN FUND LEVY

This tax is levied on gross sales i.e. all income received in the ordinary course of business activities, before allowing any deductions for business expenses. The rate of the Green Fund Levy is 0.3% of the gross sales/receipts. All taxable non-individual entities are liable to this levy. Green Fund Levy is payable quarterly before the end of each quarter.

## I. TREATY AND NON-TREATY WITHHOLDING RATES

| | Dividends (%) | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | **Individuals, companies (%)** | **Qualifying companies (%)** | | |
| **Domestic rates** | | | | |
| Companies | 10 | 5 | 15 | 15 |
| Individuals | 10 | n/a | 15 | 15 |
| **Treaty countries:** | | | | |
| Brazil | 15 | 10[1] | 15 | 15 |
| Canada | 15 | 5[2] | 0/10 | 10 |
| China | 10 | 5[3] | 10 | 10 |
| Denmark | 20 | 10[4] | 15 | 15 |
| France | 15 | 10[5] | 0/10 | 10 |
| Germany | 20 | 10[6] | 0/10/15 | 10 |
| India | 10 | 10 | 10 | 10 |
| Italy | 20 | 10[6] | 10 | 5 |
| Luxembourg | 10 | 5[7] | 0/7.5/10 | 10 |
| Norway | 20 | 10[4] | 15 | 15 |
| Spain | 10 | 0/5[8] | 0/8 | 5 |
| Sweden | 20 | 10[1] | 10/15 | 20 |
| Switzerland | 20 | 10[9] | 10 | 10 |
| United Kingdom | 20 | 10[4] | 10 | 10 |
| United States | 25 | 10[10] | 15 | 15 |
| Venezuela | 10 | 5[3] | 15 | 10 |
| CARICOM | 0 | 0 | 15 | 15 |

Notes:

1. The 10% rate applies if the beneficial owner is a company which holds directly or indirectly at least 25% of the capital of the dividend-paying company.
2. The 5% rate applies if the beneficial owner is a company which controls directly or indirectly at least 10% of the voting power in the dividend-paying company.
3. The 5% rate applies if the beneficial owner is a company which holds directly or indirectly at least 25% of the capital of the dividend-paying company.
4. The 10% rate applies if the recipient is a company which controls directly or indirectly at least 25% of the voting power of the dividend-paying company.
5. The 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 10% of the capital of the dividend-paying company.
6. The 10% rate applies if the recipient is a company (excluding partnerships) which owns directly at least 25% of the capital of the dividend-paying company.
7. The 5% rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company.

8. The 0% rate applies if the beneficial owner is a company which holds directly at least 50% of the capital of the dividend-paying company. The 5% rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company.
9. The 10% rate applies if the recipient is a company which controls directly or indirectly at least 10% of the voting power of the dividend-paying company.
10. The 10% rate applies if:
    (i) During the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10% of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation; and
    (ii) Not more than 25% of the gross income of the paying corporation for such prior taxable year (if any) consisted of interest and dividends (other than interest derived in the conduct of a banking, insurance, or financing business or dividends and interest received from subsidiary corporations having 50% or more of the outstanding shares of their voting stock owned by the paying corporation at the time such dividends or interest is received).

## J. OTHER TAXES

There are several other taxes, including unemployment levy, supplemental petroleum tax; petroleum profits tax; insurance premium tax; and hotel accommodation tax. These are industry specific.

# TUNISIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Tunis | Lassaad Marouani | +216 71 889 835<br>l.marwani@pkf.tn |

## BASIC FACTS

| | |
|---|---|
| Full name: | Tunisian Republic |
| Capital: | Tunis |
| Main languages: | Arabic |
| Population: | 12.05 million (2022 estimate) |
| Monetary unit: | Tunisian Dinar (TND) |
| Internet domain: | .tn |
| Int. dialling code: | +216 |

## KEY TAX POINTS

- Companies are generally subject to corporate income tax at the rate of 15%; 35% for banks and financial institutions, telecommunication, hydrocarbon companies, hydrocarbon service companies and companies exploiting a foreign brand (reduced to 20% for certain activities if the company lists 30% of its share capital before 31 December 2024);10% for farming and fishing activities.
- VAT is charged at 7% (IT services, hotels and restaurant activities, and equipment), 13% (raw materials, craft industry products, medical activities and canned food) or 19% (operations related to services and goods not subject to another rate). VAT rates were increased by 1% as a result of the 2018 Finance Law.
- Inherited property and gifts are subject to tax at rates varying from 2.5% to 35%, depending on the closeness of relation.
- For most categories of income, the payer of income has to withhold tax at source, file a tax return and submit the amount of tax withheld to the Treasury.

## A. TAXES PAYABLE

## FEDERAL TAXES AND LEVIES

## COMPANY TAX

Companies, partnerships and cooperatives are liable to corporate income tax on their profits stemming from any business they carry on in Tunisia and also lottery gains since 2016. Foreign companies not carrying on business in Tunisia but deriving certain types of income from Tunisia are subject to company tax.

**Tax rates:** Companies are subject to corporate income tax (CIT) at the rate of 15% (it was reduced from 30% to 25% from 2014 and to 15% from 2021).

The corporate income tax rate is 35% for banks and financial institutions, telecommunication, hydrocarbon companies, hydrocarbon service companies and companies exploiting a foreign brand (reduced to 20% for certain activities if the company lists 30% of its share capital before 31 December 2024)/

The rate is 10% for farming and fishing activities.

Hypermarkets, car dealers and franchise companies are subject to a rate of 35% on their income.

Exporting companies are liable to income tax at standard rates as from 2019, after an exemption period.

**Minimum tax liability:** The Income Tax Code provides for the following minimum taxes:

- 0.2% of gross turnover, with a minimum amount of TND 500, for companies which are not subject to the reduced 10% CIT rate; and

- 0.1% of gross turnover, with a minimum amount of TND 300, for companies which are subject to the reduced 10% CIT rate.

Legal entities liable to company tax and individuals liable to personal income tax carrying on a trade business are subject to three tax instalments each representing 30% of the total levy calculated on income and profits of the previous year.

Tax instalments should be paid by the 28th June (6th month), September (9th month) and December (12th month) following the balance sheet date.

**Social Solidarity Contribution:** The 2018 Finance Law introduced a social solidarity contribution *(contribution sociale de solidarité)* on tax resident companies as well as permanent establishments of non-resident companies. The contribution is levied on the same tax base as for CIT purposes up to year 2022 at the following rates:

- 1% for corporate entities;
- 3% for certain entities subject to the 35% corporate tax rate: banks and financial institutions, offshore banks and financial institutions and insurance companies; and
- 2% for the other companies subject to CIT at the rate of 35%.

The following minimum amounts are applicable:

| CIT rates applicable (%) | Minimum social solidarity contribution (%) |
|---|---|
| 35 | 300 |
| 20 or 15 | 200 |
| 10 | 100 |
| 0 | 200 |

The social solidarity contribution is not deductible for CIT purposes.

## CAPITAL GAINS TAX

For non-resident legal entities, gains derived from the disposal of buildings established in Tunisia or related rights are subject to corporate income tax. A capital gain is the difference between the sale price (or the quoted price on the Tunis stock exchange) and the cost price or purchase price. These entities are liable for withholding tax at a rate of 15% on the capital gain. For closed-end investment companies and credit institutions, capital gains related to securities are deductible from taxable income.

For both residents and non-residents, interest is subject to a 20% withholding tax (or a more favourable rate if a double tax treaty applies). For a non-resident, the amount withheld is offset against ordinary income tax on this income.

As from 1 January 2011, the following are exempt from capital gains tax for the sale of securities:

- The capital gain derived from the sale of shares listed on the Tunis Stock Exchange acquired or subscribed before 1 January 2011 and the sale of shares in a transaction introductory to the Tunis Stock Exchange are deductible from taxable income.
- The capital gain derived from the sale of shares listed on the Tunis Stock Exchange acquired or subscribed as from 1 January 2011 is also deductible from taxable income when the transfer takes place after the expiry of the year following the year of acquisition or subscription with a maximum of TND 10,000 per year. Otherwise the gain described above shall be subject to income tax at 10% with a maximum of 2.5% of the sales price (for individuals) or to income tax at 15% with a maximum of 5% of the sales price (for companies).
- Corporation tax is payable by non-resident legal persons not established in Tunisia at a rate of surplus value cited above. The capital gain subject to tax on companies is equal, in this case, to the difference between the sale price (or the quoted price in stock exchange of Tunis) and the purchase price of stocks, shares or units or the subscription price and from transfer operations performed during the year preceding the tax after deduction of capital loss from the operations in question.

## VALUE-ADDED TAX

VAT is an indirect tax, in that the tax is collected from someone who does not bear the entire cost of the tax. All economic activities conducted in Tunisia, including industrial and handicraft activities, liberal or commercial professions, are subject to VAT. Exports by definition are consumed abroad and are usually not subject to VAT and any VAT charged under such circumstances is usually refundable. This avoids downward pressure on exports and, ultimately, export-derived income or revenue.

VAT charged by a VAT-registered business and paid by its customers is known as ‘output VAT’ (that is, VAT on its output supplies). VAT that is paid by a business to other businesses on the supplies that it receives is known as ‘input VAT’ (that is, VAT on its input supplies). A business is generally able to recover input VAT to the extent that the input VAT is attributable to (i.e. used to make) its taxable outputs. Input VAT is recovered by setting it off against the output VAT for which the business is required to account to the Tunisian government or, if there is an excess, by claiming a reimbursement from the Tunisian government.

Four different VAT rates apply in Tunisia (VAT rates were increased by 1% as a result of the 2018 Finance Law):

- 7%: information technology services, hotels and restaurant activities and equipment; pharmaceuticals;
- 13%: raw materials, craft industry products, medical activities, and canned food;
- 19%: operations related to services and goods not subject to another rate;
- 29%: luxury articles.

According to article 18 of the Tunisian VAT code, a sales invoice issued by a VAT-registered business should contain certain mandatory information including client name, address and fiscal register, date of the transaction, price of the goods or services sold, VAT rate and amount.

## FRINGE BENEFITS TAX

Fringe benefits are considered to be a part of the salary paid to an employee and are therefore subject to social security and income taxes. Taxable fringe benefits are evaluated on the basis of their market value.

## LOCAL TAXES

The tax on the rental value is a municipal tax on buildings or plants. The owner of the property is liable for collection of the tax. The tax base is the gross rental value determined in accordance with a general census carried out every three to five years by the local authorities. The rate is fixed per local authority which may be divided into two zones, urban and suburban (where the rate is lower). The land tax on undeveloped land is owed by occupiers, owners or persons benefiting from the land.

## OTHER TAXES AND LEVIES

## SOCIAL SECURITY TAXES

The social security rates are 9.18% on behalf of the employee, 16.57% on behalf of the employer and 0.5% for employer's compensation on behalf of the employer.

## REAL ESTATE TAX

The purchase of real estate is subject to the following:

- A registration duty of 5% on the purchase price increased by VAT;
- A stamp duty of TND 30 per sheet of contract;
- A real estate property Conservation Duty of 1% on the purchase price increased by VAT;
- A registration will be increased by 1% of the purchase price for non-registration of the property purchased;
- A supplementary charge of 3% in cases where the owner has failed to declare the value of his property;
- A supplementary charge of 2% when the purchase price exceeds TND 500,000 and 4% if it exceeds TND 1,000,000, except for professional buildings or acquisition by incentive companies.
- When registration is not done in due time, the purchase price is increased by 10% per year as from 1st May 2022.

Any real estate buyer who is an individual or a corporate entity subject to a regular accounting system must withhold tax on the real estate purchase price. This tax is 2.5% on the purchase price increased by VAT (15% for a non-resident). The buyer shall pay 5, 10 or 15% on the capital gain on real estate.

## EXCISE TAX

This is a federal tax on specific goods and services either imported or manufactured in Tunisia. It is levied on a variety of items such as cigarettes, tobacco, alcoholic beverages, cosmetics, perfume and private cars. Excise tax is levied on the sale price or customs value for imported goods, the rates of which were increased effective 1 January 2018 by the Finance Law. According to the Tunisian Excise Tax Code, several rates apply to different goods. A joint list is available in the code, setting different rates.

## GIFTS, WEALTH, ESTATE AND/OR INHERITANCE TAX

Inherited property and gifts are subject to tax at the following rates:

- Direct line relatives (children, spouses, parents, etc.): 2.5%;
- Brothers and sisters: 5%;
- Collateral line relatives: 25%;
- Relatives beyond the fourth degree: 35%;
- Unrelated individuals: 35%.

## VOCATIONAL TRAINING TAX

This is payable monthly at the rate of 2% of the total gross wages. A special rate of 1% is applicable to the manufacturing sector.

## TAX FOR PROMOTING EMPLOYEES' ACCOMMODATION

Employers have to pay a tax at the rate of 1% of total gross salaries to promote the employee's accommodation. Farmers are exempt from this tax.

## B. DETERMINATION OF TAXABLE INCOME

Taxable income is determined on the basis of regular accounting results. When there are discrepancies between fiscal rules and accounting principles, adjustments are made to the accounting results.

Profits are generally considered gross revenue less production, salary and wages and rental expenses. Generally, all expenses generated by the conduct of business are deductible if they are incurred in gaining or producing assessable income and not paid in cash for amounts exceeding TND 3,000.

Taxable income also includes capital gains, except for capital gains stemming from the disposal of securities listed on the Tunisian Stock Exchange (TSE) and capital gains from an initial public offering on the TSE.

## DEPRECIATION

Fixed assets owned by the company are normally written off over their normal useful life. For tax purposes, the straight-line method is normally adopted. Assets of a lower value than TND 500 may be fully written off during their first year. Companies may choose the declining-balance method to calculate depreciation on hardware, agriculture equipment and newly purchased manufacturing equipment (from 1 January 1999). From 1 January 2008, a company is eligible to use the declining balance method to compute depreciation on manufacturing equipment financed by leasing.

## STOCK / INVENTORY

For the determination of net income, inventories must be valued at their cost price. If market value or realisable value is lower at the end of the year, the company must set up reserves for depreciation of inventories, which are deductible within the limit of 30% of taxable income.

## DIVIDENDS

Collected dividends that are distributed by Tunisian companies are tax-exempt in the hands of resident companies. Non-residents companies and individuals are subject to withholding tax at 10% since 2018 (15% if resident in a tax haven). The non-capitalised earnings, amounts given to partners or shareholders and attendance fees given to members of the board of directors are assimilated to a dividend payment.

Gains from stock option exercises: in Tunisia, stock options are recognised only in the following sectors of activities:

- Software engineering;
- Software services;
- Telecommunications and new technologies sectors;
- Listed companies.

When the plan is recognised by Tunisian Law to be a stock option, the gain is not subject to taxation. This advantage is granted under the double condition that:

- At the date the stock option is granted, the employee does not hold more than 10% of the subscribed share capital; and,
- The shares are not sold during a period of three years starting from 1 January of the subsequent year in which the option is exercised.

When Tunisian law does not recognise the stock option plan, the exercise gain made by the employee (difference between the exercise price and the fair market value of the shares at the date of exercise) will be subject to income tax.

## INTEREST DEDUCTION

Interest from foreign currency deposits or from convertible Dinar is deductible from taxable income. The interests on loans granted, or left at the disposal of the Tunisian company by partners or shareholders, are fully deductible from the taxable income of shareholders or partners, under the following conditions:

- The interest rate does not exceed 8%;
- The amounts do not exceed 50% of the capital which should be fully paid up.

A limitation of interest rates is not applicable when the partner or shareholder who benefits from the interest is a bank, in which case interest is deductible from the taxable base to the limit applicable on the market.

## LOSSES

The deficit recorded during a business year which resulted from a regular accounting record in compliance with corporate accounting legislation is deducted successively from the results of the following business years up until and including the fourth year. For any profit business year, the deduction of deficits and depreciation is carried out according to the following order:

(a) Reportable deficits;
(b) The depreciation of the concerned business year;
(c) Deferred depreciation in deficit periods.

During a business year when the profit is not sufficient to carry out the total deduction of the deficit and depreciation, the remaining part is added back successively to the results of the subsequent business years up until and including the fourth year.

## FOREIGN SOURCED INCOME

According to the Tunisian tax legislation, foreign-sourced revenues realised by individuals and which were subject to tax payment in the country of origin are not taxed. Non-resident legal entities are taxable on their Tunisian source income and on the gain from the disposal of buildings and the disposal of shares in real estate companies. The taxable capital gain is the difference between the sale price and the purchase cost.

Relief from foreign taxes in Tunisia depends on the double tax treaty, if any, concluded by Tunisia.

## INCENTIVES

Tunisian tax legislation has established a certain number of incentives for investment and creation of projects in certain sectors of activity, either by Tunisian or foreign promoters being resident or non-resident or in partnership according to the overall development strategy. These are mainly aimed at accelerating growth rate and job creation within activities related to fields determined in Article One of the new 2016 Investment Incentives Code.

Various tax incentives are available for total exporting companies. From 1 January 2015 until the end of 2021 exporting activity income is taxable at the rate of 10% with a minimum of 0.1% of gross turnover, after an exemption period.

Major incentives are available for investments made by enterprises settled in areas that need development (regional development zones). Income stemming from investments carried out in these areas is fully deductible from the taxable income during the first ten years of activity but, for subsequent business years, income tax is at 10%.

As part of the promotion of small and medium-sized enterprises, the 2019 Finance law has renewed management measures to support businesses created as from 1 January 2019. It concerns new investments announced in 2019 and 2022 for which an exemption of income tax is granted for 4 years.

## C. FOREIGN TAX RELIEF

Relief from foreign taxes in Tunisia depends on whether a double tax treaty has been concluded by Tunisia.

## D. CORPORATE GROUPS

When a Tunisian company holds 75% or more of the shares of one or more Tunisian companies, the group may choose to be taxed as a single entity. Hence, the subsidiaries are treated as branches of the parent company and corporate tax is payable only by the parent company. To benefit from the results integrating scheme, the parent company must make the commitment to list its shares on the stock market before the end of the year. Under this system, the profits and losses of all controlled branches, subsidiaries and partnerships in Tunisia and abroad are consolidated.

## E. WITHHOLDING TAX

For certain categories of income, the payer of income has to withhold tax at source, file a tax return and submit the amount of tax withheld to the Treasury. In all cases, purchases exceeding TND 1,000 (VAT included) are subject to withholding tax at 1%.

Different rates of withholding taxes apply:

- 2.5% of real state selling price;
- 10% on dividends distributed to resident or non-resident individuals and companies (increased from 5% as of 1 January 2018);
- 3% for fees subject to real system of VAT;
- 5% of hotel leases;
- 10% on fees, commissions or leases;
- 15% on capital gains or fees of directors.

## F. PERSONAL TAX

With respect to the international taxation agreements, personal income tax is a direct tax levied on income of an individual exceeding TND 5,000 per year. Taxpayers are classified into residents and non-residents. According to Tunisian laws, three criteria are used to indicate that an individual has a habitual residence in Tunisia:

(1) Main residence of the person is in Tunisia;
(2) Principal place of residence (period equal to, or more than, 183 days during a civil year) is in Tunisia;
(3) Civil servant or state employee carrying out his/her duty in a foreign country, where they are not subject to personal income tax on global income.

A non-resident is subject to tax only on personal income from Tunisian sources. Income chargeable to personal income tax is called assessable income and is divided into seven categories:

(1) Income from commerce and industry;
(2) Income from non-trading professions;
(3) Income from agriculture and fishing activities;
(4) Wages, salaries, pensions and life annuities;
(5) Land income;
(6) Income in the nature of dividends and interests resulting from the detention of securities and bonds;
(7) Income from any other activity not specified above.

For each category of income, certain deductions and allowances are granted in calculating taxable income. A taxpayer shall keep the books in compliance with the accounting legislation in order to benefit from these deductions. In general, a person liable to personal income tax has to compute his tax liability, file a tax return and pay tax, if any, accordingly on a calendar year basis. Married couples file tax returns as separate individuals. The income of children is reported on the tax return of the head of the family. A spouse can report income of the children on his/her tax return under certain circumstances.

**Income tax rates including social solidarity contribution (effective 1 January 2018):**

| Amount (TND) | Rate | Effective Tax Rate of the Upper Limit |
|---|---|---|
| 0 to 5,000 | 1% | 0% |
| 5,001 to 20,000 | 27% | 19.50% |
| 20,001 to 30,000 | 29% | 22.33% |
| 30,001 to 50,000 | 33% | 26.20% |
| over 50,000 | 36% | |

For trading and non-trading activities in accordance with the revenue code, a minimum tax liability is due of 0.1% of the total gross turnover or receipts, except for turnover or receipts from export activities, with a minimum amount of TND 200 (and TND 100 due in the absence of turnover).

## G. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 10/25[36] | 10/25[36] | 0/10/20/25[37] | 0/15/25[38] |
| Individuals | 10/25 | -- | 0/20/25 | 15/25 |
| **Treaty countries:** | | | | |
| Algeria | –[8] | –[8] | –[8] | –[9] |
| Austria | 20 | 10[1] | 10 | 10/15[23] |
| Belgium | 15 | 5[2] | 0/5/10[12] | 11 |
| Burkina Faso | 8 | 8 | 5 | 5 |
| Cameroon | 12 | 12 | 15 | 15 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Canada | 15 | 15 | 15 | 0/15/20[24] |
| China | 8 | 8 | 10 | 5/10[25] |
| Czech Republic | 15 | 10[3] | 12 | 5/15[26] |
| Denmark | 15 | 15 | 12 | 15 |
| Egypt | 10 | 10 | 10 | 15 |
| Ethiopia | 5 | 5 | 10 | 5 |
| France | –[10] | –[10] | 12 | 5/10/15/20[27] |
| Germany | 15 | 10[4] | 10 | 10/15[28] |
| Greece | 10 | 10 | 15 | 12 |
| Hungary | 12 | 10[3] | 12 | 12 |
| Indonesia | 12 | 12 | 0/12[13] | 15 |
| Iran | 10 | 10 | 10 | 8 |
| Italy | 15 | 15 | 12 | 5/12/16[29] |
| Ivory Coast | 10 | 10 | 10 | 10 |
| Jordan | –[11] | –[11] | –[11] | –[11] |
| Korea (South) | 15 | 15 | 0/12[14] | 15 |
| Kuwait | 10 | 0[5]/10 | 2.5/10[15] | 5 |
| Lebanon | 5 | 5 | 5 | 5 |
| Libya | –[8] | –[8] | –[8] | –[9] |
| Luxembourg | 10 | 10 | 7.5/10[16] | 12 |
| Mali | 5 | 0[3] | 5 | 10 |
| Malta | 10 | 10 | 0/12[17] | 12 |
| Mauritania | –[8] | –[8] | –[8] | –[9] |
| Mauritius | 0 | 0 | 2.5 | 2.5 |
| Morocco | –[8] | –[8] | –[8] | –[9] |
| Netherlands | 20 | 0[2] | 0/7.5/10[18] | 7.5/11[30] |
| Norway | 20 | 20 | 12 | 5/15/20[31] |
| Oman | 0 | 0 | 10 | 5 |
| Pakistan | 10 | 10 | 13 | 10 |
| Poland | 10 | 5[1] | 12 | 12 |
| Portugal | 15 | 15 | 15 | 10 |
| Qatar | 0 | 0 | – | 5 |
| Romania | 12 | 12 | 10 | 12 |
| Saudi Arabia | 5 | 5 | 2.5/5 | 5 |
| Senegal | –[8] | –[8] | –[8] | –[9] |
| Serbia | 10 | 10 | 10 | 10 |
| Singapore | 5 | 5 | 5/10 | 5/10 |
| Slovak Republic | 15 | 10[3] | 12 | 5/15[32] |
| South Africa | 10 | 10 | 5/12[19] | 10/12[33] |
| Spain | 15 | 5[6] | 5/10[20] | 10 |
| Sudan | 5 | 0 | 10 | 5 |
| Sweden | 20 | 15[3] | 12 | 5/15[34] |
| Switzerland | 10 | 10 | 10 | 10 |
| Syria | 0 | 0 | 10 | 18 |
| Turkey | 15 | 12[3] | 10 | 10 |
| United Arab Emirates | 0 | 0 | 5/10 | 7.5 |
| United Kingdom | 20 | 12[7] | 10/12[21] | 15 |
| United States | 20 | 14[3] | 15 | 10/15[35] |
| Vietnam | 10 | 10 | 10 | 10 |
| Yemen | 0 | 0 | 0/10[22] | 7.5 |

Notes:

1. The reduced rate applies if the recipient of the dividends is a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
2. The reduced rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the paying company.
3. The reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the paying company.
4. The reduced rate applies if the recipient is a company which directly controls at least 25% of the capital of the paying company.
5. The 0% rate applies if the recipient is the Government of Kuwait, a public enterprise or any other entity of that State.
6. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 50% of the capital of the paying company.
7. The reduced rate applies if the beneficial owner is a company which controls directly at least 25% of the voting power in the paying company.
8. No withholding tax limitation on dividends and interest under the tax treaty.
9. No tax levied in the source country. Royalties subject to tax in the residence country only.
10. No withholding tax limitation on dividends under the tax treaty.
11. No withholding tax limitation on dividends, interest and royalties under the tax treaty.
12. The 5% rate applies to interest from loans, not represented by bearer securities, granted by banking enterprises to an enterprise. The 0% rate applies to interest on a loan or credit made, guaranteed or insured by a Contracting State or by a political subdivision, local authority or the central bank of that State, or by an entity that is primarily financed through public funds.
13. The 0% rate applies if interest is (i) beneficially derived by the Government including a political subdivision or a local authority thereof or the central bank (ii) paid by the Government or a political subdivision or by the local authority thereof, when the maturity of this interest-generating loan is at least 7 years.
14. The 0% rate applies if interest is (i) beneficially derived by the Government including a political subdivision or a local authority thereof or the central bank (ii) beneficially derived by a resident of a Contracting State that is a bank or similar financial institution with respect to an obligation having a maturity of at least 7 years or (iii) paid by the Tunisian Government to a Korean resident with respect to loans made to the Tunisian Government or a political subdivision or local authority thereof.
15. The 2.5% rate applies to interest paid in respect of bank loans. The 10% rate applies in all other cases.
16. The 7.5% rate applies to interest, provided that the loan on which the interest is paid is guaranteed or financed by the other State or by a financial institution which is a resident of that other state and that the loan is granted for a minimum period of 5 years. The 10% rate applies in all other cases.
17. The 0% rate applies to interest derived by the Government or a local authority thereof.
18. The 7.5% rate applies as long as the interest received by a Tunisian resident is not subject to Dutch withholding tax and as long as the Netherlands have not changed their taxation law on that point. The 0% rate applies to interest paid to the Government and the Central Bank, subject to certain conditions.
19. The 5% rate applies to interest paid in respect of bank loans. The 12% rate applies in all other cases.
20. The 5% rate applies to interest derived from loans outstanding for more than 7 years. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
21. The 10% rate applies if the beneficial owner of the interest is a bank or other financial institution.
22. The 0% rate applies to interest paid directly to a Contracting State, one of its political subdivisions or local authorities or the Central Bank.
23. The 10% rate applies to royalties paid for the use or the right to use any copyright of literary, artistic or scientific works, but not including cinematograph and television films.
24. The 20% rate applies to patent royalties and royalties for the use or the right to use trademarks, motion picture films and films or videotapes for use in connection with television, or for the use of, or the right to use, industrial, commercial, scientific or harbour equipment. The 0% rate applies to copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films and films or videotapes for use in connection with television) arising in Tunisia and subject to tax in Canada. The 15% rate applies in all other cases.
25. The 10% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematography films, or films or tapes for radio or television broadcasting, any patent, [trade] mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific experience. The 5% rate applies to royalties paid for technical or economic studies or for technical assistance.
26. The 15% rate applies to payments of any kind received as a consideration for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, for the use of, or the right to use industrial, commercial or scientific equipment and for information concerning industrial, commercial or scientific experience as well as for technical or economic studies, or for technical services rendered in the other Contracting State. The 5% rate applies to payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or recordings for radio and television.
27. The 5% rate applies to royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work. The 15% rate applies to royalties for the use of, or the right to use, patents, trademarks, designs or models, plans, secret formulae, or processes, information in respect of industrial, commercial, or scientific experience and economical and technical studies. The 20% rate applies to royalties for the use of, or the right to use, agricultural, industrial, commercial, scientific equipment, or port facilities and licences, trademarks, cinematographic films, and films for TV broadcasting. However, payments made to public entities for the use of cinematographic films or the broadcasting on radio and TV are exempt from WHT. However, since the 20% treaty rate is higher than the 15% domestic rate, the latter will be applied.
28. The 10% rate applies to royalties paid for the use or the right to use any copyright of literary, artistic or scientific works, but not including cinematograph and television films, and for information concerning agricultural, industrial, commercial or scientific experience and of payments for economic and technical studies. The 15% rate applies to royalties paid for the granting of licences to use patents, designs and models, plans, secret formulae or processes, trademarks and for the hire of cinematograph and television films.
29. The 16% rate applies to royalties relating to a trade mark, to cinematograph and television films, to industrial, commercial or scientific equipment. The 5% rate applies to royalties relating to royalties on literary, artistic or scientific work. The 12% rate applies in all other cases.
30. The 7.5% rate applies as long as the royalties received by a Tunisian resident is not subject to Dutch withholding tax and as long as the Netherlands have not changed their taxation law on that point.
31. The 5% rate applies to royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, except cinematographic films and films for TV broadcasting. The 15% rate applies to royalties for the use of, or the right to use, patents, trademarks, designs or models, plans, secret formulae, or processes, information in respect of industrial, commercial, or scientific experience and economical and technical studies. The 20% rate applies to royalties for the use of, or the right to use, agricultural, industrial, commercial, scientific equipment, or port facilities, and the use of, or the right to use, trademarks and cinematographic films and films for TV broadcasting. However, since the 20% treaty rate is higher than the 15% domestic rate, the latter will be applied.

32. The 15% rate applies to payments of any kind received as a consideration for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, for the use of, or the right to use industrial, commercial or scientific equipment and for information concerning industrial, commercial or scientific experience as well as for technical or economic studies, or for technical services rendered in the other Contracting State. The 5% rate applies to payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or recordings for radio and television.
33. The 10% rate applies to royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes, and information in respect of industrial, commercial, or scientific experience. The 12% rate applies to royalties for technical services, such as technical and economic studies and technical assistance and other services of a technical or consultancy nature.
34. The 5% rate applies to royalties for the use of, or the right to use, copyrights of literary, artistic or scientific work, not including motion picture films and television recordings. The 15% rate applies in all other cases (including technical and economic studies).
35. The 15% rate applies to royalties for copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes, information in respect of industrial, commercial, or scientific experience and profits from any ownership, depending from the productivity, the use, or the alienation of that ownership. The 10% rate applies to royalties for the use of, or the right to use, industrial, commercial, or scientific equipment other than vessels and aircraft used for international transport, and technical studies paid from public funds or political subdivisions or local authorities or technical assistance for the use of the ownership of the aforementioned rights, in case the technical assistance is realised in the source state.
36. A final 10% withholding tax is levied on dividends distributed to non-resident companies (increased from 5% as of 1 January 2018). The withholding tax on dividends is 25% if the non-resident recipient is based in a tax haven jurisdiction.
37. Interest paid by Tunisia resident persons to non-resident companies is subject to a final 20% withholding tax unless a lower treaty rate applies. A reduced 10% final withholding tax rate applies to interest paid to non-resident banks (increased from 5% as of 1 January 2018). An increased 25% withholding tax rate applies if the non-resident recipient is based in a tax haven jurisdiction. Interest paid by Tunisia resident persons or by the government from deposits or securities issued in foreign currency or in convertible dinars is tax-exempt.
38. Royalties paid by Tunisia resident persons to non-resident companies are subject to a final 15% withholding tax unless a lower treaty rate applies. An increased 25% withholding tax rate applies if the non-resident recipient is based in a tax haven jurisdiction. Royalties paid by holders of an oil exploration and development licence in respect of technical assistance or studies performed by the parent company are tax-exempt.

# TURKEY

## MEMBER FIRMS

| City | Name | Contact Information |
|---|---|---|
| Istanbul | Kadir Sayıcı | +90 212 426 00 93<br>k.sayici@pkfistanbul.com |
| Izmir | Selman Uysal | +90 232 466 01 22<br>selmanuysal@pkfizmir.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Turkey |
| Capital: | Ankara |
| Main languages: | Turkish |
| Population: | 86.05 million (2022 estimate) |
| Monetary unit: | Turkish Lira (TRY) |
| Internet domain: | .tr |
| Int. dialling code: | +90 |

## KEY TAX POINTS

- Corporations in Turkey can be regarded as either limited or full taxpayers. Full taxpayers are liable for tax on their worldwide income. Limited taxpayers are subject to tax on income derived in Turkey.
- A foreign corporation is regarded as a limited taxpayer in Turkey, and is taxable on its Turkish-sourced income only.
- Capital gains are normally regarded as part of ordinary corporate income.
- VAT is levied on all goods and services supplied within the scope of commercial, industrial, agricultural and independent professional activities and on the importation of goods and services.
- The withholding tax applicable on dividend payments has been reduced to 10% effective from 22 December 2021. Previously, the tax rate was 15%.
- Repatriation of after-tax profits of branches to the overseas headquarters is also subject to withholding tax (same as profit distribution by companies). The recent decision reducing the withholding tax rate to 10% applies to the repatriation of such branch profits as well.
- No withholding tax is imposed on dividends paid to a resident company and hence the recent decision does not have an impact on profit distributions from a resident company to another resident company.
- Interest paid for business purposes in an operational period may be deducted but must be capitalised if it relates to the acquisition of a fixed asset. Financial expenses for the first year only are added to the cost. The interest can be capitalised or recognised as a financial expense in subsequent years.

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- Controlled foreign company (CFC) regulations exist in Turkey. They apply where a resident company has at least a 50% interest in a non-resident company subject to certain other conditions as well.
- Transfer pricing rules apply to resident companies with transactions with related parties, whether resident or not in Turkey.
- Individuals resident in Turkey are liable for income tax on their worldwide income, but non-resident individuals are liable for income tax only on income earned in Turkey.

## A. TAXES PAYABLE

### COMPANY TAX

Corporations in Turkey can be regarded as either limited or full taxpayers. Full taxpayers are liable for tax on their worldwide income. Limited taxpayers are subject to tax on income derived in Turkey. Corporations are regarded as full taxpayers if their statutory head office or actual business centre is located in Turkey as stated in the articles of association. Thus, foreign-owned subsidiaries wholly established in Turkey are regarded as unlimited taxpayers whereas foreign branches are treated as limited taxpayers.

The corporate income tax rate in Turkey is 20%. However, further to article 11 of the Law on the Collection Procedure of Public Receivables and Law No. 7316, which came into force after being gazetted on 22 April 2021, and Law No. 5520, with the Temporary Article 13 added, the corporate income tax rate will be 25% for corporate earnings related to the 2021 taxation period and 23% for corporate earnings related to the 2022 taxation period. This change will be valid for the taxation of corporate earnings for periods starting from 1 January 2021, with tax returns that must be submitted as from 1 July 2021. Starting from 2023 the rate will be re-instated again to 20%.

Law No. 7351 was gazetted on 22 January 2022, further to which a reduced Corporate Income Tax rate of %1 is introduced for;

a) Income earned by exporters from exportations;

b) Income earned from manufacturing activities by manufacturers with industry registration certificates.

As a result in 2022 the corporate income tax rate is 23 % for all companies, however, for manufacturers and exporters it is 22 % on the proportion of their income resulting from exporting and manufacturing activities.

The tax year is the calendar year although a special permit can be obtained from the Ministry of Finance for a different fiscal period. Returns are due by the fourth month (until 30 April) from the fiscal year-end. corporation tax is normally payable until the end of the 4th month. The taxpayer also has to pay a quarterly advance tax throughout the accounting period which is credited against the tax liability of the same period to be calculated in the return for that tax year. As of the 2022 accounting period, the 4th advance tax instalment has been cancelled.

### CAPITAL GAINS TAX

Capital gains are normally regarded as part of ordinary corporate income. Capital gains derived from the sale of shares in a local company by either a foreign company or a local company are, in principle, taxable. Taxation of capital gains derived from the sale of shares between non-residents (individuals or corporations) differs according to the legal status of the company whose shares are held. The existence of a double tax treaty between the country of residence of the non-resident shareholder and Turkey may generally result in capital gains tax being avoided in Turkey subject to the condition that the holding period exceeds one year.

In general, this is also true for capital gains arising from the sale of a shareholding in a limited company. Tax resident companies are eligible for the participation exemption scheme in respect of certain shareholdings. Under this scheme, 50% of the gains derived from the sale of shares in subsidiaries are exempt from 5 December 2017. Two conditions must be met:

- The shares must have been held for two years prior to the disposal; and,
- The amount of the gain must be kept in a special reserve account for at least five years.

The sale revenue must be collected by the end of the second calendar year following the year of sale.

### BRANCH PROFITS TAX

There is no specific branch profits tax in Turkey. Permanent establishments of foreign companies are taxed on the profits earned in Turkey at the standard corporate income tax rate. However, a 10% branch remittance tax also applies when the profits are remitted to the head office. If they are not remitted, no branch remittance tax applies. Branch remittance tax might be reduced under the scope of a double tax treaty.

### VALUE ADDED TAX (VAT)



VAT is levied on all goods and services supplied within the scope of commercial, industrial, agricultural and self-employment income and on the importation of goods and services. The supply of all goods and services is subject to VAT unless exempt. The standard rate is 18%. Currently, there are also various rates ranging from 1% to 18%. VAT is levied on a monthly basis. Returns have to be filed on or before the 26th day of the next month and the tax also has to be paid by the 26th.

### SPECIAL CONSUMPTION TAX

Special consumption tax was introduced on 12 June 2002 in order to simplify the Turkish tax system. When special consumption tax came into force, the high level VAT taxes were decreased to a maximum of 18%. The Council of Ministers Decision No. 2015/8353 published in the Official Gazette and on the website of the Revenue Administration became effective on 1 January 2016. It renders the increased rates and fixed amounts of special consumption taxes applicable to certain types of goods (i.e. tobacco products, alcoholic drinks, mobile phones and all non-electric cars with an engine over 1,600 cc).

Special consumption tax is realised during importation or at the end of production at rates ranging from 0.5% to 160% and is set as relative or fixed. There are four different types of main product groups that are listed under the special consumption tax law. The lists and the related product groups are classified as follows:

1. Petroleum and solvent products;
2. Vehicles (Transportation vehicles are included, tractors are excluded);
3. Tobacco products and alcoholic / non-alcoholic beverages;

4. White goods, electrical home products, luxury goods.

## LOCAL TAXES

There are general municipal taxes and real estate taxes on building and land.

## B. DETERMINATION OF TAXABLE INCOME

Basically, corporate income is calculated as the difference in the value of the net assets on the last day and the first day of the calendar year. Assets which are added or withdrawn during this period should either be subtracted from or added to the resulting difference. Deductible and non-deductible expenses and tax-exempt corporate income also affect the calculation of taxable income.

## DEPRECIATION

The taxpayer may choose either the ordinary or the declining-balance depreciation method. A taxpayer who initially chooses the declining balance method for an asset may switch to the straight-line method but the tax payer who starts using the straight-line method is not permitted to switch to the declining balance method. Depreciation rates to be applied for fixed assets are determined and announced by the Ministry of Finance through communiques based on the asset's useful life. The maximum depreciation rate is 50%.

Further to an amendment made to article 320 of the VUK (Tax Procedure Law), the option to calculate depreciation on a daily basis from the date of acquisition is provided for the taxpayer's assets acquired after the publishing of this law (26 October 2021). In addition, the possibility to extend the depreciation periods is provided by considering longer useful lifespans, provided that the useful life extended does not exceed twice the useful life determined by the Ministry of Treasury and Finance or 50 years and the same depreciation rate is used each year.

## STOCK / INVENTORY

Inventory is valued at cost using the FIFO or weighted average method.

## CAPITAL GAINS AND LOSSES

In accordance with the provisions of Income Tax Law, capital gains received by non-residents upon disposal of participation shares and other assets are taxable in Turkey if the related gains are deemed to be Turkish-sourced. In accordance with Turkish Income Tax Code provisions, a capital gain is deemed to be Turkish-sourced if the sale transaction is performed in Turkey or the transaction is evaluated in Turkey.

### Loss of Capital

According to article 376 of the Commercial Code, if two-thirds of the sum of the share capital and legal reserves, as show in the last annual balance sheet, become uncovered due to losses, the board of directors is obliged to call a general assembly meeting to resolve whether to continue company activities with one-third of the share capital or whether to make up the loss of the share capital. If either of these are not decided upon, the company will automatically dissolve.

## DIVIDENDS

Dividends distributed by resident companies to other resident companies are not subject to withholding tax. Such dividends are also exempt from corporate income tax (participation exemption) at the level of the receiving company.

Dividends distributed to non-resident companies are subject to a final 10% withholding tax, unless a double tax treaty provides for a lower rate. The taxable base is the gross amount of the dividend. (see also hereafter under the chapter: Treaty and Non-Treaty Withholding Tax Rates)

## INTEREST DEDUCTIONS

Interest paid for business purposes in an operational period may be deducted but must be capitalised in the first year if it relates to the acquisition of a fixed asset. It is optional in the following years.

### Thin capitalisation

Interest and similar payments deemed paid or calculated on the basis of hidden equity capital are non-deductible whereby hidden equity capital refers to loans which:

- are taken directly or indirectly from shareholders or persons related to the shareholders;
- are used in the conduct of business; and
- exceed, at any time in a taxable period, 3 times the borrowing company's equity (i.e. the maximum debt-to-equity ratio is 3:1 for financing by related persons.

Interest and other items paid, with the exception of realized exchange rate differences, on loans taken from shareholders and persons related to shareholders in excess of the 3:1 debt-to-equity ratio are treated as hidden profit distributions for tax purposes. At the level of non-residents, such hidden profit distributions are deemed to be profits remitted to the head office and corresponding adjustments are made for previous taxes of both parties.

## LOSSES

Net operating losses can be carried forward for five years. The loss must be covered by the first available year's income. There is no indexation of carry-forward losses. Losses may only be carried back in the case of liquidation.

## FOREIGN SOURCED INCOME

Resident companies are subject to taxation on their worldwide income.

## INCENTIVES

The "Decision on Government Supports in Investments" has been finalised through the Council of Ministers Decision No. 2012/3305 published in the Official Gazette dated 19 June 2012 and the "Communique on the Implementation of the Decision on Government Supports in Investments" No. 2012/1. The new incentive system can be categorised under four main headings:

- General incentive applications;
- Regional incentive applications;
- Incentivising large scale investments;
- Incentivising strategic investments.

The "Reduced Corporate Tax" application is arranged under article 32A of the Corporate Tax Law No. 5520 and was enforced by the "Law on the Amendment of Certain Laws" No. 5838, which was published in the Official Gazette on 28 February 2009. Reduced corporate taxes have been introduced to encourage new investments and further investment in existing projects.

Under article 32A, income arising from qualifying investments with an incentive certificate are subject to corporate tax at reduced rates. The tax savings are capped by a specified investment subsidy limit. The rate of tax applicable to such projects is calculated by dividing the investment contribution limit by the total investment made. This is illustrated in the tables below.

For example, if an investment is made in region I of TRY 200 million in 2017 under the regional investment application, the said investment is subject to corporation tax at 50% of the normal rate up to (%20x%50) and an investment subsidy limit of 15% of the investment amount (i.e. TRY 30 million). There is no time limit on the application of the reduced tax rate although it is not available in certain periods where there is no tax base due to loss deduction, exempted gains and other deductions. The reduced rate applies until the investment contribution limit has been reached.

**Rates for 2021:**

| | Regional Investment Applications | | Large Scale Investments | |
|---|---|---|---|---|
| **Regions** | **Investment Contribution rate (%)** | **The corporate tax or income tax reduction rate (%)** | **Investment Contribution rate (%)** | **The corporate tax or income tax reduction rate (%)** |
| I | 15 | 50 | 25 | 50 |
| II | 20 | 55 | 30 | 55 |
| III | 25 | 60 | 35 | 60 |
| IV | 30 | 70 | 40 | 70 |
| V | 40 | 80 | 50 | 80 |
| VI | 50 | 90 | 60 | 90 |

* For expenses made in 2017-2022, the above investment contribution rates will be increased by 15 points.

**Rates for 2022:**

| | Regional Investment Applications | | Large Scale Investments | |
|---|---|---|---|---|
| **Regions** | **Investment Contribution rate (%)** | **The corporate tax or income tax reduction rate (%)** | **Investment Contribution rate (%)** | **The corporate tax or income tax reduction rate (%)** |
| I | 15 | 50 | 25 | 50 |
| II | 20 | 55 | 30 | 55 |
| III | 25 | 60 | 35 | 60 |
| IV | 30 | 70 | 40 | 70 |
| V | 40 | 80 | 50 | 80 |
| VI | 50 | 90 | 60 | 90 |

The corporate tax and income tax reduction rate will be applied at 100% in all regions. Apart from that, the percentage that will be applied to investors' other operating income during the investment period regarding investment contribution is 100%. It is valid for investment expenditure within the scope of investment incentive certificates for the manufacturing industry.

The tax reduction rate and investment contribution rate applicable in all regions for specified strategic investments are 90% and 50% respectively.

## WAGE TAX / SOCIAL SECURITY CONTRIBUTIONS

Social insurance premiums are calculated on the basis of monthly wages and are paid jointly by the worker and the employer at the following rates:

| BRANCHES | EMPLOYEE (%) | EMPLOYER (%) | TOTAL (%) |
|---|---|---|---|
| Short Term Social Security Branches including occupational accidents and diseases (varies according to the job) | -- | 2 | 2 |
| Disability, old age, death | 9 | 11 | 20 |
| General Health Insurance | 5 | 7.5 | 12.5 |
| Total | 15 | 22.5 | 37.5 |
| Unemployment Insurance | 1 | 2 | 3 |

The above rates are applied to the gross total of salaries, wages and bonuses up to a current monthly maximum of TRY 37,530 from 1 January until 31 December 2022. The premiums are paid each month to the Social Insurance Institution at the place where the worker is employed before the 30th day of the subsequent month.

## THE NEW TURKISH COMMERCIAL CODE

The New Turkish Commercial Code, which was accepted by the Turkish Parliament on 13 January 2011 and took effect on 1 July 2012, requires financial reports to be prepared in compliance with the TFRS. The Council of Ministers can determine which companies are subject to independent audit. Financial statements of corporations and conglomerates subject to independent audit shall be audited by an independent auditor according to the Turkish Audit Standards issued by the Turkish Public Oversight, Accounting and Auditing Standards Authority, which is compliant with International Auditing Standards.

Financial statements of companies subject to independent audit must be organised according to Turkish Accounting Standards in accordance with international financial reporting standards or General Communique on Accounting System Application. Other companies' financial statements must be organised according to Tax procedural Law. The Companies which will be subject to independent audit pursuant to the Turkish Commercial Code (No.6102) have been re-determined. Companies meeting at least two of the following criteria during two consecutive years shall be subject to an independent audit:

a) Total asset size of TRY 35 million or more;

b) Annual net sales revenue of TRYL 70 million or more;

c) Minimum of 175 employees or more.

To determine whether or not the abovementioned conditions have been met the financial statements of 2020 and 2021 and the average number of employees for 2020 and 2021 will be taken into consideration.

## C. FOREIGN TAX RELIEF

Double taxation of resident companies is unilaterally relieved by an ordinary tax credit. Foreign taxes may be offset against corporate income tax up to the amount of the Turkish tax attributable to the foreign income. The limitation is calculated on an overall basis. The foreign tax that cannot be credited in the relevant taxable period because of this limitation may be carried forward for 3 taxable periods.

Where foreign-source income qualifies for exemption, a unilateral relief is granted by way of the full exemption method.

## D. CORPORATE GROUPS

Group consolidation for tax purposes is not available.

## E. RELATED PARTY TRANSACTIONS

From 1 January 2006, transfer pricing rules apply to resident companies with transactions with related parties, whether resident or not in Turkey.

if a transaction between a company and a related person is performed under prices determined contrary to the arm's-length principle, the said transaction is fully or partially considered to be a hidden profit distribution. Relevant transactions include production or construction, the sale/purchase of goods, services, salary payments, leasing and loan transactions. At the level of non-residents such hidden profit distributions are deemed to be profits remitted to the head office and corresponding adjustments are made for previous taxes of both parties.

However, transfer pricing rules are not applied to domestic transactions between related companies unless a treasury loss occurs, i.e. the total tax burden arising from a transaction effected between related parties. As long as profits are taxed in the hands of one or more related parties (i.e. there is no treasury loss), transfer pricing legislation is not applied.

When a transaction is performed with a resident of a low-tax jurisdiction, it is always deemed to be performed with a related party. As from 9 August 2016, when it is determined through a direct or indirect connection that the person is considered to be a related person, the application of hidden profit distribution provisions requires a minimum 10% of partnership or voting rights. For the calculation of the ratio, related persons are considered on an aggregate basis.

Prescribed arm's-length pricing methods in the law are those described in the OECD transfer pricing guidelines, including:

- Comparable uncontrolled price method;
- Cost-plus method;
- Resale price method;
- Operational profit method.

Alternatively, companies can also use alternative methods if these are considered more appropriate.

**Controlled Foreign Companies (CFC)**

Controlled foreign company (CFC) rules exist in Turkey. They apply where a resident company has at least a 50% interest in a non-resident company and the following conditions apply:

- 25% or more of the gross revenue of the foreign subsidiary must be composed of passive income;
- The CFC must be subject to an effective income tax rate of less than 10% on its commercial profit in its home country;
- Gross revenue of the CFC must exceed the equivalent of TRY 100,000 in a foreign currency in the related period.

## F. WITHHOLDING TAXES

The following are liable to withholding taxes when paid to a non-resident entity:

| Type of Income | Rate |
|---|---|
| Contract Progress Income | 3% |
| Profit Shares/dividends | 10% |

| Type of Income | Rate |
|---|---|
| Leasing | 1% |
| Wages and services fees | 15-35% |
| Professional services in general | 20% |
| Petroleum exploration services | 5% |
| Rentals | 20% |
| Deposit interest - up to 6 months | 5% |
| Deposit interest - up to 1 year | 3% |
| Deposit interest - more than 1 year | 0% |
| Bills and bonds | 0 - 10% |
| Income from sales of securities | 15% |
| Sum derived from sale or transfer of copyrights patents and trademarks | 20% |
| Royalties | 20% |

Withholding taxes on dividends, interest and royalties may be reduced under the terms of the various double tax treaties with Turkey.

## G. EXCHANGE CONTROL

The flow of capital in and out of Turkey is regulated by Decrees to protect the value of the Turkish currency.

## H. PERSONAL TAX

Individuals resident in Turkey are liable for income tax on their worldwide income but non-resident individuals are liable for income tax only on income earned in Turkey. Turkish nationals are deemed to be tax resident unless they have evidence of residence abroad. Foreigners are regarded as resident if they stay in Turkey without interruption for more than six months in a calendar year, other than for reasons of imprisonment or assignments for specific and temporary projects. Income tax is charged on commercial and agricultural gains, fees, self-employment earnings, real estate income, income from moveable capital, other income and earnings.

The general rule is that taxpayers must remit the amount of tax due in two equal payments. Taxpayers carrying on business or professional activities must make quarterly income tax payments during the tax year. Instalments paid at the end of the year are deducted from the income tax return given for the income tax payers in March of the following year and corporate tax is deducted from the corporate tax return given in April of the following year. The following income tax rates for 2022 are applicable to income other than employment income.

Effective from 2022, the net minimum wage has been increased to TRY 4,253.40. Along with this annual readjustment, the Turkish government has further announced that an income tax and stamp duty exemption will also apply to minimum wage, and going forward, there will be no income tax or stamp duty withholding on payroll. This exemption is also extended to higher-than-minimum wage earners, limited to the minimum wage amount.

The regulations entered into force on the date of publication: to be applied to wage payments made as from 1 January 2022.

| Taxable Income Amount (TRY) | Tax on lower amount (TRY) | Rate on Excess (%) |
|---|---|---|
| 0 – 32,000 | 0 | 15 |
| 32,001 – 70,000 | 4,800 | 20 |
| 70,001 – 170,000 | 12,400 | 27 |
| Over 170,000 | 39,400 | 35 |

The following income tax rates for 2022 are applicable to employment income:

| Taxable Income Amount (TRY) | Tax on lower amount (TRY) | Rate on Excess (%) |
|---|---|---|
| 0 – 32,000 | 0 | 15 |
| 32,001 – 70,000 | 3,600 | 20 |
| 70,001 – 250,000 | 12,400 | 27 |
| Over 250,000 | 61,000 | 35 |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 10 | 10 | 0/3/5/7/10/18/20 | 20 |
| Individuals | 10 | -- | 0/3/5/7/10/18/20 | 20 |
| **Treaty countries:** | | | | |
| Albania | 15 | 5[1] | 10 | 10 |
| Algeria | 12 | 12 | 10 | 10 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Australia | 15 | 5[2] | 10 | 10 |
| Austria | 15 | 5[3] | 5/10/15[25] | 10 |
| Azerbaijan | 12 | 12 | 10 | 10 |
| Bahrain | 15 | 10[1] | 10 | 10 |
| Bangladesh | 10 | 10 | 10 | 10 |
| Belarus | 15 | 10[1] | 10 | 10 |
| Belgium | 10/20 | 10/15[4] | 15 | 10 |
| Bosnia and Herzegovina | 15 | 5[1] | 10 | 10 |
| Brazil | 15 | 10[1] | 15 | 10/15[41] |
| Bulgaria | 15 | 10[1] | 10 | 10 |
| Canada | 20 | 15[5] | 15 | 10 |
| China | 10 | 10 | 10 | 10 |
| Croatia | 10 | 10 | 10 | 10 |
| Czech Republic | 10 | 10 | 10 | 10 |
| Denmark | 20 | 15[1] | 15 | 10 |
| Egypt | 15 | 5[1] | 10 | 10 |
| Estonia | 10 | 10 | 10 | 5/10[42] |
| Ethiopia | 10 | 10 | 10 | 10 |
| Finland | 15 | 5[1] | 0/5/10/15[26] | 10 |
| France | 20 | 15[6] | 15 | 10 |
| Gambia | 15 | 5[6] | 10 | 10 |
| Georgia | 10 | 10 | 10 | 10 |
| Germany | 15 | 5[1] | 10 | 10 |
| Greece | 15 | 15 | 12 | 10 |
| Hungary | 15 | 10[1] | 10 | 10 |
| India | 15 | 15 | 0/10/15[27] | 15 |
| Indonesia | 15 | 10[1] | 10 | 10 |
| Iran | 20 | 15[1] | 10 | 10 |
| Ireland | 15 | 5[8]/10[7] | 10/15[28] | 10 |
| Israel | 10 | 10 | 10 | 10 |
| Italy | 15 | 15 | 15 | 10 |
| Japan | 15 | 10[9] | 1029/15 | 10 |
| Jordan | 15 | 10[1] | 10 | 12 |
| Kazakhstan | 10 | 10 | 10 | 10 |
| Korea (South) | 20 | 15[1] | 10/15[30] | 10 |
| Kosovo | 15 | 5[1] | 10 | 10 |
| Kuwait | 10 | 10 | 10 | 10 |
| Kyrgyzstan | 10 | 10 | 10 | 10 |
| Latvia | 10 | 10 | 10 | 5/10[42] |
| Lebanon | 15 | 10[10] | 10 | 10 |
| Lithuania | 10 | 10 | 10 | 5/10[42] |
| Luxembourg | 20 | 10[1] | 10/15[31] | 10 |
| Malaysia | 15 | 10[1] | 15 | 10 |
| Malta | 15 | 10[1] | 10 | 10 |
| Mexico | 15 | 5[1] | 0[32]/10[33]/15 | 10 |
| Moldova | 15 | 10[1] | 10 | 10 |
| Mongolia | 10 | 10 | 10 | 10 |
| Montenegro | 15 | 5[1] | 10 | 10 |
| Morocco | 10 | 7[1] | 10 | 10 |
| Netherlands | 20 | 15[1] | 10/15[31] | 10 |
| New Zealand | 15 | 5[11] | 0[34]/10[33]/15 | 10 |

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| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| North Macedonia | 10 | 5[1] | 10 | 10 |
| Norway | 15 | 5[12] | 5/10/15[35] | 10 |
| Oman | 15 | 10[13] | 10 | 10 |
| Pakistan | 15 | 10[14] | 10 | 10 |
| Philippines | 15 | 101 | 10 | 10/15[43] |
| Poland | 15 | 10[1] | 10 | 10 |
| Portugal | 15 | 5[15] | 0/10/15[36] | 10 |
| Qatar | 10 | 5[16] | 10 | 10 |
| Romania | 15 | 15 | 10 | 10 |
| Russia | 10 | 10 | 10 | 10 |
| Saudi Arabia | 10 | 5[17] | 10 | 10 |
| Serbia | 15 | 5[1] | 10 | 10 |
| Singapore | 15 | 10[1] | 7.5[29]/10 | 10 |
| Slovak Republic | 10 | 5[1] | 10 | 10 |
| Slovenia | 10 | 10 | 10 | 10 |
| South Africa | 15 | 10[1] | 10 | 10 |
| Spain | 15 | 5[18] | 10/15[37] | 10 |
| Sudan | 10 | 10 | 10 | 10 |
| Sweden | 20 | 15[1] | 15 | 10 |
| Switzerland | 15 | 5[19] | 0/5/10[38] | 10 |
| Syria | 10 | 10 | 10 | 10/15[44] |
| Tajikistan | 10 | 10 | 10 | 10 |
| Thailand | 15 | 10[1] | 0/10/15[39] | 15 |
| Tunisia | 15 | 12[1] | 10 | 10 |
| Turkmenistan | 10 | 10 | 10 | 10 |
| Ukraine | 15 | 10[1] | 10 | 10 |
| United Arab Emirates | 12 | 5[20]/10[1] | 10 | 10 |
| United Kingdom | 20 | 15[21] | 15 | 10 |
| United States | 20 | 15[22] | 0/10/15[40] | 5/10[45] |
| Uzbekistan | 10 | 10 | 10 | 10 |
| Vietnam | 15 | 5[23]/10[24] | 10 | 10 |
| Yemen | 10 | 10 | 10 | 10 |

Notes:

1. The reduced rate applies if the recipient is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
2. The 5% reduced rate applies to dividends which are paid out of profits which have been subjected to the full rate of corporation tax in Turkey, where those dividends are paid to a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
3. The 5% reduced rate applies if the beneficial owner of the dividends is a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company provided that such dividends are exempt from tax in Austria.
4. The 15% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.

   If under the provisions of the Belgian laws, a company resident of Belgium is not charged to corporate income tax with respect to dividends received from a company resident of Turkey, the 10% rate applies (art. 4 (b) (i) of the Protocol to the treaty).
5. The 15% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly shares representing at least 10% of the voting power of the dividend-paying company.
6. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company.
7. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the voting power of the dividend-paying company.
8. The 5% rate applies if the Irish company has held directly at least 25% of the voting power of the Turkish company and dividends have been paid out of profits that have been subject to tax in Turkey.
9. The 10% reduced rate applies if the beneficial owner is a company which owns at least 25% of the voting shares of the dividend-paying company during the period of six months immediately before the end of the accounting period for which the distribution of profits takes place.
10. The 10% reduced rate applies if the effective (beneficial) owner is a company (other than a partnership) which holds directly at least 15% of the capital of the dividend-paying company.
11. The 5% reduced rate applies if the beneficial owner of the dividends is a company (other than a partnership) which holds directly at least 25%

of the capital of the dividend-paying company provided that such dividends are exempt from tax in New Zealand.

12. The 5% reduced rate applies if (i) the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company, provided that such dividends are exempt from tax in Norway, or (ii) the dividends are derived by the Norway Government Pension Fund (Statens Pensjonsfond) and provided that such dividends are exempt from tax in Norway.
13. The 10% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 15% of the capital of the dividend-paying company.
14. The 10% reduced rate applies if the beneficial owner is a company (excluding partnership) which holds directly at least 25% of the capital of the dividend-paying company and the later company is engaged in an industrial undertaking.
15. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) that, for an uninterrupted period of two years prior to the payment of the dividends, or if the company paying the dividends has existed for less than two years during the lifetime of the company, holds directly at least 25% of the capital (capital social) of the dividend-paying company.
16. The 5% reduced rate applies if (i) the beneficial owner is the Government or a public institution which is wholly owned by the Government or its political subdivisions or local authorities, of Qatar or (ii) the beneficial owner is a company (excluding partnership) which holds directly at least 20% of the capital of the dividend-paying company.
17. The 5% reduced rate applies if (i) the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company or (ii) the beneficial owner is the central bank or an entity which is wholly owned by the government of Saudi Arabia.
18. The 5% reduced rate applies to dividends to the extent that they are paid out of profits that have been subject to tax in Turkey (where they have not been exempted and are subject to the full rate of corporation tax (Kurumlar Vergisi)) where those dividends are paid to a company (other than a partnership) which holds directly at least 25% of the capital of the dividend-paying company.
19. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the dividend-paying company provided that a relief from Swiss tax is granted for such dividends by way of an abatement of the profits tax in proportion corresponding to the ratio between the earnings from participations and the total profits or by way of an equivalent relief.
20. The 5% reduced rate applies if the recipient is the Government, or a public institution which is wholly owned by the Government or its political subdivisions or local authorities, of the United Arab Emirates.
21. The 15% reduced rate applies if the beneficial owner is a company which controls directly or indirectly at least 25% of the voting power in the dividend-paying company.
22. The 15% reduced rate applies if the beneficial owner is a company which owns at least 10% of the voting stock of the dividend-paying company.
23. The 5% reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 50% of the capital of the dividend-paying company or has invested more than USD 10 million, or the equivalent in Turkish or Vietnamese currency, in the capital of the dividend-paying company.
24. The 10% reduced rate applies if the beneficial owner is a company which holds directly or indirectly at least 25% but less than 50% of the capital of the dividend-paying company.
25. The 5% rate applies to interest paid in respect of a loan or credit made, guaranteed or insured for the purposes of promoting export by the Oesterreichische Kontrollbank AG or a similar Turkish public entity the objective of which is to promote the export. The 10% rate applies if the interest is derived by a bank. The 15% rate applies in all other cases.
26. The 0% rate applies to interest arising in Turkey and paid to the Government of Finland or to the Bank of Finland (Suomen Pankki). The 5% rate applies to interest in respect of a loan or credit made, guaranteed or insured for the purposes of promoting export by the Finnish Export Credit or the FINNVERA or similar Turkish public entities the objective of which are to promote the export. The 10% rate applies to interest derived by a bank. The 15% rate applies in all other cases.
27. The 0% rate applies to interest derived and beneficially owned by (i) the government, a political subdivision or a local authority of India (ii) the Central Bank of India (iii) the EXIM Bank of India. The 10% rate applies to interest paid on any loan of whatever kind granted by a bank or a financial institution. The 15% rate applies in all other cases.
28. The 10% rate applies to interest paid in respect of a loan or other debt claim for a period exceeding two years or if the interest is received by a financial institution. The 15% rate applies in all other cases.
29. The reduced rate applies to interest received by any financial institution.
30. The 10% rate applies to interest paid in respect of a loan or other debt-claim for a period exceeding two years.
31. The 10% rate applies to interest paid on a loan made for a period of more than two years.
32. The 0% rate applies if (i) the beneficial owner is a Contracting State, a political subdivision or a local authority thereof, or the Central Bank of Mexico (Banco de Mexico) or the Central Bank of Turkey (Turkiye Cumhuriyet Merkez Bankasi), (ii) the interest is paid by any of the entities mentioned in (i), (iii) the interest arises in Turkey and is paid in respect of a loan for a period of not less than three years granted by Banco Nacional de Comercio Exterior, S.N.C., Nacional Financiera, S.N.C. or Banco Nacional de Obras y Servicios Publicos, S.N.C.
33. The 10% rate applies to interest paid to a bank.
34. The 0% rate applies to interest arising in Turkey and paid to the Government of New Zealand or to the Reserve Bank of New Zealand.
35. The 5% rate applies if the interest is paid to the Government Pension Fund (Statens Pensjonsfond), the Norwegian Guarantee Institute for Export Credits (Garantiinstituttet for Eksportkreditt) or Eksportfinans ASA. The 10% rate applies if the interest is paid to a bank. The 15% rate applies in all other cases.
36. The Central Bank of Portugal shall be exempt from Turkish tax with respect to interest arising in Turkey. The Government, the political or administrative subdivisions or the local authorities of Portugal shall be exempt from tax in Turkey with respect to interest arising in Turkey. The 10% rate applies to interest paid on a loan made for a period of more than two years. The 15% rate applies in all other cases.
37. The 10% rate applies to interest derived from a loan of whatever kind granted by a bank or if the interest is paid in connection with the sale on credit of merchandise or equipment to a Spanish enterprise.
38. The 5% rate applies to interest paid in respect of a loan or credit made, guaranteed or insured for the purposes of promoting export by an Eximbank or similar institution, the objective of which is to promote the export. Interest shall be exempted from tax in the Contracting State in which it arises if it is paid to the other Contracting State or the Central Bank of that other State.
39. The 10% rate applies to interest received by any financial institution (including an insurance company). Interest arising in Turkey and paid to the Government of Thailand, the Bank of Thailand, or Export-Import Bank of Thailand shall be exempt from Turkish tax.
40. The 10% rate applies to interest derived from a loan of whatever kind granted by a financial institution, such as a bank, savings institution, or insurance company. The 0% rate applies to interest arising in (i) Turkey and paid to the Government of the United States or any Federal Reserve Bank (ii) a Contracting State in connection with a loan or credit guaranteed or insured by the Government of the other Contracting State.
41. The 15% rate applies to royalties arising from the use of, or the right to use, trademarks. The 10% rate applies in all other cases.

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42. The 5% rate applies to royalties for the use of industrial, commercial or scientific equipment. The 10% rate applies in all other cases.
43. The 10% rate applies to royalties arising from the use of, or the right to use, any copyright of literary, artistic or scientific work, any patent, trade mark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience. The 15% rate applies to royalties arising from the use of or the right to use, any cinematographic films and films or tapes for television or radio broadcasting.
44. The 10% rate applies to royalties for the use of or the right to use any copyright of literary, artistic or scientific work including cinematograph films and recordings for radio and television. The 15% rate applies to royalties in case of a patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
45. The 5% rate applies to royalties for the use of, or the right to use industrial, commercial, or scientific equipment. The 10% rate applies to royalties for the use of, the right to use, or the sale (which is contingent on the productivity, use, or disposition) of any copyright of literary, artistic, or scientific work including royalties in respect of motion pictures and works on film, tape, or other means of reproduction for use in connection with radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning, industrial, commercial or scientific experience.

# UGANDA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Kampala | Charles Oguttu | +256 312 305800<br>coguttu@ug.pkfea.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Uganda |
| Capital: | Kampala |
| Main languages: | English, Swahili, Luganda |
| Population: | 48.49 million (2022 estimate) |
| Monetary unit: | Ugandan Shilling (UGX) |
| Internet domain: | .ug |
| Int. dialling code: | +256 |

## KEY TAX POINTS

- Resident companies are taxable on their worldwide income and gains whereas non-residents are subject to tax on income sourced in Uganda.
- The standard rate of corporate income tax applicable to resident and non-resident companies is 30%, although special rates apply to small businesses and mining companies.
- Capital gains and losses only arise in respect of non-depreciable assets owned by a business. Gains are added to and taxed along with ordinary income.
- A tax at 15% is charged on repatriated profits of overseas companies with branches in Uganda.
- VAT is charged at a standard rate of 18% but some supplies are zero rated or exempt.
- Dividends are generally subject to withholding tax where paid to residents or non-residents at a rate of 15% (or 10% where the payer is listed on the Ugandan Stock Exchange).
- Other payments for goods and services are subject to withholding tax with different rates in some cases depending on whether the recipient is resident in Uganda.
- Income tax is levied on the worldwide income of resident individuals (a foreign tax credit is granted for foreign sourced income not exceeding the appropriate Uganda income tax payable) and on the income of non-resident individuals sourced from Uganda.
- A Tax Procedure Code Act, assented to on 19 October 2014, came into force with effect from 1 July 2016, to provide a code to regulate the procedures for administration, to harmonize and to consolidate tax procedures.

## A. TAXES PAYABLE



## COMPANY TAX

Resident companies are taxable on their worldwide income and gains whereas non-residents are taxed on income sourced in Uganda. Uganda-sourced income is clearly defined for purposes of the Income Tax Act.

The tax rates applicable to residents and non-residents are as follows:

- For companies and retirement funds – 30%;
- Special rates of tax apply to income from small businesses (i.e. those businesses where the income does not exceed UGX 150 million per year). These presumptive tax rates fall in defined bands/ranges of gross income.

The fiscal year in Uganda runs from 1 July to 30 June. Companies must file a return of income each year by 31 December following the end of the tax year. A different accounting period (referred to as substituted year) can be opted for by seeking permission from the revenue authorities. In such cases, return of income should be filed within six months of applicable year end.

## CAPITAL GAINS TAX

Capital gains are added to the income from all other sources and taxed at the rate applicable to that person.

## BRANCH PROFITS TAX

Non-resident companies are subject to Ugandan corporate income tax in respect of profits earned from branches in Uganda. In addition, the branch is taxed on the repatriated income at the rate of 15%.

## RENTAL INCOME TAX

Effective July 2014, rental income, expenditure and losses generated by a taxable individual or company is required to be declared in a rental income tax return separate from the usual business income tax return.

## VALUE ADDED TAX (VAT)

VAT is payable on:

- Every taxable supply in Uganda made by a taxable person;
- Every import of goods other than an exempt import;
- The supply of any imported services by any person.

A taxable supply is defined as 'a supply of goods or services, other than an exempt supply, made by a taxable person for consideration as part of his business activities'. A taxable person is a person who is required to be registered under the statute. Persons who are required to be registered are those who:

- During any period of three calendar months make taxable supplies, the value of which exclusive of any tax exceeds one quarter of the annual registration threshold;
- Have reasonable grounds to expect that in any period of three calendar months will make taxable supplies, the total value of which will exceed one-quarter of the annual registration threshold;
- The annual registration threshold is, at present, UGX 150m.

## RATES OF TAX (VAT)

There are three categories of supplies for VAT purposes: exempt, zero-rated and standard rated.

The standard rate is 18%. Some types of supplies are zero rated or exempt.

## FRINGE BENEFITS TAX

This is not applicable in Uganda but benefits to employees are valued as per rules of valuation under the Income Tax Act 1997 and added to the employment income to determine the tax.

## LOCAL TAXES

Local service tax is levied by local authorities on resident individuals (with a few exceptions) who are above the age of 18 and are in gainful employment with effect from 1 July 2008. Local Hotel Tax was also introduced with effect from 1 July 2008, collected and remitted to the local authority monthly based on the tax bands.

## OTHER TAXES

Excise, import and custom duties are applicable on several items either on ad valorem basis or at specific rates.

# B. DETERMINATION OF TAXABLE INCOME

## CAPITAL ALLOWANCES

The Industrial building deduction is 5% on straight-line basis. Effective July 2014, initial allowance deduction on eligible items (50% off the cost base of the property is allowed on eligible property put into service for the first time outside a radius of 50 km. from the boundaries of Kampala) and industrial buildings (20%) was re-enacted. Start-up costs for a business or expenditure incurred in the initial public offering at the stock market are allowed at a rate of 25% on a straight-line basis. Horticulture business allowance is 20% on straight-line basis of the capital expenditure incurred in the acquisition or establishment of a horticultural plant or the construction of a greenhouse.

## DEPRECIATION

Depreciation is allowable on written-down value basis (reducing balance method) at the following rates:

| No. | Details | Rate |
|---|---|---|
| 1. | Computers and data handling equipment | 40% |
| 2 | Plant and machinery used in farming, manufacturing and mining. | 30% |
| 3. | Automobiles, buses, minibuses, goods vehicles, construction and earth-moving equipment, specialised trucks, tractors, trailers and trailer-mounted containers, rail cars, locomotives and equipment, vessels, barges, tugs and similar water transportation equipment; aircraft; specialised public utility plant, equipment and machinery, office furniture, fixtures and equipment, any depreciable asset not included in another class. | 20% |

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## STOCK/INVENTORY

A deduction is allowed for the cost of trading stock disposed of during a year of income. The closing value of trading stock is the lower of cost or market value of trading stock on hand at the end of the year.

## CAPITAL GAINS AND LOSSES

Capital gains or losses are taxable only if the asset on which the gain or loss arises is owned by a business and is a non-depreciable asset. This is determined by subtracting the cost base of the asset from the consideration received on sale of the asset. Cost base of the asset is the original cost to the taxpayer as increased by any expenditure incurred to alter or improve the asset which has not been allowed as a deduction. The cost base of assets that are sold beyond twelve months from the date of purchase, are entitled to some indexation parameters based on the stipulated formula. In case of immovable property purchased prior to 31 March 1998, the taxpayer may substitute the market value of the property as on 31 March 1998 for the original cost of the asset. Capital gains and losses are added or subtracted from the other income of the taxpayer for that year of income and not taxed separately.

### DIVIDENDS

Dividends are subject to 15% withholding tax except dividends paid by companies listed on the stock exchange to resident individuals which is 10%. Effective July 2013, dividends have been expanded to include issue of bonus shares, which are only taxable upon disposal.

### INTEREST DEDUCTIONS

Allowable in full except where a company is a member of a group which is not a financial institution or person carrying on insurance business, the amount of deductible interest (in respect to all debts) shall not exceed 30% of the tax earnings before interest, tax, depreciation and amortisation (Tax EBITDA).

### LOSSES

Assessed losses are allowed to be carried forward and allowed as a deduction in determining the taxpayer's chargeable income in the following year of income. These are allowed to be carried forward indefinitely.

### FOREIGN SOURCED INCOME

The gross income of a resident person includes income derived from all geographic sources and the gross income of a non-resident includes only income derived from sources in Uganda.

### INCENTIVES FOR HOLDERS OF FREE ZONEDEVELOPER LICENCES AND OTHER LARGE - SCALE INVESTORS

Investors operating within Free Zones and Industrial parks as well as other large investors operating outside these zones that are engaged in specified sectors (like agro–processing, etc.) that meet specified conditions like minimum investment amounts, employment quotas of citizens and use of local raw materials are entitled to exemption from income tax The payments for a feasibility study and design services, locally produced materials for the construction of a factory or warehouse, locally produced raw materials and inputs and on the supply of machinery and equipment made by the qualifying investors will also be exempted from Value Added Tax. The qualifying investors will also enjoy NIL Excise Duty on imported construction materials used in construction of a factory or warehouse and locally produced raw materials and inputs. The same qualifying investors will also enjoy NIL Stamp Duty on debentures, further charge on a mortgaged property and lease of land as well as NIL stamp duty on Increase of share capital and on transfer of land.

## C. FOREIGN TAX RELIEF

A resident taxpayer is entitled to a credit for any foreign income tax paid by the taxpayer in respect of foreign-sourced income included in the gross income of the taxpayer, but shall not exceed the Uganda income tax payable on such foreign-sourced income.

## D. RELATED PARTY TRANSACTIONS

In order to regulate transactions between related parties, Transfer Pricing Regulations have been introduced with effect from 1 July 2011. The regulations shall apply to a "controlled transaction" where a taxpayer, who is a party to the transaction, is located in or outside Uganda. The regulations expressly require that a taxpayer who has transactions with related non-resident or resident entities must prepare transfer pricing documentation. This documentation, for a year of income, must be in place prior to the due date of filing the income tax return for that year. Related party transactions are also governed by section 90 of the Income Tax Act which provides that the commissioner may distribute or apportion incomes, deductions or credits between taxpayers who are associates. A penalty of UGX 50 million is levied where a taxpayer fails to provide records in respect of transfer pricing within 30 days upon request by the Commissioner.

## E. WITHHOLDING TAX

Withholding tax is a final tax on:

- Interest paid by a financial institution to a resident individual;
- Interest paid to any person on treasury bills by the Bank of Uganda;
- Dividends paid to a resident individual.

### RATES OF WITHHOLDING TAX

| Description | Resident | Non-resident |
|---|---|---|
| Management fees and royalties | 6% | 15% |
| Consultancy, agency fees, etc | 6% | 15% |
| Professional fees | 6% | 15% |
| Dividends[1] | 15% or 10% | 15% |
| Interest[2] | 15% | 15% |
| Sports persons and public entertainers | Nil | 15% |
| Re-insurance premiums | Nil | 10% |

NOTES:

1. It does not apply where the dividend income is exempt from tax in the hands of a shareholder.
2. It does not apply to residents where: (i) interest is paid to a natural person; and (ii) interest other than interest from government securities paid to a financial institution.

The 6% withholding tax does not apply to taxpayers whom the Commissioner has exempted from withholding tax. Interest on deposit auction funds issued by Bank of Uganda is taxable at 20%. Withholding tax at 10% is applicable on purchase of an asset by a resident person from a non-resident as well as at 6% on the purchase of a business or business asset by a resident person. Interest payment on government securities to non-residents is subject to tax at 20%. Apart from the above, withholding tax is also applicable and charged on import of goods at the rate of 6%. In case of local transactions of goods and services, 6% withholding tax is applicable where the payer is the Government, a Government body or a company/person designated by the Minister. In case of professional services, the 6% withholding tax is applicable whether or not the payer has been designated by the Minister.

The rate of withholding on payments to non-residents is reduced in some cases under the provisions of double taxation agreements entered into with a small number of overseas territories (see Section I below).

From July 2014, a person who makes payments for winnings of sports betting or pool betting shall withhold tax on the gross amount of the payment at of 15%. From July 2014, a resident person who makes a payment of premium for reinsurance services to a non-resident person shall withhold tax on the gross amount of the payment at a rate of 15%. This does not apply to reinsurance services provided by a few specified reinsurers. Please note that a new withholding tax of 10% has been introduced effective 1 July 2020 on commission paid to an Insurance Agent and to an Advertising Agent.

## F. EXCHANGE CONTROL

There are no restrictions on foreign currency flows in and out of the country. Though not widely enforced, a taxpayer transferring funds in excess of UGX 50 million from Uganda to a place outside Uganda is required to obtain a tax clearance certificate from the Uganda Revenue Authority. Money transfers are generally subject to anti-money laundering procedures/regulations. Realised exchange gains and losses are taxable/allowable in the year of realisation. The only specific requirement is to notify the Commissioner of Uganda Revenue Authority in writing of the existence of such transactions that give rise to foreign exchange movements. This applies if it concerns foreign currency debt.

## G. PERSONAL TAX

Income tax is levied on the worldwide income of resident individuals and on the income of non-resident individuals from sources in Uganda. An individual will be regarded as resident in Uganda if he or she:

- Has a permanent home in Uganda;
- Is present in Uganda for a period of, or periods amounting in aggregate to 183 days or more in any 12-month period that commences or ends during the year of income;
- Is present in Uganda during the year of income and in each of the two preceding years of income for periods averaging more than 122 days in each year of income;
- Is an employee or official of the government of Uganda posted abroad during the year of income.

The income tax rates applicable to resident individuals are as follows:

| Chargeable income (UGX) | Rate of tax |
|---|---|
| Not exceeding UGX 2,820,000 (235,000 pm) | Nil |
| Exceeding UGX 2,820,000 (235,000 pm) but not exceeding UGX 4,020,000 (335,000 pm) | 10% of the amount by which chargeable income exceeds UGX 2,820,000 (235,000 pm) |
| Exceeding UGX 4,020,000 (335,000 pm) but not exceeding UGX 4,920,000 (410,000 pm) | UGX 120,000 (10,000 pm) plus 20% of the amount by which chargeable income exceeds UGX 4,020,000 (335,000 pm) |
| Exceeding UGX 4,920,000 (410,000 pm) | a) UGX 300,000 (25,000 pm) plus 30% of the amount by which chargeable income exceeds UGX 4,920,000 (410,000 pm); and<br>b) Where the chargeable income of an individual exceeds UGX 120,000,000 (10,000,000 pm) an additional 10% charged on the amount by which chargeable income exceeds UGX 120,000,000 (10,000,000 pm) |

The income tax rates applicable to non-resident individuals are:

| Chargeable income (UGX) | Rate of tax |
|---|---|
| Not exceeding UGX 4,020,000 (335,000 pm) | 10% |
| Exceeding UGX 4,020,000 (335,000 pm) but not exceeding UGX 4,920,000 (410,000 pm) | UGX 402,000 plus 20% of the amount by which chargeable income exceeds UGX 335,000 |
| Exceeding UGX 4,920,000 (410,000 pm) | a) UGX 582,000 (48,500 pm) plus 30% of the amount by which chargeable income exceeds UGX 4,920,000 (410,000 pm); and<br>b) Where the chargeable income of an individual exceeds UGX 120,000,000 (10,000,000 pm) an additional 10% charged on the amount by which chargeable income exceeds UGX 120,000,000 (10,000,000 pm) |

Where a taxpayer's income consists exclusively of employment income derived from a single employer and from which tax has been withheld, no tax return needs to be filed. Small businesses with income not exceeding UGX 150 million per year run by resident individuals do not need to file a return.

## H. TREATY RATES OF WITHHOLDING TAX

Generally, the reduced treaty rates will only apply if the person that seeks to benefit from the reduced rates is a resident of the other treaty country, is the beneficial owner of that income and has economic substance in that treaty country. The term ‘beneficial owner’ has been defined in Uganda to mean a natural person who owns or has a controlling interest over a legal person (other than an individual) and who exercises control over the management and policies of a legal person.

| Country | Dividends | | Interest (%) | Royalties (%) | Technical / Management Fees (%) |
|---|---|---|---|---|---|
| | Individuals / Companies (%) | Qualifying Companies (%) | | | |
| Denmark | 15 | 10[1] | 10 | 10 | 10 |
| India | 10 | 10 | 10 | 10 | 10 |
| Italy | 15 | 15 | 15 | 10 | 10 |
| Mauritius | 10 | 10 | 10 | 10 | 10 |
| Netherlands | 15 | 0/5[2] | 10 | 10 | 10 |
| Norway | 15 | 10[1] | 10 | 10 | 10 |
| South Africa | 15 | 10[1] | 10 | 10 | 10 |
| United Kingdom | 15 | 15 | 15 | 15 | 15 |
| Zambia | 0 | 0 | --[3] | --[4] | 0 |

NOTES:

1. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
2. The 0% rate applies if the beneficial owner of the dividends is a company the capital of which is wholly or partly divided into shares and which is a resident of the Netherlands and holds directly at least 50% of the capital of the company paying the dividends with respect to investments - including expansion of (current) investments - made after the entry into force of the treaty. The 5% rate applies if the beneficial owner of the dividends is a company which is a resident of the Netherlands, the capital of which is wholly or partly divided into shares and that holds directly less than 50% of the capital of the company paying the dividends.
3. Uganda-sourced interest derived by a Zambian resident shall be exempt from tax in Zambia, unless it is not subject to tax in Uganda.
4. Any royalty or rent received by or accrued to a Zambian resident by virtue of the use in Uganda shall be exempt from tax in Zambia if such royalty or rent is subject to tax in Uganda.

# UKRAINE

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Kyiv | Sviatoslav Biloblovskiy | +38 044 501 25 31<br>pkf@pkf.kiev.ua |

## BASIC FACTS

| | |
|---|---|
| Full name: | Ukraine |
| Capital: | Kyiv |
| Main languages: | Ukrainian |
| Population: | 43.50 million (2021 estimate) |
| Monetary unit: | Ukrainian Hryvnia (UAH) |
| Internet domain: | .ua |
| Int. dialling code: | +380 |

## KEY TAX POINTS

- The Tax Code of Ukraine determines taxable profits as net profits before tax as per the accounting records, either Ukrainian statutory or International Financial Reporting Standards (IFRS), and adjusted for “tax differences”. Companies with total revenue from all types of business activities not exceeding UAH 20 million are allowed to define taxable profits without taking “tax differences” into consideration.
- Companies generally pay corporate income tax (CIT) at a flat rate of 18%. Special tax rates apply to certain types of businesses. Additional rates of 0% or 3% apply to qualified insurance activities. Income (profit) of a non-resident derived from Ukrainian sources is taxable at a rate of 0%, 4%, 6%, 12%, 15% or 20%.
- Value Added Tax (VAT) is currently levied at a rate of 20% on the taxable value of domestic supplies, services and imported goods. The rate on exported goods is 0%. The VAT rate on supply of medicines and medical devices is 7%.
- Ukrainian tax residents are subject to personal income tax (PIT) on their worldwide income, whereas non-residents are only subject to taxation on the Ukrainian-sourced portion of their income. The tax rate varies from 0% to 18% of the tax base and depends on the type of income. The standard applicable rate for PIT is 18%.
- All types of income subject to PIT are also subject to military duty. The rate of this duty is 1.5% of the taxable income.

- When paying wages (or similar payments) the source of payment needs to accrue for and transfer a single contribution for mandatory state social insurance (SC) to the Budget. The rate is set at a standard 22% while a reduced rate may apply for some categories of individuals.
- Legal entities and individuals (including non-residents) are the payers of property tax. Property tax is divided into real estate tax, other than land plot, land tax and vehicle tax. The real estate tax rates are set by local self-government bodies at a percentage (not exceeding 1.5%) of minimum salary, established by law as of 1st January of the tax (reporting) year, per 1 sq. metre of tax base. The land tax rate is established at a percentage as well by local self-government bodies. However, the tax base is the monetary valuation of the land plot and the tax rate cannot exceed 3%.

## A. TAXES PAYABLE

### COMPANY TAX

The tax that companies pay is known as corporate income tax (CIT). Currently, this tax is calculated at a flat rate of 18%. At the same time, special tax rates apply to certain types of businesses.

For insurance activities, there is an additional tax, which is 3% on the amount of insurance contracts from the tax object. The rate of this additional tax for the contracts with term life insurance, a voluntary health insurance and insurance contracts within the non-state pension is 0%. Additional rates of 10% or 18% are applied to income concerning gambling or bookmaking activities.

The CIT rate on income derived from lottery activities is 30%.

Income (profit) of a non-resident derived from Ukrainian sources is taxable at a rate of 15% (basic rate for non-resident`s income), 0% (insurance activities), 4% (insurance activities), 6% (freight), 12% (insurance activities) or 20% (advertising activities).

The reporting period for entities with income for the previous year exceeding UAH 20 million is defined as a quarter. For other taxpayers it is a year.

Restrictions apply to transactions between related parties and transactions with non-residents from “low-tax” jurisdictions. Transactions between such parties with an amount exceeding UAH 10 million are considered as “controlled”. At the same time the total taxable income of the entity should exceed UAH 150 million.

The taxable base for such transaction should be comparable to the taxable base of similar transactions performed by non-related parties (transfer pricing rules are based on the OECD approach).

### CAPITAL GAINS TAX

There is no separate capital gains tax.

### BRANCH PROFITS TAX

There is no special profits tax on branches of foreign companies in Ukraine. Permanent establishments of foreign companies are CIT taxpayers in Ukraine.

### VALUE ADDED TAX (VAT)

VAT is levied on the sale of most merchandise and services and on imported/exported goods and services.

The taxable base for VAT is defined as the contractual value of the goods or services supplied. At the same time, the base for taxation of supplies of goods/services cannot be less than the purchase price of goods/services. The tax base of operations of supplying manufactured goods/services cannot go below normal prices and the base of taxation of supplies of fixed assets cannot be less than the book value according to accounting, established at the beginning of the reporting (tax) period during which such operations are carried out.

VAT is currently levied at a rate of 20% of the taxable value of domestic supplies, imported goods and auxiliary services. The VAT rate on exported goods and auxiliary services is 0%. The rate on supply of medicines and medical devices on the list approved by the Cabinet of Ministers of Ukraine is 7%.

Ukrainian VAT legislation for the taxation of services applies the concept of “place of supply”. Only supplies of goods/services with a place of supply in Ukraine are subject to VAT in Ukraine.

In general, services rendered within the Customs territory of Ukraine are taxed at the general VAT rate, regardless of whether they are rendered to residents or non-residents. However, there are certain exceptions to this rule. Certain transactions are exempt from VAT and are not subject to VAT.

If entities meet certain criteria, they may be subject to mandatory registration as VAT payers. One such criterion is the volume of taxable supplies of goods/services during the previous 12-month period, with the taxable threshold set at UAH 1 million. However, if an entity’s volume of taxable supplies in this period was less than UAH 1 million, then it can opt to register voluntarily. There is no mechanism for a non-resident to register for VAT purposes without a PE in Ukraine. Accordingly, any Ukrainian VAT incurred by a non-resident is non-recoverable.

If an entity imports goods to Ukraine in taxable quantities, it is obliged to pay VAT during the customs clearance process without the need to register as a VAT payer.

In addition to taxable entities, the Tax Code of Ukraine defines the concept of a tax agent (individual responsible for accruing and withholding VAT) and states that, when non-residents provide services that are qualified as taxable supplies in Ukraine, VAT should be accrued and remitted to the budget by the Ukrainian customer.

For VAT accounting purposes, the so-called “first event” rule is normally used. According to this rule, output and input VAT on domestic sales are assessed on the first of the following events: the date on which goods/services are supplied/received or the date on which payment is received/paid.

In general, the tax period for VAT purposes is a calendar month. Entities liable to pay VAT must therefore submit tax returns and remit VAT on a monthly basis. For some types of taxpayers, the tax period for VAT purposes is a calendar quarter (for single taxpayers).

**Electronic VAT administration**

A special electronic administration system, which includes VAT accounts for all VAT payers in the State Treasury, is used for settlement of VAT to the Budget. Both input VAT and output VAT should be reflected in this system. For these purposes, VAT accounting documents (VAT invoices) are issued electronically and are subject to mandatory registration with the Unified Register of Tax Invoices.

The aim of this system is to make VAT input of the customers (i.e. VAT payers) guaranteed by payment of VAT liabilities by the suppliers. VAT input on domestic purchases can be recognized by the taxpayer only if the supplier issued a duly registered VAT invoice. In order to register a VAT invoice, the supplier should have sufficient balance in the electronic VAT administration system. Otherwise, it may be required to transfer cash to the VAT account (i.e. to prepay their VAT liabilities).

Apart from this, there is a special procedure for temporary suspension of VAT invoice registration by the tax authorities. This procedure allows the tax authorities to suspend registering VAT invoices that meet certain risk criteria.

**VAT recovery and refunds**

Generally, VAT incurred by a registered entity on the purchase and/or importation of goods and services used for the purpose of its own business (except for VAT incurred in relation to exempt supply) may be recovered by way of a credit against output VAT. If the VAT credit exceeds VAT output, a VAT refund is available in the form of a cash payment.

## FRINGE BENEFITS TAX (FBT)

There is no separate fringe benefits tax. Both residents and non-residents are subject to personal income tax (PIT) on fringe benefits (treated as a payment-in-kind). The value of the benefits form part of the taxable employment income of individuals by grossing up for PIT.

## SOCIAL SECURITY CONTRIBUTIONS

Employers are liable to pay a single contribution for mandatory state social insurance (SC) relating to salaries and benefits paid to their employees.

The maximum SC base is capped at fifteen minimum monthly salaries and is equal to UAH 90,000 in 2021. The minimum amount of SC per month is UAH 1,320 in 2021.

The applicable SC rates are as follows:

| Type | Single contribution for mandatory state social insurance rate | |
|---|---|---|
| | **Employer's Contribution** | **Employee's Contribution** |
| Enterprises and PEs using hired labour force (labour contracts) | 22% | 0% |
| Employers paying remuneration under civil law contracts | 22% | 0% |
| PEs registered as taxpayers under the simplified tax system | 22% | |
| Individuals engaged in independent professional activities | 22% | |

There is a special reduced SC rate of 8.41%, 5.5% or 5.3% for payments to individuals with physical disabilities.

## LOCAL TAXES

There are a number of taxes at local level, including property tax (divided into real estate tax, other than land plot, land tax and vehicle tax), single tax, fee for parking of vehicles and tourist tax. In general, local taxes (except for single tax) and duties do not have a significant impact on a taxpayer's tax position.

## LAND TAX

Land tax is imposed on owners and users of land. Land tax is divided into land fee and rent. The land fee is paid by owners of land plots and the rent is paid by users of land plots (renters). The tax base is the monetary valuation of the land plot or its area.

The rate of land tax depends on the category, location, and the existence of a state valuation for each particular land plot. The land tax rate is established every year at a percentage by local self-government bodies. In general, the tax rate cannot exceed 3% (or 5%).

Land tax is calculated annually for the current year and paid annually in full (by natural persons) or monthly in equal instalments (by legal entities).

## VEHICLE TAX

A local vehicle tax shall be charged on owners (natural persons and legal entities) of passenger cars with an average market value exceeding 375 minimal salaries as of 1st January of the reporting year (i.e. UAH 2.25 million in 2021) and not older than 5 years.

The tax rate is UAH 25,000 per year for each passenger car.

Vehicle tax is calculated annually for the current year and paid annually in full (by natural persons) or quarterly in equal instalments (by legal entities).

## REAL ESTATE TAX, OTHER THAN LAND PLOT

Real estate tax, other than land plot, is imposed on owners of residential and non-residential property in Ukraine, both individuals and legal entities, including non-residents. Real estate tax rates are set by local authorities but cannot exceed 1.5% of the statutory minimum salary established as of 1st January of a reporting year per square metre of an apartment, house or non-residential real estate (for 2021, the maximum is UAH 90 per sq. metre).

Tax relief for up to 60 square metres per apartment and 120 square metres per house (this will also be the case for an individual holding more than one property item the total size of which exceeds 180 square metres) is given to individual real estate taxpayers if property is used for private purposes.

There are statutory tax exemptions (e.g. production facilities and warehouses of industrial enterprises, buildings and constructions used in agricultural production, property owned by government agencies and some types of non-profit organisations (NGOs)).

Real estate tax is calculated annually for the current year and paid annually in full (by natural persons) or quarterly in equal instalments (by legal entities).

## SPECIAL PENSION FUND CHARGES

The following special charges are payable to the State Pension Fund:

- 3%, 4% or 5% charge on the initial registration of vehicles (new cars, which are first subject to a registration with the government agency), depending on their value. In 2021, the following criteria are applicable: up to UAH 361,185 – 3%; above UAH 361,185, but not exceeding UAH 634,809 – 4%; above UAH 634,809 – 5% (the basis is the value of the new car).
- 1% charge on the acquisition of real estate payable by individuals and legal entities that purchase real estate (the base is the value of the real estate).
- 10% charge on the value of precious metals contained in jewellery during its marking on the public enterprises of assay control (the base is the value of the precious metal).

## STAMP DUTY

There is no stamp duty in Ukraine. However, special duties are imposed on certain transactions, including notarisation of contracts (state duty) and the filing of documents with the courts (court fee). In most cases, the amounts involved are nominal, although there are some exceptions.

## EXCISE TAX

Excise tax applies to certain goods imported to or produced in the Ukraine. Excisable goods include ethyl alcohol, alcoholic beverages, beer, tobacco and tobacco products, cars, car bodies, motorbikes, liquefied gas, petrol, diesel fuel, other fuel material, and electric power.

The rates of excise tax can be ad valorem (a percentage of the value of the goods), specific (in monetary units per unit of goods), or combined.

There exists a special electronic administration system for excise tax on fuel and ethyl alcohol. This system is aimed at controlling income and outcome flows of fuel and ethyl alcohol in the market. The system requires entities to issue and register excise accounting documents (excise invoices) electronically on each operation of fuel or ethyl alcohol sale, its usage for the company's needs, and for manufacturing non-excisable goods.

## CHARGE ON ENVIRONMENTAL POLLUTION

The Tax Code of Ukraine provides for an environmental tax. Environmental tax is imposed on any legal entity that discharges contaminants into the environment (air or water) or disposes of waste.

The environmental tax base depends on the amount and types of contaminants. The actual environmental tax rate depends on the type and toxicity of each contaminant. The minimum rate is UAH 0.49 per ton of contaminant, and the maximum rate is UAH 3,121,217.74 per ton.

## B. DETERMINATION OF TAXABLE INCOME

Taxable profit is defined as the financial result before tax, determined under Ukrainian accounting standards or under International Financial Reporting Standards, that is subject to several adjustments ("tax differences"). Tax differences increasing the financial result for tax purposes include the following:

- 30% of the cost of goods, fixed assets, works and services purchased from non-residents registered in low-tax and non-transparent jurisdictions, or from non-profit organizations if the amount of purchase from non-profit organisations exceeds 25 minimum salaries. This limitation does not apply if the taxpayer substantiates the arm's-length level of the expenses by preparing transfer pricing documentation.
- Royalties paid to non-residents exceeding the sum of royalty income and 4% of the taxpayer's net sales income for the preceding reporting year (excluding VAT and excise tax). In some cases, royalties are added back in full. The limitation does not apply if the taxpayer substantiates the arm's length level of the royalties by preparing transfer pricing documentation.
- Transfer pricing adjustments.
- Provisions and allowances accrued for financial accounting purposes (except salary provisions).
- Bad-debt allowances.
- Funds or cost of goods, works or services provided to non-profit organizations in an amount exceeding 4% of the taxpayer's taxable profit for the preceding year.
- Impairment of fixed assets and intangible assets.
- Expenses on repairs and reconstruction of non-production fixed assets and intangible assets.
- Non-repayable financial aid (goods/services), which was provided free of charge for the benefit of its recipients (other than duly registered non-profit organisations) that are not CIT payers or which are taxed at a 0% CIT rate.
- Losses from fines, penalties, forfeits, which were accrued in accordance with civil legislation for the benefit of entities that are not CIT payers (except for private individuals), or which are taxed at a 0% CIT rate.
- Losses from participation in the equity of other companies.
- Etc.

Industry-specific adjustments apply for banks and financial institutions. Tax loss carry forwards decrease the pre-tax financial result for CIT purposes.

If a taxpayer's income does not exceed UAH 20 million, the taxpayer may opt not to make any adjustments to the financial result before tax for CIT purposes.

According to domestic tax accounting rules, taxable items are normally recognised on the basis of the accrual method. In accordance with this method, income is generally recognised in the reporting period in which it was accrued. In general, expenses are recognised when they are incurred (i.e. upon receipt of goods or services), regardless of the period of payment. The expenses must be recognized in the reporting period in which the income related to these expenses is recognized.

Resident entities are taxed on the worldwide income they receive or accrue within the reporting period. Gross taxable income is defined as any income, from domestic or foreign sources, that is received or accrued by the taxpayer in the course of conducting any activity. This income may be in monetary, tangible or intangible form.

## DEPRECIATION

Depreciation allowances are permitted for all capital assets, including both fixed and intangible property, except for land, goodwill, fixed assets under conservation and non-business-related capital assets. For tax purposes, fixed assets are defined as assets that are designated for use in a taxpayer's business activity for more than one year and that have a value exceeding UAH 6,000.00.

According to the Tax Code of Ukraine, fixed assets are divided into 16 groups according to their minimum useful life for tax depreciation purposes.

| Groups | Fixed assets and other non-current assets included in this group | Minimum useful life, years |
|---|---|---|
| Group 1 | Plots of land | -- |
| Group 2 | Capital expenditure on land improvements unrelated to construction | 15 |
| Group 3 | Buildings | 20 |
| | Facilities | 15 |
| | Transmission devices | 10 |
| Group 4 | Machinery and equipment | 5 |
| | Computers and other automatic data processing equipment; related information read-out and printing equipment; related computer programs (except for payments for programs that are classified as royalties and/or programs treated as intangible assets); other information systems; switch boxes, routers, modules and modems; uninterrupted power supplies and means connecting them to telecommunications networks; telephones (including satellite phones), microphones and portable radio transmitters worth over UAH 6,000.00 | 2 |
| Group 5 | Motor vehicles | 5 |
| Group 6 | Instruments, devices, furniture | 4 |
| Group 7 | Animals | 6 |
| Group 8 | Perennial plants | 10 |
| Group 9 | Other fixed assets | 12 |
| Group 10 | Library funds | - |
| Group 11 | Low-cost non-current tangible assets | - |
| Group 12 | Temporary facilities | 5 |
| Group 13 | Natural resources | - |
| Group 14 | Reusable containers | 6 |
| Group 15 | Rented assets | 5 |
| Group 16 | Long-term biological assets | 7 |

For tax purposes, fixed assets are depreciated during their useful lives using one of the following four methods:

- Straight line method;
- Reducing balance method;
- Accelerated reducing balance method;
- Cumulative method.

The tax depreciation method used should correspond with the taxpayer's UAS (Ukrainian Accounting Standards) policy. Each fixed asset is accounted for separately and depreciated over its useful life, as defined in the taxpayer's tax policy, but which should be at least the minimum useful life period indicated in the Tax Code of Ukraine.



According to the Tax Code of Ukraine, intangible assets are divided into six groups. Each intangible asset should be accounted for separately and amortised using one of the abovementioned methods over its useful life, taking into consideration the minimum useful life established by the Tax Code of Ukraine.

| Groups | Fixed assets included in this group | Minimum useful life, years |
|---|---|---|
| Group 1 | Rights to use natural resources | According to the entitling document |
| Group 2 | Rights to use property | According to the entitling document |
| Group 3 | Rights to use commercial branding (trademarks, etc.) | According to the entitling document |
| Group 4 | Industrial property rights | According to the entitling document, but not less than five years |
| Group 5 | Copyrights and related rights | According to the entitling document, but not less than two years |
| Group 6 | Other intangible assets | According to the entitling document |

## STOCK / INVENTORY

Generally, stock is valued at its purchase cost. The cost of materials transferred to production may be determined by the following valuation methods: average cost, cost of item, FIFO, price of sales or standard cost.

## CAPITAL GAINS AND LOSSES

Capital gains and losses are subject to CIT at regular corporate rates.

## DIVIDENDS

Dividends paid by Ukrainian companies are subject to advanced corporate income tax (ACIT), which is calculated based on the statutory tax rate – 18%. Advance payment is calculated on the excess amount of dividends to be paid over the value of the object of taxation for the reporting year on the results of which the dividends are paid and for which the liability is paid. In the case of an outstanding liability, advance payment is calculated on the full amount of dividends to be paid. ACIT is due prior to or upon payment of dividends.

Ukrainian companies may use paid ACIT to reduce their CIT liability for future periods.

ACIT does not apply to dividends paid by the following entities:

- Dividends paid to individuals;
- Dividends paid by joint investment vehicles;
- Dividends paid to shareholders of the taxpayer's parent company, up to the amount of dividends received by the parent company from third companies;
- Dividends paid by companies whose profits are exempt from tax, up to the amount of such exempt profits in the period for which dividends are paid.

Dividends distributed to non-residents are subject to withholding tax at a rate of 15%, unless an applicable double tax treaty provides otherwise. Ukrainian CIT payers do not include dividends received from other Ukrainian CIT taxpayers that pay ACIT on their taxable profit.

## INTEREST EXPENSES

Any interest expenses incurred by a taxpayer in the course of carrying out business activities are generally deductible.

However, interest payments to non-resident related parties may be deducted only up to 30% of earnings before tax, financial expenses and depreciation charges (EBITDA) of the taxpayer, provided that the taxpayer's debt-to-equity ratio exceeds 3.5 (10 for financial institutions and companies engaged exclusively in leasing activity).

Disallowed interest expenses may, in principle, be carried forward indefinitely (subject to a 5% reduction each tax period). The deduction of payments to tax havens is limited.

## LOSSES

Tax losses may in principle be carried forward indefinitely and should be reported in CIT returns for subsequent periods as a separate deductible difference although there are specific limitations for utilising such losses in future tax periods. Losses may not be carried back.

## FOREIGN-SOURCED INCOME

Foreign-sourced income and gains are subject to CIT at the regular rate except for dividends, unless an applicable double tax treaty provides otherwise.

## INCENTIVES

Small businesses may choose to adopt the simplified tax system and become a simplified taxpayer. The simplified tax system is designed to reduce the tax and administrative burden on legal entities and private individuals. Taxpayers eligible to use this system, tax rates and permitted types of business activities are described in the table below:

| Group | Maximum annual income (UAH) | Maximum number of employees | Types of permitted activities* | Rate (%) |
|---|---|---|---|---|
| 1 (individuals) | 1,002,000 | none | Trading only with private individuals (retail sales and/or rendering of services)* | Up to 10% of monthly cost of living (UAH 227 in 2021) |
| 2 (individuals) | 5,004,000 | max 10 persons | Trading only with private individuals or other simplified taxpayers (production of goods and/or rendering of services except for certain types of operations)* | Up to 20% of minimum monthly salary (UAH 1,200 in 2020) |
| 3 (individuals and legal entities) | 5,000,000 | unlimited | Any* | 3 % of income (VAT payer) 5 % of income (non-VAT payer) |
| 4 (agricultural producers) | unlimited | unlimited | For legal entities: share of agricultural commodity production in the previous tax (reporting) year is equal to or exceeds 75%** | Depends on the type of land |
| | | none | For individuals: operate exclusively as a farmer** | |

* The following business activities cannot benefit from the simplified tax system:

- Gambling establishments;
- Exchange of foreign currencies;
- Production, export, import and sale of excisable goods;
- Extraction, production and realisation of precious metals and precious gems;
- Extraction and realisation of mineral resources;
- Financial services except insurance;
- Management of enterprises;
- Postal and connection services;
- Sales of works of art, antiques;
- Touring events businesses;
- etc.

Legal entities and individuals using the Simplified Tax System are exempt from the following taxes:

- Corporate Profits Tax;
- Personal Income Tax (on income of individual entrepreneurs only);
- Value-Added Tax (except for those opting to be VAT payers);
- Property tax (only land tax);
- Rent for special use of water (4-th group).

** Entities that carry out activities for the production of excisable goods other than wine grape cannot opt for the simplified tax system.

## C. FOREIGN TAX RELIEF

Tax residents are allowed to offset foreign taxes paid in respect of the income received abroad against their Ukrainian tax liabilities if it is provided by a double tax treaty (DTT) between Ukraine and the relevant foreign state. The amount of foreign tax credit is limited to the amount of Ukrainian tax that would arise from the same income in Ukraine. To claim a tax credit, the taxpayer must obtain an official confirmation of the amounts of income subject to tax abroad and the tax paid thereon, issued/verified by the relevant foreign tax authority.

## D. CORPORATE GROUPS

There is no group taxation.

## E. RELATED PARTY TRANSACTIONS

The Tax Code of Ukraine adheres to the main standards of the OECD Guidelines. It requires certain transactions to be recognised as “controlled transactions” (CT) which must be performed according to the arm’s-length principle and are subject to control by the tax authorities.

The following business transactions carried out by Ukrainian taxpayers are deemed to be controlled (if they have an influence on the corporate income tax base):

- Transactions with non-resident related parties;
- International transactions on the sale of goods and/or services through non-resident commission agents;
- Transactions with non-residents that do not pay CIT and/or are not tax residents of the country where they are registered as legal entities and are incorporated under specific legal forms (the list of such legal forms of non-residents has been approved by the Cabinet of Ministers. This list currently includes 104 specific legal forms from 26 countries);
- Transactions with non-residents (both related and non-related parties) registered in a jurisdiction listed by the Cabinet of Ministers (the full list of low tax jurisdictions now includes 79 jurisdictions), i.e.:
    - a state (territory) where the income tax rate is lower than in Ukraine by at least 5 percentage points;
    - a state which is not a party to international agreements with Ukraine containing provisions on information exchange;
    - a state, where the respective agencies do not provide for timely and full exchange of tax and financial information at the request of tax agencies;
- Business transactions (including intrafirm settlements), between a non-resident and its permanent representative office in Ukraine.



Transactions stated above (except for transactions between a non-resident and its permanent representative office in Ukraine) are treated as CT, if both of the following conditions are met:

- The annual income of a taxpayer from any activities, defined in accordance with the accounting standards, exceeds UAH 150 million (net of indirect taxes) for the reporting year;
- The volume of such transactions of the taxpayer with one counterparty, as defined under the accounting standards, exceeds UAH 10 million (net of indirect taxes) for the reporting year.

Transactions between a non-resident and its permanent representative office in Ukraine are treated as CT, if the volume of such transactions, as defined under the accounting standards, exceeds UAH 10 million (net of indirect taxes) for the reporting year.

Based on OECD rules, Ukrainian TP rules provide for five methods to determine whether the conditions of commercial and financial relations between related parties satisfy the arm’s length principle:

- Comparable uncontrolled price method;
- Resale price method;
- “Cost plus” method;

- Transactional net margin method;
- Profit split method.

The comparable uncontrolled price method has priority. In cases where the resale price method, "cost plus" method, net margin or profit split methods may be applied by the taxpayer with the same reliability, the resale price or "cost plus" method shall be used.

The deadline for submitting the report on controlled transactions is stated as 1st October of the year following the reporting year. Transfer pricing documentation should be submitted at the request of the Ukrainian tax authorities within 30 days.

The transfer pricing documentation should contain the following information:

- Comprehensive information about parties of CT and taxpayer`s related parties, including information on entities, which are owned 20% or more by the taxpayer (either directly or indirectly) and information on entities-owners of 20% or more in the taxpayer (either directly or indirectly);
- Information about the group (parent company and subsidiary companies), including: structure, description of activities, group transfer pricing policies, information on entities which the taxpayer provides with local management reports (names of the countries in which these entities hold their head offices);
- Description of the management structure of the taxpayer, its organizational structure scheme and number of employees;
- Description of business and strategy of business, implemented by the taxpayer, in particular, economic terms of business, analysis of respective markets of goods (works, services), where the taxpayer operates, major competitors;
- Information about the taxpayer's participation in business restructuring or transfer of intangible assets during the reporting or preceding year, with an explanation of the aspects of those operations that had or still have an impact on the operations of the taxpayer;
- Description of the CT and copies of the agreements (contracts);
- Description of goods (work, services), including physical characteristics, quality and reputation in the market, country of origin and manufacturer, trademarks, etc.;
- Information about the payments actually made in the CT (amounts and currency of payment, date, payment documents);
- Factors that impact the price, in particular business strategies of the parties (if any);
- Functional analysis of the CT: information on the functions of CT`s parties and assets which they used and which are associated with such CT, and economic (commercial) risks taken into account by such persons in the implementation of the CT;
- Economic and comparative analysis: amount of income or expenses, profitability level; transfer pricing method applied, its substantiation; information about and approach to selection of comparables data and sources of information; substantiation of use of information for several tax periods (years) during calculation of profitability range and calculation of average weighted profitability index (if any); profitability level calculation of the arm's-length price or profitability range; description and calculation of adjustments of terms in controlled and comparables transactions (if any) etc.;
- Information about adjustments of tax base and tax amount made by the taxpayer (if any);
- etc.

The terms for selection of comparable companies are specified in the Tax Code of Ukraine. One may use information on comparable companies in order to determine profitability level subject to all the following conditions being met:

- A comparable company conducts activities comparable to the activities of the taxpayer and performs comparable functions (comparability of activities is determined under national and international classifiers);
- A comparable company does not have losses according to accounting (financial) statements in more than one reporting period out of all periods used for the calculation of financial indicators;
- A comparable company does not own, directly and indirectly, more than 20% of corporate rights in another legal entity or does not have as a participant (shareholder) a legal entity with a direct/indirect participatory share of more than 20%.

Criteria for grouping several CTs for TP purposes are also prescribed. The principle of grouping allows to unifiy several CTs (to confirm that the arm's-length principle has been applied), subject to the following conditions: such transactions are interconnected or they are a continuation to each other or have a continuous or regular nature.

An option of concluding an advance pricing agreement (APA) with the Ukrainian tax authorities is available to large taxpayers, whereby an approach to pricing in CTs can be agreed upon with the tax authorities in advance. APAs should guarantee that the tax authorities accept the selected transfer pricing methodology for CTs.

To monitor a taxpayer's compliance with TP rules, the Ukrainian tax authorities are authorised to conduct specialised TP audits. The tax authorities have a right to audit CTs and request TP documentation to be presented for review for a period of seven years following the date of submission of the report on CTs.

**Implementation of BEPS**

As from 2017, Ukraine has joined the implementation of the Base Erosion and Profit Shifting (BEPS) action plan and is gradually trying to introduce it in its own national legislation.

On 16 January 2020, the Verkhovna Rada of Ukraine adopted Law on amendments to the Tax Code related to the improvement of tax administration and elimination of technical and logical inconsistencies in the tax legislation (Draft Law No. 1210 of 30 August 2019).

The Law is mainly aimed at BEPS implementation, i.e. changes:

- on transfer pricing regulations (including 3-level TP-documentation);
- introduction of controlled foreign companies ("CFC") regulations;
- introduction of a mechanism to collect capital gains tax from a non-resident-seller;
- on thin capitalisation rules;
- on tax status of foreign companies (they will be deemed Ukrainian tax residents for corporate income tax purposes);
- etc.

The Law have not been came into force, yet. It is waiting for President`s adoption and signing.

## F. WITHHOLDING TAX

The domestic withholding tax rates (CIT) are set out in the table below (although more favourable treaty rates may apply). In order to benefit from any applicable treaty relief, a non-resident company should provide the Ukrainian taxpayer with a residency certificate issued annually by the tax authorities of their country of residence. The amount withheld should be remitted to the government when the income is paid to the non-resident company.

| Income from Ukrainian sources | Withholding CIT rate |
|---|---|
| Dividends | 15% |
| Interest | 15% |
| Royalties | 15% |
| Income from international freight transportation | 6% |
| Other Ukrainian-sourced income | 15% |

A special tax is levied on insurance and advertising income payable from the Ukraine to non-resident companies. This tax should be accrued for on top of the income from Ukrainian sources payment (i.e. the gross amount) at the following rates and is non-recoverable at the level of the taxpayer (see table below).

| Income from Ukrainian sources | CIT rate |
|---|---|
| Insurance income | 0% / 4% / 12% |
| Income from advertising services | 20% |

## G. EXCHANGE CONTROLS

Currency operations that take place in Ukraine fall under state currency control regulations, a key feature of which is the concept of residency.

Only the local currency (UAH) may be used in business transactions between residents. Residents and non-residents involved in international trade and investment transactions generally use a foreign currency.

Ukrainian legislation establishes the freedom of currency transactions as the main principle of regulation of currency transactions. It further provides for key principals of regulation in the fields of licensing in the financial services market, monitoring of currency transactions and liability for offences.

Foreign currency proceeds received by a company from its foreign clients must be credited to a local bank account within 365 days of the export date of the goods (export transactions). Failure to comply with this provision will result in the Ukrainian company being liable to pay a penalty of 0.3% of the proceeds for each day of delay.

Goods must be imported into Ukraine within 365 days of prepayments being made by a Ukrainian company to its suppliers (import transactions). Failure to comply with this provision will result in the Ukrainian company being liable to pay a penalty of 0.3% of the proceeds for each day of delay.

These terms (concerning enrolment within 365 days) are not being applied if the transaction amount is lower than UAH 400,000 (approximately USD 14,285 or EUR 12,120).

In order to further facilitate business activities in Ukraine, in 2019 the National Bank of Ukraine lifted the surrender requirement of a share of foreign currency proceeds. Cash receipts in foreign currency received by entities from abroad are therefore not subject to mandatory sale on the foreign exchange market.

At the same time, several temporary restrictions may be imposed on cross-border payments in foreign currency.

## H. PERSONAL TAX

The Personal Income Tax (PIT) base for Ukrainian and foreign nationals depends on their tax residency status. Ukrainian tax residents are subject to PIT on their worldwide income, whereas non-residents are only subject to taxation on the Ukrainian-sourced portion of their income. The Tax Code of Ukraine also provides for a self-recognition procedure, according to which an individual can voluntarily elect to be a Ukrainian tax resident. Domestic laws provide tax residency rules and these provisions may be overruled by the respective provisions of relevant double tax treaties.

The following PIT rates are generally applied:

- 18% - general rate for the income of tax residents and the Ukrainian-sourced income of non-residents.
- 0% - on inheritance from immediate family members, income from the sale of qualifying residential property and plots of land not exceeding the limit for free land transfers (provided that the property has been in ownership for more than three years).
- 5% - on income from the sale of commercial property; income from the second and subsequent sales of residential property within one reporting year; income from the sale of movable property by its owner, other than the first sale of a vehicle; income from the sale of plots of land over the maximum area for free land transfers; on dividends issued by a resident issuer (except accrued dividends on shares and/or investment certificates); and on inheritance paid to non-relatives.
- 9% - on dividends accrued for on shares and/or investment certificates, issued by a non-resident or a resident CIT non-payer.

The Tax Code of Ukraine also provides for a list of items that must be included in an individual’s taxable income. These include, among other things, salary, gifts, insurance contributions and premiums, rental income and fringe benefits. Contributions to unqualified pension plans made on behalf of a taxpayer by another person/an employer will also be included into an individual’s taxable income. Income received from the sale of real estate is not taxable if the property is sold only once during a calendar year, regardless of the size of property. Revenue earned from the sale of a house, apartment, part of an apartment, room or cottage (including the plot of land, on which it is located) is:

- Not subject to tax if sold only once during a calendar year, and if the property has been owned for more than three years; or,
- Subject to 5% tax, which is levied on the amount received for a second sale of the property within a reporting year.

Foreign individuals, who are considered Ukrainian tax residents, are taxed in the same manner and according to the same rules as Ukrainian citizens.

## I. MILITARY DUTY

All types of income subject to PIT are also subject to military duty. The rate of this duty is 1.5% of taxable income.

## J. TREATY AND NON-TREATY WITHHOLDING TAX RATES

As of December 2020, Ukraine has up to 75 double tax treaties in effect. Withholding taxes on interest, dividends and royalties are typically reduced by tax treaties. A summary of withholding rates under the various treaties is provided in the table below. But it should be noted that in every specific case the terms and conditions of the treaty in question need to be examined. Taxpayers do not require confirmation from the tax authorities before claiming relief under a treaty. However, the withholding agent must hold a certificate of residence from the treaty country for the person to whom income is paid.

In addition to the above, the Tax Code of Ukraine requires the recipient of all types of income from the Ukraine to be the beneficial owner (actual recipient) of the respective income. Agents, nominee holders and other intermediaries in respect of the received income cannot be beneficial owners of income sourced in Ukraine, and, therefore, are not entitled to favourable treaty provisions.

| | **Dividends (%)** | | **Interest[2] (%)** | **Royalties[3] (%)** |
|---|---|---|---|---|
| | **Qualifying companies[1]** | **Companies, individuals** | | |
| **Domestic rates:** | | | | |
| Non-resident individuals | -- | 5[4] | 18 | 18 |
| Non-resident corporations | 15 | 15 | 5/15[15] | 15 |
| **Treaty rates:** | | | | |
| Algeria | 5 | 15 | 0/10 | 10 |
| Armenia | 5 | 15 | 10 | --[5] |
| Austria | 5 | 10 | 2/5 | --/5[5] |
| Azerbaijan | 10 | | 10 | 10 |
| Belarus | 15 | | 10 | 15 |
| Belgium | 5 | 15 | 2/5 | --/5[5] |
| Brazil | 10 | 15 | 15 | 15 |
| Bulgaria | 5 | 15 | 10 | 10 |
| Canada | 5 | 15 | 0/10 | --/10[5] |
| China | 5 | 10 | 10 | 10 |
| Croatia | 5 | 10 | 10 | 10 |
| Cyprus[6] | 5 | 10 | 5 | 5/10 |
| Czech Republic | 5 | 15 | 0/5 | 10 |
| Denmark | 5 | 15 | 0/10 | --/10[5] |
| Egypt | 12 | | 0/12 | 12 |
| Estonia | 5 | 15 | 10 | 10 |
| Finland | 0/5 | 15 | 5/10 | --/5/10[5] |
| France | --/5[5] | 15 | 2/10 | --/10[5] |
| Georgia | 5 | 10 | 10 | 10 |
| Germany | 5 | 10 | 2/5 | --/5[5] |
| Greece | 5 | 10 | 0/10 | 10 |
| Hungary | 5 | 15 | 10 | 5 |
| Iceland | 5 | 15 | 10 | 10 |
| India | 10 | 15 | 0/10 | 10 |
| Indonesia | 10 | 15 | 0/10 | 10 |
| Iran | 10 | | 10 | 10 |
| Ireland | 5 | 15 | 0/5/10 | 5/10 |
| Israel | 5/10 | 15 | 5/10 | 10 |
| Italy | 5 | 15 | 0/10 | 7 |
| Japan[7] | 15 | | 10 | 0/10 |
| Jordan | 10 | 15 | 10 | 10 |
| Kazakhstan | 5 | 15 | 10 | 10 |
| Korea (South) | 5 | 15 | 0/5 | 5 |
| Kuwait | 5 | | --[5] | 10 |
| Kyrgyzstan | 5 | 15 | 10 | 10 |
| Latvia | 5 | 15 | 10 | 10 |

| | Dividends (%) | | Interest[2] (%) | Royalties[3] (%) |
|---|---|---|---|---|
| | Qualifying companies[1] | Companies, individuals | | |
| Lebanon | 5 | 15 | 0/10 | 10 |
| Libya | 5 | 15 | 10 | 10 |
| Lithuania | 5 | 15 | 10 | 10 |
| Luxembourg | 5 | 15 | 5/10 | 5/10 |
| Malaysia[7,8] | -- | | 0/15 | 10/15 |
| Malta | 5 | 15 | 10 | 10 |
| Mexico | 5 | 15 | 10 | 10 |
| Moldova | 5 | 15 | 0/10 | 10 |
| Mongolia | 10 | | 10 | 10 |
| Morocco | 10 | | 10 | 10 |
| Netherlands | --/5[5] | 15 | 2/10 | --/10[5] |
| North Macedonia | 5 | 15 | 10 | 10 |
| Norway | 5 | 15 | 0/10 | 5/10 |
| Pakistan | 10 | 15 | 10 | 10 |
| Poland | 5 | 15 | 10 | 10 |
| Portugal | 10 | 15 | 0/10 | 10 |
| Qatar[9] | 5 | 10 | 5/10 | 5/10 |
| Romania | 10 | 15 | 10 | 10/15 |
| Russia[16] | 5 | 15 | 10 | 10 |
| Saudi Arabia | 5 | 15 | 10 | 10 |
| Serbia and Montenegro[10] | 5 | 10 | 0/10 | 10 |
| Singapore[13] | 5 | 15 | 0/10 | 7.5 |
| Slovakia | 10 | | 10 | 10 |
| Slovenia | 5 | 15 | 5 | 5/10 |
| South Africa | 5 | 15 | 0/10 | 10 |
| Spain[7] | 18 | | --[5] | --/5[5] |
| Sweden | --/5[5] | 10 | 10 | --/10[5] |
| Switzerland[11] | 5 | 15 | --/10[5] | --/10[5] |
| Syria | 10 | | 10 | 18 |
| Tajikistan | 10 | | 10 | 10 |
| Thailand | 10 | 15 | 10/15 | 15 |
| Turkey[12] | 10 | 15 | 10 | 10 |
| Turkmenistan | 10 | 10 | 10 | |
| United Arab Emirates | --/5[5] | --[5] | 0/3 | --/10 |
| United Kingdom[14] | --/5[5] | 15 | 5 | 5 |
| United States | 5 | 15 | --[5] | 10 |
| Uzbekistan | 10 | | 10 | 10 |
| Vietnam | 10 | | 10 | 10 |

Notes:

1. The ownership threshold for qualifying companies is 10%, 20%, 25% etc. depending on the specific provisions in the treaty.
2. According to certain treaties, interest paid to or guaranteed by the government of the other contracting state, a political subdivision thereof or an agency (including a financial institution) wholly owned by that government or political subdivision are exempt from tax.
3. If more than one rate is shown, this means that the rate will depend on the type of royalties paid.
4. Dividends received from resident corporate income taxpayers are subject to a 5% withholding tax rate.
5. "-" means that income is taxable in the country of residence of the recipient of income.
6. The countries signed a Protocol on amendments to the treaty, which entered into force on 28 November 2019 and is effective as of 1 January 2019.
7. The treaties with Japan, Malaysia, and Spain were entered into by the USSR before it dissolved. Ukraine will continue to honour these treaties, unless they are superseded.
8. The countries signed a new treaty, but it did not yet enter into force (date of signing: 4 August 2016; ratification date for Ukraine: 30 October 2019).
9. Effective date: 1 January 2020.
10. The treaty with Yugoslavia applies to the republics that formerly comprised Yugoslavia.
11. The countries signed a Protocol on amendments to the treaty, which entered into force on 16 October 2020 and is effective as of 1 January 2021.

12. The countries signed a Protocol on amendments to the treaty, which entered into force on 30 November 2020 and is effective as of 1 January 2021.
13. The countries signed a Protocol on amendments to the treaty, which entered into force on 4 March 2020 and is effective as of 1 January 2020.
14. The countries signed a Protocol on amendments to the treaty, which entered into force on 5 December 2019 and is effective as of 1 January 2020.
15. As from 1 January 2019 a reduced 5% rate applies to interest payable under qualifying debt securities (previously exempt), subject to certain conditions.
16. According to a press release of 29 April 2022, published by the Ukraine Ministry of Finance, the Ukrainian government agreed on a draft law to denounce the Russia-Ukraine double tax treaty.

## UNITED ARAB EMIRATES

### MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Dubai | Stany Pereira | +971 4 3888 900<br>dubai@pkfuae.com |
| Dubai | Sarika Dhameja | +971 4 3888 900<br>sdhameja@pkfuae.com |

### BASIC FACTS

| | |
|---|---|
| Full name: | United Arab Emirates (referred to as “UAE”) |
| Capital: | Abu Dhabi |
| Main languages: | Arabic |
| Population: | 10.08 million (2022 estimate) |
| Monetary unit: | UAE Dirham (AED) |
| Internet domain: | .ae |
| Int. dialling code: | +971 |

### KEY TAX POINTS

- There are currently no taxes levied by the Federal Government on income or wealth of companies and individuals. However, most Emirates have issued tax decrees of general application.
- The tax decrees issued by the Emirates impose income tax at varying rates on taxable income of ‘bodies corporate, wheresoever incorporated’, but the enforcement is generally limited to foreign oil exporting companies and foreign banks.
- However, the UAE Ministry of Finance (‘MOF’) has made an announcement in January 2022 that the UAE will introduce Federal Corporate Tax (‘UAE CT’) (applicable across all Emirates) on UAE businesses at the rate of 9% on accounting net profits (after certain adjustments) above AED 375,000. It is proposed that the UAE CT regime will be effective for financial years starting on or after 1 June 2023.
- Only an initial introduction to the proposed UAE CT law is announced, while the UAE CT legislation is being finalised.
- In the above announcement, a requirement of compliance with the transfer pricing rules and documentation requirements, as set out in the OECD Transfer Pricing Guidelines (“OECD TPG”), are also communicated.
- There are no withholding taxes on outbound remittances, whether of dividends, interest, royalties or fees for technical services etc. from businesses operating in the UAE. Even under the proposed UAE CT regime, it is clarified that withholding tax will not be applicable on domestic and cross-border payments of any nature.
- UAE free zones, which permit 100% foreign ownership, grant specific tax exemptions ranging from 15 to 50 years to companies operating in the free zones. There are more than 40 free zones around the UAE. It is clarified in the announcement that these benefits would continue subject to fulfilment of certain conditions.
- There are no personal taxes except municipal taxes ranging from 2% to 7.5% on the annual rental of residential property(ies).
- 5% VAT is applicable on supply of most goods and services.
- The UAE levies excise tax on tobacco and tobacco products, carbonated drinks, energy drinks, sweetened drinks, electronic smoking devices and tools as well as liquids used in such devices and tools.
- 100% foreign ownership of companies in the UAE mainland is now permitted, subject to fulfilment of certain conditions.
- Long term visas for 5 years or 10 years are available to specified categories of persons, which shall be renewed automatically.
- The UAE has entered into and concluded Double Taxation Avoidance Agreements (“DTAA”) with over 135 countries/ jurisdictions.
- As part of the Organisation for Economic Co-operation and Development’s (“OECD”) Base Erosion and Profit Shifting (“BEPS”) Inclusive Framework, the UAE became a signatory to the OECD’s BEPS Multilateral Convention (“MLI”) in 2018 and deposited the instrument of ratification in May 2019. The UAE’s DTAAs with member countries/ jurisdictions may therefore stand modified.
- During the year 2021, the DTAAs with Egypt (New), Indonesia (New), Cameroon, Costa Rica, Zimbabwe, Brazil, Nigeria and Israel have entered into force. The UAE has also entered into new DTAAs with the Democratic Republic of the Congo (DRC) and Monaco during the year, however, these are yet to enter into force.

- Until 2021, the UAE had not signed any DTAAs with any other GCC states, except for the Kingdom of Saudi Arabia ("KSA"). The DTAA signed between the KSA and the UAE was made effective from 1 January 2020.
- In line with BEPS Action 5 on Countering Harmful Tax Practices, the UAE has introduced Economic Substance Regulations ("ESR") with effect from April 2019. These regulations require all in-scope UAE entities that carry out prescribed Relevant Activities and earn income out of such Relevant Activities to have economic substance in the UAE commensurate with the level of activities they undertake.
- In line with BEPS Action 13 on three-tier Transfer Pricing Documentation, the UAE has issued Country-by-Country Report ("CBCR") Regulations with effect from January 2019 applicable only to Multinational Enterprises ("MNEs") headquartered in the UAE.
- The UAE has also given its endorsement to the BEPS 2.0 Pillar 2 (Global Minimum Tax) approach, as an Inclusive Framework member. Accordingly, large multinationals in the UAE would likely be subject to a different tax rate under the UAE CT regime.

## FEDERAL TAXES AND LEVIES

## DIRECT TAXES

Proposed UAE CT regime

On 31 January 2022, the MOF has announced that the UAE will introduce UAE CT (applicable across all Emirates) on accounting net profits (after certain adjustments) that will be effective for financial years starting on or after 1 June 2023.

This is only an initial introduction to the proposed UAE CT law while the UAE CT legislation is being finalised. Details about the proposed UAE CT regime are set out in the press release and the Frequently Asked Questions ('FAQs') published on the website of the MOF and Federal Tax Authority ('FTA').

The key aspects of the CT regime, as announced, in the UAE are given below:

### Tax rate

A progressive UAE CT regime is proposed as follows:

| Net accounting profits after making certain adjustments | Proposed UAE CT rate |
|---|---|
| Nil – 375,000 | 0% |
| 375,000 and above | 9% |

These UAE CT rates would be different for large multinational entities that are covered by OECD BEPS 2.0, as part of the Pillar Two initiative.

### Tax base for applicability of UAE CT

The UAE CT rate is proposed to be applied on accounting net profits reported in the financial statements which are prepared in accordance with internationally acceptable accounting standards, after making the specified adjustments that will be prescribed in the UAE CT law.

### Exempt income

Dividends and capital gains earned by a UAE business from its qualifying shareholdings, and income from qualifying intra group transactions and reorganisations will be exempt from UAE CT, subject to fulfilment of certain conditions (which are yet to be announced).

### Effective from

UAE CT will be effective for financial years starting on or after 1 June 2023. The MOF as part of its FAQs has further explained it by way of the following examples:

| Businesses having the following financial years | UAE CT will be effective from |
|---|---|
| Starting from 1 July 2023 and ending on 30 June 2024 | 1 July 2023 |
| Starting on 1 January 2023 and ending on 31 December 2023 | 1 January 2024 |

### Businesses covered under the proposed CT regime

The proposed UAE CT regime will be applicable to all UAE businesses and commercial activities of legal entities (except those undertaking extraction of natural resources, which will be subject to respective Emirate level corporate taxation).

It will also apply to all individuals having a business licence (or who are otherwise required to obtain one) to carry out the commercial/professional activity in the UAE. However, UAE CT shall not apply to an individual's income from employment, real estate, investments in shares, interest and other income earned from bank deposits or saving 'schemes or other personal income not related to a UAE trade or business.

Foreign entities and individuals, on their trade or business conducted in the UAE in an ongoing or a regular manner shall also get covered under the proposed UAE CT regime. However, UAE CT may not apply to a foreign investor's income from dividends, capital gains, interest, royalties and other investment returns.

### Introduction of Transfer Pricing ('TP') rules

UAE businesses will be required to comply with transfer pricing rules and documentation requirements as set out in the OECD TPG.

### Administration and compliance

- The FTA will be responsible for the administration, collection, and enforcement of UAE CT. The UAE MOF will be the competent authority for purposes of bilateral/multilateral agreements and the international exchange of information for tax purposes.
- An electronic annual UAE CT return per financial period is proposed as part of the compliance requirement. No provisional or advance UAE CT filings would be required.

U

- There would be no requirement to make any advance UAE CT payments.
- Penalties shall be imposed on non-compliance.
- Registration process and on-going compliance procedures and obligations guidelines would be released as part of the final UAE CT legislation.

### Foreign Tax Credit

Foreign tax paid on UAE taxable income would be allowed as a tax credit against UAE CT liability.

### Carry forward and set off of losses

Carry forward and set off of prior years' losses will be allowed, subject to fulfilment of certain conditions which will be introduced as part of the final UAE CT legislation.

### Tax implications with respect to Free Zone businesses

Free Zone businesses appear to be within the scope of UAE CT and will be required to register and file a UAE CT return. However, they will continue to benefit from incentives already promised under specific free zone regulations/decrees if they comply with all regulatory requirements and do not conduct business with mainland UAE. Further, even the financial free zones will be treated at par with other free zones for UAE CT purposes.

### Applicability to Banking sector

Banking operations would be subject to the UAE CT regime. Clarity on the same would be provided in the UAE CT legislation.

### Tax Group

A 'fiscal unity' concept would be introduced for UAE CT purposes. Taxpayers will be provided with an option to form a 'tax group' and file a single CT return for entire group, Option to set off losses within the group companies (group loss utilisation rules awaited) would be made available, subject to fulfilment of certain conditions which will be introduced as part of the UAE CT legislation.

### Withholding tax

Withholding tax will not be applicable to domestic as well as cross border payments/transactions of any nature under the proposed UAE CT regime.

While the above communication provided by the MOF gives a good insight on the proposed UAE CT regime, it comes with a disclaimer that the same is to provide an initial introduction while the relevant legislation is being finalised and promulgated.

Thus, in view of the above, businesses will have to wait for the legislation and further information on the technical details/other specifics of the UAE CT regime in order to seek definitive answers and take appropriate business decisions.

### Existing Taxes

There are currently no taxes levied by the Federal Government on income or wealth of companies and individuals. However, most of the Emirates have issued tax decrees of general application. These impose income tax at varying rates on taxable income of 'bodies corporate, wheresoever incorporated'. In practice, however, enforcement of the decrees is limited to oil exporting companies and foreign banks. Corporate income tax is imposed on foreign oil companies, i.e, companies dealing in oil or oil exploration rights.

Although the tax rate applicable to oil companies is generally 55% of operating profits, the amount of tax actually paid by the oil companies is calculated at a rate agreed upon mutually on the basis of specific individual concessions between the company and the respective Emirate. The tax rate may range between 55% and 85%.

Tax on foreign banks is not enforced in all of the Emirates. Branches of foreign banks are taxed at 20% of their taxable income in the Emirates of Abu Dhabi, Dubai, Sharjah and Fujairah. The basis of taxation does not differ significantly between the various Emirates. Dubai, Sharjah and Fujairah have issued specific tax legislation for branches of foreign banks, while Abu Dhabi does not have a specific decree. Special arrangements also exist for major government-controlled joint venture companies and some foreign banks. No tax returns are requested or required of other businesses operating in the UAE. Also, there are no withholding taxes on outbound remittances, whether of dividends, interest, royalties or fees for technical services, etc. from other businesses operating in the UAE.

In view of the above, detailed consideration is not given to the existing income tax decrees. Companies establishing major ventures in the UAE might, however, be well advised to seek formal tax exemptions from the respective ruler in order to avoid future assessments, especially considering the proposed new UAE CT regime. UAE free zones, which permit 100% foreign ownership, presently grant specific tax exemptions ranging from 15 to 50 years to companies operating in the free zones.

## B. INDIRECT TAXES

**Municipal taxes, customs and other levies**

Municipal taxes are charged in all the Emirates. For example, in Dubai, a 7% municipal tax is charged on hotel revenues and entertainment. Municipal taxes on renting of residential premises range from 2% in Ajman to 5% in Dubai and in Abu Dhabi – 5% for all premises other than Residential Villas, and 7.5% for Residential Villas. Customs (import) duties are levied generally at a rate of 5% but there are many items which are duty exempt such as medicines, most food products, capital goods and raw material for industries etc. Imports by free zone companies are also exempted unless products move outside the zone. If the products are moved outside the zone, Customs Duty is levied at 5%.

After the introduction of the new uniform customs tariff on 1 January 2003, all non-Gulf Co-operation Council (GCC) products, except for those exempted, are subject to 5% Customs Duty, while the products of GCC countries shall enter into each other's markets free of customs duties. Products are considered as originating in a GCC country if the value added to such product in the said country is more than 40% of the value of the product in question and if the factory that manufactured the product is at least 51% owned by GCC nationals.

In the event of re-export to non-GCC countries, a customs deposit has to be made and this will be refunded when proof of re-export is given to the authorities. In the event of re-export to GCC countries, customs duty at 5% will be levied at the first point of entry. The provisions of the GCC Customs Union have applied since 1 January 2003.

**Federal Tax Authority**

The FTA was set up as the government entity responsible for the collection and management of federal taxes in the UAE. The FTA works in conjunction with the UAE MOF.

**Excise tax**

In line with the GCC unified agreement on excise tax and effective from 1 October 2017, the UAE implemented an excise tax on carbonated drinks, tobacco products and energy drinks. Also, the UAE Cabinet adopted Cabinet Decision No. 52 of 2019 expanding the list of excise taxable products to include sweetened beverages, electronic smoking devices and liquids used in electronic smoking devices and tools, starting 1 December 2019. Accordingly, the excise tax rates to be applied in the UAE are as follows:

| Excise goods | Tax rate |
|---|---|
| Tobacco and tobacco products | 100% |
| Liquids used in electronic smoking devices and tools | 100% |
| Electronic smoking devices and tools | 100% |
| Carbonated drinks | 50% |
| Energy drinks | 100% |
| Sweetened drinks | 50% |

The FTA has been regularly updating taxable persons with new / updated guides, public clarifications, other references etc.

## VALUE ADDED TAX (VAT)

VAT was introduced in the UAE with effect from 1 January 2018. VAT is charged in the UAE at the standard rate of 5% on most goods and services and at a zero rate for some categories of supplies such as export of goods and services, certain education services, healthcare services, and international transportation and related supplies. Residential properties other than first supply, bare land, local passenger transport and supply of some financial services are exempt from VAT.

Many of the popular free zones in the UAE like Jebel Ali Free Zone, Abu Dhabi Airport Free Zone, Sharjah Airport International Free Zone and others, that have specific fenced geographic areas, security measures and customs controls, have been included in a list of Designated Zones ("DZs") released by the FTA. These DZs have certain advantages under the VAT regime, whereby no VAT is chargeable on certain supplies of goods undertaken within such DZs or between DZs, subject to fulfilment of certain conditions.

The FTA has been regularly updating taxable persons with new/updated VAT guides, public clarifications, business bulletins etc. Hence any impacted person may be advised to always consult the latest/updated provisions.

## C. AMENDMENT TO COMMERCIAL COMPANIES LAW

In November 2021, HH Sheikh Khalifa bin Zayed Al Nahyan, President of the UAE, approved amendments to more than 40 laws in the UAE, the largest legislative reform in its history, in conjunction with the UAE's golden jubilee.

The changes were introduced to enhance the country's position as a global trade and commercial hub. Among these changes is the issuance of Federal Law by Decree No. 32 of 2021 on Commercial Companies ("New Law "), which has now come into force since 2 January 2022.

The New Law repeals and replaces Federal Law No. 2 of 2015 ("Old Law") and also consolidates the revisions made by Decree No. 26 of 2020 ("Amendment 2020"). The New Law has introduced some new concepts and certain revisions to existing structures which are listed below:

- Two new company structures – The Special Purpose Acquisition Company (SPAC) and the Special Purpose Vehicle (SPV);
- Amendments to the provisions in connection with Limited Liability Companies (LLCs); and
- Revisions to certain articles related to Public Joint Stock Companies (PJSCs).

Furthermore, Article 10 of the Commercial Companies Law ('CCL') has been revised and no longer refers to UAE national ownership restrictions. However, the New Law mentions that the Council of Ministers, based on the recommendation of the committee stipulated in clause (1) of the article of the New Law, shall issue a decision defining the activities with strategic impact and the controls for licensing any such companies including determining a certain percentage of the nationals' share in the capital or the boards of directors of all companies incorporated within the scope of its competencies

The much-awaited changes towards attracting investment into the UAE relate to the provisions for relaxing the foreign ownership restrictions. It should be noted that all the companies governed by the CCL will need to review their existing constitutional documents and should adjust their position accordingly within the stipulated time frame.



## D. STRATEGIC AND INTERNATIONAL PARTNERSHIP (INCLUDING WITHHOLDING TAX IMPLICATIONS)

The UAE has entered into and concluded Double Taxation Avoidance Agreements ("DTAA"/"Tax Treaties") with over 135 countries. The list of the countries/jurisdictions with whom the UAE has concluded a tax treaty can be found at

https://www.mof.gov.ae/en/StrategicPartnerships/DoubleTaxtionAgreements/Pages/DoubleTaxtion.aspx

The treaty with the Kingdom of Saudi Arabia ("KSA") was the first bilateral tax treaty signed between two GCC member states and it has entered into force with effect from 1 January 2020.

The tax treaties signed by the UAE may have little relevance from a UAE tax perspective as currently in the UAE there is no withholding tax on dividends, interest and royalties among others.

Also, the UAE being part of the Global Forum on Transparency has also put considerable efforts into setting up the necessary framework that helps in collecting and exchanging information and data on natural persons and legal entities licensed to operate in the UAE, including free zones.

The UAE has also signed agreements for the Protection and Promotion of Investments ("PPI") with nearly 105 countries with an objective to:

- Protect investments from all non-commercial risks like nationalisation, expropriation, sequestration and freezing;
- Allow the establishment of investments and licensing such investments;
- Confirm the free transfer of profits and other returns in a freely transferable currency;
- Grant national treatment in accordance with the laws enforced in the State, and most favoured nation treatment, with respect to management, maintenance and expansion of investments;
- Fair and prompt compensation for the investor in case of expropriation of his investment for the purpose of public interest; in accordance with the law and without discrimination, the compensation should amount to the fair market value on the investment before the expropriation;
- Set the dispute settlement procedures between the investor and the State.

The list of the countries/jurisdictions with whom the UAE has an agreement for the PPI can be found at https://www.mof.gov.ae/en/StrategicPartnerships/DoubleTaxtionAgreements/Pages/InvestorProtection.aspx

## E. ECONOMIC SUBSTANCE REGULATIONS

In line with BEPS Action 5 on Countering Harmful Tax Practices, the UAE introduced Economic Substance Regulations ("ESR") on 30 April 2019 vide Cabinet Resolution No. 31 of 2019 supported by Ministerial decision No. 215 of 2019 (the "Guidance"), Relevant Activity Guide ("the Guide") and Frequently Asked Questions ("FAQs").

On 10 August 2020, the UAE Government retrospectively amended the Regulations and the Guidance vide Cabinet Resolution No. 57 of 2020 and Ministerial Decision 100 of 2020 respectively, thereby repealing and replacing Resolution No. 31 of 2019, Ministerial decision no. 215 of 2019, Cabinet Resolution No. 58 of 2019 and amending the Guide and FAQs.

**Key highlights of the Regulations are as follows:**

- ESR requires all in-scope UAE entities (onshore as well as offshore) that carry out the below-listed Relevant Activities and earn income out of such Relevant Activities to have economic substance in the UAE commensurate with the level of revenue/ activities they undertake.
- The following business activities are considered as 'Relevant Activities' under the ESR:
  - Banking Business;
  - Insurance Business;
  - Investment Fund management Business;
  - Headquarters Business;
  - Shipping Business;
  - Holding Company Business;
  - Intellectual property Business ("IP");
  - Lease - Finance Business;
  - Distribution and Service Centre Business.
- Broadly, an entity is required to satisfy the following key criteria to fulfil the economic substance test in the UAE:
  - Conduct relevant 'core income generating activities' in the UAE;
  - Should be 'directed and managed' in the UAE; and
  - With reference to the level of activities performed in the UAE:
    - o Must have an adequate number of qualified full-time employees in the UAE
    - o Must incur an adequate amount of operating expenditure in the UAE
    - o Must have adequate physical assets /premises in the UAE.

  The Regulations and the Guidance, inter-alia, envisage two types of annual compliances, i.e. (i) submission of the 'Information Notification' and (ii) submission of the 'Substance Report'.
- Non-compliance under the ESR shall result in levy of penalties and in certain cases suspension, revocation or non-renewal of company licences.

## F. COUNTRY-BY-COUNTRY REPORT REGULATIONS

- In line with BEPS Action 13 on three-tier Transfer Pricing Documentation, the UAE issued Country-by-Country Report ("CBCR") Regulations with effect from 1 January 2019 applicable only to Multinational Enterprises ("MNEs") headquartered in the UAE.
- On 4 June 2020, the UAE retrospectively amended the CBCR Regulations vide Cabinet Resolution No. 44 of 2020.
- The CBCR Regulations are currently applicable only to a UAE headquartered multinational enterprise ("MNE") group whose consolidated revenues exceed AED 3,150,000,000 in the fiscal year ("FY") immediately preceding the reporting fiscal year.
- The CBCR Regulations envisage two types of annual compliances, i.e. (i) submission of the 'Annual Notification' and (ii) submission of the 'CBCR'.
- Non-compliance with CBCR Regulations shall result in levy of substantial penalties.
- It shall be noted that post the amendment to CBCR Regulations, there is no requirement in relation to the submission of annual notification and secondary filing of the CBCR by the Constituent Entities of the MNE Group headquartered outside the UAE.

# UNITED KINGDOM

## MEMBER FIRMS

| City | Name | Contact Information |
|---|---|---|
| Birmingham/Nottingham | James Bagley | +44 1159 45 4300<br>james.bagley@smithcooper.co.uk |
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| London | Chris Riley | +44 207 516 2427<br>criley@pkf-llttlejohn.com |
| London | Shakunt Shah | +44 208 515 2804<br>schheda@klsa.net |

## BASIC FACTS

| | |
|---|---|
| Full name: | United Kingdom of Great Britain and Northern Ireland |
| Capital: | London |
| Main languages: | English |
| Population: | 68.55 million (2022 estimate) |
| Monetary unit: | Pound Sterling (GBP) |
| Internet domain: | .uk |
| Int. dialling code: | +44 |
| Tax authority: | HM Revenue & Customs ('HMRC') |

## KEY TAX POINTS

- A company resident in the UK is generally chargeable to Corporation Tax on all its sources of income and capital gains, wherever arising. Companies with overseas permanent establishments may however make an election to exempt profits and losses from those permanent establishments from UK tax if conditions are met.
- From 6 April 2020, a company not resident in the UK but receiving rental income from UK property is liable to UK corporation tax. Previously, such companies were subject to income tax. This represents a significant change as corporate tax rules now apply in determining taxable profits.
- Dividends received by UK companies from both UK and non UK companies are generally exempt from Corporation Tax if conditions are met. These conditions are stricter for smaller recipient companies.
- Where income or gains arising overseas are taxable on a UK resident company due to the conditions for exemption not being met, double taxation relief is generally available in respect of foreign tax suffered.
- Non-resident companies are liable to Corporation Tax if they carry on a trade in the UK through a permanent establishment in the UK. Capital gains arising on a non-resident company in respect of the sale of assets used in, or for the purposes of a trade carried on through a UK permanent establishment are also subject to Corporation Tax.
- Controlled foreign companies (CFC) legislation is in place to ensure that profits diverted from the UK to subsidiaries resident in low tax jurisdictions are included in a controlling UK company's taxable income. Exemptions exist and only profits that pass through a gateway test are subject to UK corporation tax.
- Transfer Pricing rules impute arm's-length pricing to transactions between connected parties whether located overseas or in the UK. For Small or Medium-sized entities (SMEs) the application of the rules are generally restricted to transactions with countries with which the UK does not have a suitable double tax treaty. Anti-profit fragmentation rules were introduced from 1 April 2019 to prevent profit diversion and applies to UK resident companies, partnership and individual of all sizes.
- The 'Diverted Profits Tax' came into force in April 2015. This imputes a tax charge of 25% on profits 'artificially diverted' from the UK through transactions which have no economic substance, where the arrangements are not otherwise caught by CFC or Transfer Pricing rules. This tax is not covered by UK Tax treaties, the charge may not be creditable for overseas tax purposes.
- Country-by-Country reporting regulations apply to multi-national groups with a UK parent company and turnover of EUR 750 million (approximately GBP 685 million) or more. Such entities must provide HMRC with an annual report which discloses certain financial and fiscal information for each country in which the group carries on its business.
- UK Companies, UK partnerships, UK groups or UK sub-groups with a turnover of GBP 200 million or more or a balance sheet total over GBP 2 billion in the previous tax year, are required to publish their tax strategy on the internet. If UK company or group is part of a multinational group that meets the threshold for 'country-by-country reporting' then that UK company or group will also need to publish a strategy - the strategy should cover matters relevant to UK tax.
- Companies incorporated in the UK with, either alone or when its results are aggregated with other UK companies in the same group, a turnover of more than GBP 200 million and/or a balance sheet total of more than GBP 2 billion must comply with the Senior Accounting Officer regime. Qualifying companies are required to appoint a Senior Accounting Officer (SAO) and notify HMRC that they have done so. The SAO is responsible for taking reasonable steps to ensure that a company has appropriate

tax accounting arrangements and certifying this to HMRC. The SAO can be held personally liable to a penalty in the event there is a failure in this duty.

- UK companies/groups with net UK interest exposure above GBP 2 million are required to apply complex rules to limit corporate tax deductibility of interest expenditure. A fixed interest rate will apply, limiting the allowable net interest exposure to 30% of a group's UK EBITDA. Alternatively, a group ratio rule can apply replacing the current worldwide debt cap. If an election is made this will be beneficial if the group rate is higher than the 30% fixed ratio. This group rate will be based on the external net interest to EBITDA for the worldwide group.
- From 1 April 2017 companies are able to use carried forward losses against profits from other income streams other than those that created the loss or against trading profits generated by other group companies. Where group taxable profits exceed GBP 5 million, the amount of loss that can be offset will be restricted to 50% of the amount of profit that could be offset against the carried forward losses.
- VAT is charged on the supply of most goods and services in the UK and on the importation of goods from outside of the UK.
- Income Tax at 20% must be withheld from payments of interest or royalties, although since April 2016 banks are no longer required to deduct Income Tax from certain payments of interest, principally where the recipient is a UK resident individual. Double tax treaties can reduce or remove this charge in many cases, although this is subject to a successful claim for treaty benefits to apply in respect of interest payments prior to the payment being made. There is no withholding tax on dividends.
- Resident and UK domiciled individuals are subject to Income Tax on their worldwide income as it arises. Non-residents are normally only subject to Income Tax on income arising in the UK.
- UK resident but non-UK Domiciled individuals can choose to be taxed only on their Income and Capital gains arising in the UK together with Income and Gains remitted to the UK from overseas in a given tax year (the Remittance Basis). However, non-domiciled individuals who are long term residents are required to pay an annual charge to qualify for this treatment. From 6 April 2017 new rules are also in existence to treat certain individuals as UK domiciled for income tax and capital gains tax purposes. These included non-domiciled individuals born in the UK with a UK domicile and who have since taken a non-domicile status but are UK resident for the relevant tax year (referred to as formerly domiciled residents) as well as non-domiciled individuals who have been UK resident for at least 15 of the previous 20 tax years.
- Non-domiciled individuals who come to work in the UK, and who were not resident in the UK for any of the previous three tax years, can claim overseas work day relief for the first three tax years following arrival in the UK.
- A UK domiciled or deemed domiciled individual is potentially subject to Inheritance Tax on the transfer of any property owned by him, whilst a non-UK domiciled individual may only be subject to Inheritance Tax on the transfer of property situated in the UK. Inheritance Tax is a combination of gift and death tax. For UK inheritance tax purposes an individual will be treated as UK domiciled if they have been UK domiciled within the three years preceding the relevant date, or from 6 April 2017 they have been resident in the UK for at least 15 out of the previous 20 years and at least one of the four years ending with the relevant year, or from 6 April 2017 the individual returns to the UK to become UK resident, having had a UK domicile at birth but later emigrated and acquired a foreign domicile and is UK resident for the relevant year as well as at least one of the previous two tax years.
- From 6 April 2015, non-residents owning UK residential property are subject to Capital Gains Tax in respect of gains arising on a disposal of that property. From 6 April 2019, non-residents have also been liable to Capital Gains Tax on the sale of non-residential UK property as well as certain indirectly held interests in UK property. In most cases, only increases in value from either April 2015 or April 2019 (as appropriate) will be subject to charge. Non-residents (other than companies) are required to complete and lodge a Property Capital Gains Tax return for a disposal of an interest in UK property within 30 days of disposal. Any Capital Gains Tax is also due within that period.
- From 6 April 2020, UK residents (except companies) also need to file a Property Capital Gains tax return within 30 days of completion of a disposal of UK residential property if there is a capital gains tax liability. The Capital Gains Tax also needs to be paid within that period.
- UK residential property owned by non-natural persons (e.g. companies) is subject to an annual tax (Annual Tax on Enveloped Dwellings) but there are reliefs where the property is used in certain property businesses, including letting. ATED compliance obligations arise in respect of properties valued at GBP 500,000 or more.
- UK resident trusts are liable to UK tax on worldwide income and gains. Non- resident trusts are liable to UK tax only on UK income and disposals of UK land/property (the latter with a 30 day reporting requirement).
- Anti-avoidance legislation exists to attribute the income and gains of offshore trusts and companies to UK residents who set up such structures and their UK resident beneficiaries.
- Trusts are subject to their own Inheritance Tax regime on worldwide assets. However, foreign assets settled by a non-UK domiciled person (who was also not deemed domiciled) are excluded.
- Devolved taxes – with effect from 1 April 2018 the Scottish Government introduced new tax rates applicable to employment, trading, pension and rental income for Scottish resident taxpayers. Land and Buildings Transaction Tax applies to land and property located in Scotland – See I below. There are separate Land and Buildings Transaction Tax and Landfill Tax regimes in Scotland. Separate devolved powers apply for Northern Ireland, see H below.
- HMRC wish to become one of the most digitally advanced tax administrations in the world. From 1 April 2019 HMRC have required most businesses, self-employed people and landlords to maintain digital tax accounts and submit quarterly digital returns where VAT registered. A consultation was launched March 2021 in to digitalising the corporation tax administrative system.
- From 6 April 2021, any medium or large company (any business which breaches two of the following conditions – turnover over GBP 10.2 million, balance sheet value over GBP 5.2 million, or over 50 employees) engaging contractors through an intermediary such as another company, partnership or employment business is required to undertake a formal assessment of the contractor's employment tax status which includes the issue of a formal Status Determination Statement to the contractor and to the fee-payer if this is not the engager. Where the Statement indicates the contractor is a deemed employee for tax purposes, the engager (or fee-payer where applicable) is required to withhold PAYE and National Insurance Contributions prior to paying the contractor and to remit these deductions to HMRC in accordance with standard payroll processes. There is additional employer National Insurance Contributions payable to HMRC.

## A. TAXES PAYABLE

### COMPANY TAX

A UK resident company is liable to Corporation Tax on all its sources of income and capital gains, wherever these arise. A company is deemed to be resident in the UK, for tax purposes, if it is incorporated in the UK or its central management and control is exercised in the UK. A non UK resident company carrying on a trade in the UK through a permanent establishment (located in the UK) is liable to Corporation Tax on all income and gains attributable to that permanent establishment.

Corporation Tax rates are fixed for each financial year commencing 1 April. If a company's accounting period does not coincide with the financial year, its profits must be time apportioned and the Corporation Tax rate applied accordingly. Since 1 April 2015,a company is subject to a standard rate of Corporation Tax, irrespective of the level of its taxable profits:

| | 1 April 2019 to 31 March 2020 | 1 April 2020 to 31 March 2021 | 1 April 2021 to 31 March 2022 |
|---|---|---|---|
| Standard rate | 19% | 19% | 19% |

The March 2021 UK budget confirmed that the UK standard rate of corporate tax will be remain at 19% until 31 March 2023. From 1 April 2023 the corporation tax rate is due to rise to 25% on profits above GBP 250,000. The tax rate will taper up from 19% to 25% on profits falling within GBP 50,000-GBP 250,000. The profit bands will be shared between 'associated companies'.

Large companies are those companies with taxable profits in excess of GBP 1,500,000. Where a company is a member of a group of companies, the limit of GBP 1,500,000 is reduced proportionately by the number of 'active' companies within the group. Where a company is 'large' for a second successive period, or where its taxable profits exceed GBP 10,000,000 (divided by the number of active companies within the group, where appropriate), it will be required to pay its Corporation Tax liability for that period in quarterly instalments. The first payment is generally due 6 months and 13 days after the start of the accounting period and quarterly thereafter. Companies with an annual Corporation Tax liability of GBP 10,000 or less are not required to pay taxes by instalments. For companies which are not required to pay their Corporation Tax in instalments, the payment date is 9 months and 1 day after the end of the relevant accounting period.

For accounting periods starting on or after 1 April 2019 companies with annual taxable profits of GBP 20 million or more (reduced by number of active companies in the group) are required to pay quarterly on the 3rd, 6th, 9th and final month of its 12 month accounting period. (For a 31 December year end, payments will be due on the 14 March, 14 June, 14 September and 14 December of that year.)

### CAPITAL GAINS TAX

Capital gains made by companies are taxed at the standard rate of Corporation Tax. Non-resident companies are only taxed on capital gains from the sale of assets used in, or for the purposes of, a trade which is carried on through a permanent establishment located in the UK. From April 2015 non UK residents are chargeable on certain disposals of residential property in the UK and with disposal of commercial properties becoming taxable since April 2019. There are special provisions allowing tax deferrals by UK resident and non-resident companies for reinvestment / migration. Capital losses can only be offset against capital gains arising in the same financial year, or carried forward indefinitely to set against future capital gains. It is not possible to carry back capital losses.

A capital gain or loss arising on the disposal of shares in a trading company may be exempt from UK Corporation Tax where at least 10% of the ordinary share capital has been held for a minimum period of 12 months. This relief is called the "Substantial Shareholdings Exemption" (SSE). The rules are relaxed for disposals on or after 1 April 2017. The changes mean that the company making the disposal no longer has to be a trading company or member of a trading group. The company being sold no longer needs to meet a trading condition immediately after the disposal to an unrelated party and also the holding of a 10% stake requirement is relaxed provided at least 10% was held for a 12 month period within the 6 years prior to the disposal.

### BRANCH PROFITS TAX

There is no branch profits tax in the UK. Foreign branch profits of a UK company are liable to UK Corporation Tax with relief (generally) available for overseas taxes paid on the same profits. An irrevocable election may be made to exempt the overseas branch profits from UK tax. Where an election is made any branch losses are not available to offset against the company's profits and previous losses relieved against UK profits are clawed back. The election is irrevocable and applies to all branches of a UK company. There are anti-avoidance provisions in place that are similar to the CFC rules and aim to prevent the artificial diversion of profits overseas. A UK branch of a non-resident company is taxable on its profits and gains in the same way as a UK resident company.

### VALUE ADDED TAX (VAT)

VAT is charged on the supply of most goods and services made by businesses in the UK. VAT is collected at each stage of the supply chain, generally when title to the goods passes or when services are performed. The burden of the tax falls on the ultimate consumer. Supplies of goods or services made in the UK by foreign entities can give rise to a requirement to register for VAT in the UK. VAT registration is compulsory for businesses established in the UK making annual taxable supplies in excess of the registration threshold. VAT registration is required if a business' VAT taxable turnover is more than GBP 85,000. Voluntary registration is sometimes available for businesses trading below this level. There is no VAT registration threshold for businesses making taxable supplies in the UK that have no UK business address. Such businesses must register for VAT immediately upon making taxable supplies in the UK unless the reverse charge simplification applies. The UK reverse charge simplification applies to most services when provided by a non-UK supplier to a UK VAT registered business customer.

The standard rate of VAT in the UK is 20%. Some supplies, such as the grant of certain interests in land, insurance, education, financial services, and health and welfare, are exempt from VAT (i.e. no VAT is charged but recovery of VAT on related purchases may be restricted). There is the 'option' for businesses to charge VAT on non-residential property transactions in order to recover VAT incurred, however, this is subject to anti-avoidance restrictions.

The export of goods from the UK, plus UK supplies of some other goods and services (e.g. books, food, children's clothing) are zero-rated. Other UK supplies may also be subject to VAT at the reduced rate of 5% (e.g. certain building works). VAT-registered businesses with an annual taxable turnover not exceeding GBP 150,000 may elect to simplify their VAT accounting by using the 'flat rate' scheme. Under the scheme, businesses account for VAT at a flat rate on turnover rather than on every single transaction. They are, however, not able to recover VAT on expenditure other than capital items over GBP 2,000.

The UK's VAT regime is currently derived from its previous membership of the European Union. The UK left the EU on 31 January 2020 and was in a transition period which ended on 31 December 2020. UK VAT currently remains broadly in the same form as previously. However, changes were introduced with effect from 1 January 2021 which treats the sale of low value goods (under GBP 135) differently depending on the location of the goods at the point of sale and if an online marketplace has been used. In broad terms, transactions between the UK and EU member states are now treated as imports and exports.

### DIGITAL SERVICES TAX (DST)

From 1 April 2020, the UK government introduced a narrowly targeted 2% tax on the UK revenues of digital businesses that are considered to drive significant value from the participation of their users. The type of business targeted include social media platforms, search engines and online marketplaces.

A business is taxable if it generates more than GBP 500 million in global annual revenues from in scope activities and generates more than GBP 25 million in annual revenues from in scope activities linked to UK users. Businesses will not pay DST on the first GBP 25 million of UK taxable revenues.

The tax will be deductible as a normal business expense against UK Corporation Tax.

### APPRENTICESHIP LEVY

An apprenticeship levy applies at a rate of 0.5% of an employer's pay bill. A GBP 15,000 allowance for employers means that the levy is only paid on employers' pay bills over GBP 3 million in a tax year. All connected companies or charities are grouped together for the purposes of calculating the pay bill and together the group has one allowance.

Employers can use their levy funding to contribute towards training costs, subject to a number of qualifying conditions.

### FRINGE BENEFITS TAX (FBT)

No FBT is payable by the employer as the employees are normally taxed on benefits provided by virtue of their employment. However, National Insurance may be payable by the employer on the cash equivalent of the benefit provided.

### BENEFITS IN KIND

There are 2 ways to report benefits, either through payroll reporting each time a payment is made or annually. An annual return is required regardless of which way benefits are reported.

### LOCAL TAXES

Local authority rates are charged on the occupier of commercial property in the UK based on the rateable value of real estate at a level determined by central government.

### OTHER TAXES

Insurance Premium Tax will be payable at the standard rate of 12% or higher rate of 20%. Stamp Duty, at a rate of 0.5%, is payable by the purchaser (whether or not UK resident) on the transfer of shares in a UK incorporated company. Stamp Duty Land Tax (SDLT) is payable on UK land and building transactions and the rates are between 0 and 12% on the consideration paid for residential properties. SDLT is charged at increasing rates for each portion of the price. An additional 3% charge applies to purchases of certain residential properties. From 1 April 2021, a 2% surcharge applies to purchasers of residential property in England and Northern Ireland who are not resident in the UK. This can include UK resident companies that are controlled by non-UK residents.

In Scotland, Land and Buildings Transaction Tax (LBTT) replaced SDLT with effect from 1 April 2015. The rates of LBTT for residential property progressively increase from 0 to 12%, with the 12% applying to consideration over GBP 750,000 as opposed to over GBP 1,500,000 for SDLT. An additional 4% charge applies to purchases of certain residential properties in Scotland. Different rates apply for first time buyers.

For non-residential property, SDLT applies at rates ranging from 0 to 5% on a block basis. Non- residential property transaction in Scotland are subject to LBTT rather than SDLT. Rates applicable range from 0 to 5% with 5% applying where the consideration exceeds GBP 250,000. Special rules apply to leases.

Special rates of SDLT apply where the residential property is purchased by a 'non-natural person' which includes companies. This rate is 15% for property costing over GBP 500,000. In addition, such properties are also subject to an annual tax, called the "Annual Tax on Enveloped Dwellings" or "ATED". Exemptions from ATED will apply where the property is used for specified, qualifying purposes, including certain letting arrangements.

For the year to 5 April 2022, Social Security Contributions are charged on employees at a rate of 12% on earnings over GBP 184 per week up to earnings of GBP 967 per week and 2% thereafter. There is no upper limit to the employer's contribution which is broadly charged at 13.8% of an employee's earnings over GBP 184 per week.



## B. DETERMINATION OF TAXABLE INCOME

### TRADING PROFITS

Taxable trading profits are calculated by determining assessable income and subtracting allowable deductions. Generally, to be deductible, expenditure must be incurred wholly and exclusively for the purposes of the trade and be revenue in nature rather than capital. Tax adjustments are made to the profit derived using UK accounting standards.

### DEPRECIATION

Depreciation is not deductible and relief is instead given for investment through Capital Allowances. Capital Allowances are granted for depreciation of equipment and other assets at the following rates (using the reducing balance method, unless stated otherwise)

- An Annual Investment Allowance (AIA) provides for 100% tax relief on annual expenditure of up to GBP 1,000,000 on most types of plant and machinery costs (excluding cars) during the 24 month period from 1 January 2019 to 31 December 2020 (now extended to 31 March 2023). Businesses with accounting periods that straddle the commencement date or the final date will need to calculate the amount of AIA they can claim for the accounting period.
- Plant, machinery and equipment: 18% annual writing down allowances (WDA) where working life is less than 25 years. For certain assets where the working life is at least 25 years or the asset is one on a list of 'integral features' incorporated in a building, the writing down allowance for 'integral features' is to 6% with regards to corporation tax and income tax respectively.
- In order to stimulate investment in capital investment, a temporary super-deductions allowance has been introduced in respect of capital expenditure incurred on new and qualifying plant and machinery assets. Expenditure incurred in the period from 1 April 2021 to 31 March 2023 may qualify for a first year allowance of 130% (in respect of main pool expenditure) or 50% (in respect of special rate pool expenditure).
- Motor cars: cars used in the business with CO2 emissions of up to 50g/Km from April 2021 onwards form part of the general plant and machinery pool and attract allowances at 18%, whereas cars with higher emissions go into a special rate pool with annual allowances limited to 6%. New and unused cars with 0g/km emissions obtain a 100% first year allowance.
- Structures and Buildings Allowance (SBA) is available to businesses incurring qualifying expenditure on non-residential structures and buildings newly constructed, or renovated, on or after 29 October 2018. From 1 April 2020, for the purposes of Corporation Tax (6 April for Income Taxes purposes) businesses can claim relief at 3%, prior to this date relief was at 2%.
- Research and development (R&D): 100% Capital Allowances are available to companies which incur capital expenditure on facilities or equipment for the carrying out of R&D. In addition, enhanced relief for revenue expenditure may be available in some cases. See 'Incentives' below.
- Investment in energy-saving equipment and environmentally-friendly equipment: 100% first year Capital Allowances are available for expenditure on designated energy efficient equipment.

The amortisation on many intangible assets is deductible for tax. Relief can also be obtained in certain circumstances where the assets are not amortised for accounting purposes. No relief for the amortisation of goodwill or certain other business related intangibles is available where the goodwill or other intangible is acquired on or after 8 July 2015.

For 'relevant assets' acquired or created on or after 1 April 2019, relief may be available at a fixed rate of 6.5% of cost per annum provided certain conditions are met. 'Relevant assets' include goodwill, customer related intangibles, unregistered trademarks and licences on such items. Tax relief will now be available for acquisitions from July 2020 of pre-April 2002 Intellectual Property acquired from related overseas companies.

## STOCK / INVENTORY

Stock and work in progress are valued at the lower of cost and net realisable value, being the only basis acceptable for tax purposes.

## CAPITAL GAINS AND LOSSES

As discussed above, capital gains are included within the profits chargeable to Corporation Tax for an accounting period. Gains are normally computed by deducting the cost of an asset from its sale proceeds. An indexation allowance for inflation (calculated to December 2017) is available to companies. Capital losses can only be set against current or future capital gains, and not against income.

## DIVIDENDS

Dividends received by UK companies from both UK and overseas companies are generally exempt from Corporation Tax subject to various conditions. For further details see section 'C' below.

## INTEREST DEDUCTIONS

Interest is generally deductible on an accruals basis as long as the borrowing is for an allowable purpose but there are many anti-avoidance rules to restrict relief. The main exception is where, under certain circumstances, the interest is payable to a connected party and remains unpaid for more than 12 months after the end of the accounting period. Relief for such interest is deferred until it is paid unless the lender is liable to UK Corporation Tax and has brought the interest receivable into account.

The UK's transfer pricing rules apply to debt. Interest paid to a parent or fellow subsidiary (under common control and whether UK or overseas) is not deductible to the extent that the payment would not have been made if the companies had not been connected. There are no statutory debt/equity restrictions or safe harbours.

UK companies/groups with net UK interest exposure above GBP 2 million are required to apply rules effective from 1 April 2017 to limit corporate tax deductibility of interest expenditure. A fixed interest rate will apply, limiting the allowable net interest exposure to 30% of a group's UK EBITDA. Alternatively, a group ratio rule may apply based on the ratio of external net interest to EBITDA for the worldwide group.

The UK also has anti-hybrid rules. These rules are complex and should be considered where there is any overseas connection to the financing arrangement in place.



## LOSSES

Trading losses may be:

- Set off against income and capital gains of the same accounting period;
- Carried back for set off against income and capital gains of the previous year;
- Carried forward against future trading profits from the same trade. Where within a period of three years prior and five years after there is both a greater than 50% change in a company's ownership and a major change in the nature or conduct of a trade, relief from the carry forward or carry back of losses will be denied from the date of the change in ownership.
- With effect from 18 April 2015, anti-avoidance provisions apply to deny the use of brought forward losses to certain arrangements where a company seeks to obtain a Corporation Tax advantage through the use of brought forward losses and it is reasonable

to assume that the value of the Corporation Tax advantage exceeds the value of any non-tax advantages.

- From 1 April 2017 businesses will be able to use carried forward losses against profits from other income streams other than those that created the loss; or against profits generated by other group companies. Where group taxable profits exceed GBP 5 million, the amount of carried forward loss that can be offset will be restricted to 50% of the amount of profit that could be offset against the carried forward losses. The utilisation of brought forward capital losses also come within this GBP 5 million restriction from 1 April 2020, other than in certain liquidation cases.

## FOREIGN SOURCED INCOME

The UK has controlled foreign company (CFC) legislation which is designed to tax holding companies on the profits of subsidiary companies in a 'low tax territory' (countries where the tax rate is less than three-quarters of the corresponding UK tax on those profits). UK resident companies that hold a 25% or greater interest in a CFC may be taxed on the profits of the CFC but there are a number of exceptions to this rule. From 2012, the regime is targeted specifically at overseas profits that have been artificially diverted from the UK and a number of exemptions exist to take some companies or a proportion of their profits out of the charge. There is also a gateway test that companies can pass to avoid a CFC charge. A partial exemption for finance companies ensures that, in broad terms, profits caught under these rules are taxed at a quarter of the main Corporation Tax rate. From 1 January 2019 there are 2 amendments to the rules to ensure that they comply with ATAD. The definition of control has been extended to take into account interests held by associated enterprises (UK resident of not) and the finance company exemption is no longer available in relation to certain non-trading finance profits.

From 6 April 2019 there will be a UK Income Tax charge on gross income received by a person resident in a low tax jurisdiction (without a full tax treaty with the UK) in respect of intangible property to the extent that those amounts can be referred to UK sales. There is a GBP 10 million de minimis threshold and a number of exemptions to this charge.

From 1 April 2019 the UK introduced Profit Fragmentation rules which may create a charge to UK tax on value that is artificially diverted from a UK trader to an offshore entity.

## INCENTIVES

There are a number of grants and other forms of assistance available to businesses in the UK. Certain expenditure incurred in respect of qualifying research and development activities carried on by companies qualifies for enhanced tax relief. If the qualifying expenditure is incurred by small and medium-sized companies, the relief is generally an additional deduction of 130%. Where such companies have a tax adjusted loss for a period, all or part of the losses can be surrendered for a repayable credit at a rate of 14.5%. From 1 April 2020, large companies may claim a taxable credit equal to 13% of the qualifying expenditure (from 1 April 2018 to 31 March 2020, the taxable credit was equal to 12% of the qualifying expenditure). In some circumstances, a small or medium sized company may be required to claim relief at the large company rates.

Research and development (R&D): 100% Capital Allowances are available to companies, which incur capital expenditure on facilities or equipment for the carrying out of R&D.

The Patent Box allows companies with qualifying patent income to be taxed on that income at an effective rate of 10% by way of a deduction against profits. The way in which the Patent Box relief is calculated changed with effect from 1 July 2016; however, if a company elects into the Patent Box regime for periods ended prior to 30 June 2016, it will be entitled to claim relief calculated under the existing rules until 30 June 2021, but only in respect of income from patents which existed as at 30 June 2016. The transitional period from the 'old' to 'new' regime will end at 30 June 2021 and the method of calculating the profits that benefit from the patent box may change substantially for some companies from 1 July 2021.

A 100% business rate discount is available to businesses that move into an Enterprise Zone. In addition, 100% Capital Allowances are available in respect of certain types of expenditure by businesses and companies based in some Enterprise Zones.

## C. FOREIGN TAX RELIEF

Certain foreign taxes paid on income and gains of a UK resident company may be credited against the Corporation Tax on the same profits or relieved by way of deduction against profits. The foreign tax relief cannot exceed the UK Corporation Tax charged on the same profits. Domestic and foreign dividends received by UK resident companies from 1 July 2009 are generally tax exempt. Various conditions need to be met and those conditions are different depending on whether the recipient is a small company.

## D. CORPORATE GROUPS

Tax losses (other than capital losses but see below) may be surrendered within a 75% UK group effectively allowing consolidation of losses against profits and capital gains. Where a UK group company takes over the trade of a 75% fellow UK group member, the unused trading losses and Capital Allowances are transferred to the acquiring company. The trade losses are offset against future profits of the trade transferred. Companies may also benefit from consortium relief. A company is owned by a consortium if at least 75% of the ordinary share capital is held by companies, each of whom owns at least 5%.

The transfer of assets within a 75% group of UK companies does not give rise to a capital gain. If the transferee company leaves the group within six years of such a tax free transfer, a capital gain may arise based on the market value of the asset at the time of the transfer. If the company leaves the group as a result of another company making a disposal of its shares, the gain forms part of the disposal proceeds deemed to be received by the company selling the shares.

A company with capital losses may elect to treat a gain which would have been realised by another UK group company as if it had been realised by it. The practical effect is to give a form of 'group relief' for capital losses.

## E. RELATED PARTY TRANSACTIONS

UK transfer pricing legislation requires companies and partnerships to calculate profits and losses on connected party transactions in accordance with the arm's length principle. There is a requirement to prepare and retain reasonable documentation to demonstrate that the arm's length standard has been met. However, in certain circumstances, small and medium-sized groups may be exempted from the UK's transfer pricing provisions.

UK Profit Fragmentation should also be considered where there are related party transactions. There is no exemption from these rules for small and medium-sized groups.

## F. WITHHOLDING TAX

No withholding tax applies to dividends paid by UK resident companies.

Subject to the terms of the applicable tax treaty, withholding taxes must usually be deducted from interest and royalties. Up to 30 May 2021, in most circumstances no withholding tax applies to interest and royalty payments where the conditions of the EU Interest and Royalty Directive are met. From 1 June 2021, the UK repealed the application of the directive and it will be necessary to re-apply for relief from withholding taxes under the relevant double tax treaty with the UK.

## G. EXCHANGE CONTROL

There are no exchange controls in the UK.

## H. CORPORATION TAX (Northern Ireland) BILL

The Corporation Tax (Northern Ireland) Bill provides for the devolution of the rate-setting power for Corporation Tax to the Northern Ireland Assembly. The new rules will have effect from a date to be appointed by HM Treasury. The Northern Ireland executive has committed to a rate of 12.5% that will apply to most trading activities with exclusions for oil and gas and the majority of financial activities.

## I. PERSONAL TAX

Taxable persons comprise resident individuals, trustees and executors as well as non-resident individuals, trustees and executors in respect of their UK-source income. Resident persons are generally subject to Income Tax on their worldwide income as it arises. Non-residents are normally only subject to Income Tax on income arising in the UK. Broadly, UK resident individuals are liable to capital gains tax whilst non-residents are not. However, from 6 April 2015 non-resident individuals are liable to UK capital gains tax (CGT) on UK sited residential property on the portion of the gain arising after 6 April 2015. With effect from 6 April 2019, this was extended to include all UK property and includes disposals of substantial shareholdings in property rich entities.

A new statutory residence test was introduced from 6 April 2013 and provides clarity to individuals on their residence status. For individuals who have been residing outside the UK for some time it is important that care is taken with the number of visits to the UK, as being in the UK for too long a period could make an individual UK resident. HMRC treat an individual as being in the UK for a day if the individual remains in the UK at midnight. Under the new statutory residence test it is possible to be UK resident in certain circumstances when in the UK for as little as 16 days. Different rules apply to individuals leaving the UK as to those coming to the UK and in every case it is important to take professional advice and review current residence status.

Broadly, individuals are domiciled in the country or state regarded as their permanent home. Individuals acquire a domicile of origin at birth, normally that of their father, and it is retained until a new domicile of choice is acquired. To acquire a domicile of choice, a person must sever ties with the domicile of origin and settle in another country with the clear intention of making a permanent home there.

There are special rules which allow non-domiciled individuals from being taxed on their non-UK source income and gains until they are remitted to the UK. The rules regarding remittance to the UK are complicated and some UK residents are subject to a GBP 30,000 or GBP 60,000 annual charge for using this facility. A remittance basis claim will cease to apply if the individual takes a domicile of choice in the UK or once they become deemed UK domicile (see IHT section below). As of 6 April 2014, specific anti-avoidance rules prevent a non-domiciled individual from using the remittance basis in respect of income earned from an overseas employment that is deemed to be connected with the individual's UK employment.

Non-domiciled individuals who come to work in the UK, and who were not resident in the UK for any of the previous three tax years, can claim overseas work day relief for the first three tax years following arrival in the UK. These rules allow a proportion of the individual's emoluments from employment to escape UK taxation until such time as those amounts are remitted to the UK, based on the number of UK and non-UK work days carried out by the individual during the true year.

Husbands and wives are taxed separately and each is entitled to a personal allowance. This has been set at GBP 12,570 for the year ended 5 April 2023 (although the allowance is reduced by GBP 1 for every GBP 2 above which an individual's annual income exceeds GBP 100,000). The income of a minor unmarried child is also taxed separately, unless it originates from funds given to the child by the parent and it is in excess of GBP 100.

Donations to UK registered charities are made net of basic rate tax if a Gift Aid election is made. For each GBP 80 donated by an individual, the charity receives a total of GBP 100. Higher or additional rate tax relief is given by extending the basic rate or higher rate band by the grossed up amount of the gift (see below).

A UK resident individual under the age of 75 may join a personal pension scheme and make contributions. Tax relief for all contributions in a tax year is given on the higher of 100% of relevant UK earnings and GBP 3,600 (gross),and is further restricted to the annual allowance. This is GBP 40,000 from 6 April 2014 onwards and was previously set at GBP 50,000 from 6 April 2011 to 5 April 2014. A tapered reduction in the annual allowance applies from 6 April 2016 for those with an adjusted income over GBP 150,000 until 5 April 2020 and GBP 240,000 from 6 April 2020. The reduction is GBP 1 for every GBP 2 of income over GBP 150,000/240,000 and the minimum allowance is GBP 10,000 until 5 April 2020 and GBP 4,000 from 6 April 2020.

Individuals are able to carry forward their unused annual allowances for up to three years. The total amount an individual may contribute into a pension over his or her lifetime (including any capital growth) is determined by the lifetime allowance (which is GBP 1,073,100 from 6 April 2020).

Interest on loans taken out wholly and exclusively for business purposes qualify for tax relief. This includes interest on loans taken out to:

(a) Acquire shares in a closely controlled company;

(b) Acquire shares in an employee-controlled company;

(c) Acquire an interest in a partnership or to acquire machinery or plant for use in a partnership or employment.

The amount of unrestricted Income Tax reliefs an individual is entitled to take advantage of in any one tax year is restricted to the higher of GBP 50,000 and 25% of the individual's adjusted total income. Restricted reliefs include the interest relief referred to above, as well as relief for trading and property business losses off-set against general income. Individuals are entitled to a tax credit of up to 30% of the value invested in qualifying shares in the Enterprise Investment Scheme (EIS) on investments of up to

GBP 1 million per annum (GBP 2 million from 6 April 2018 if at least GBP 1 million is invested in knowledge intensive companies; and in venture capital trust (VCT) companies on investments up to GBP 200,000 per year. A more generous relief of 50% is available on investments of up to GBP 100,000 into small start-up companies from April 2012 onwards under the seed enterprise investment scheme (SEIS).

In addition to Income Tax relief, dividends received from ordinary VCT shares are exempt from Income Tax. EIS shares also qualify for capital gains deferral relief and there is no upper limit. For SEIS shares up to 50% of a qualifying investment can exempt other gains realised in the year SEIS income tax relief is claimed.

Individual Savings Accounts (ISAs) are tax favoured savings accounts. Any income or gains from investments in an ISA is tax-free. The ISA annual contribution allowance for 2022/23 is GBP 20,000. Junior ISAs for children are set at GBP 9,000 for 2022/23.

Capital gains chargeable on taxpayers other than companies are subject to capital gains tax at a rate of 10% or 20% depending on the total of income and gains arising in the tax year. An 8% supplementary charge applies on gains realised on the disposal of residential property. A rate of 10% is also available (known as Business Asset Disposal' relief) in certain circumstances, such as on the disposal of shares held in a trading company, all or part of a business or an interest in a partnership, provided certain conditions are met. The more generous GBP 10 million lifetime limit was reduced to GBP 1 million from 11 March 2020. A 10% tax rate can also apply in respect of shares that qualify for Investors Relief. Where the relief is available then a lifetime limit of GBP 10 million of gains is available. There is an annual exemption from tax on capital gains available per individual which for the year ended 5 April 2023 is GBP 12,300 and is expected to remain the same until 2026.

Capital gains derived from assets outside the UK will not be subject to UK tax in the hands of a foreign domiciled individual unless remitted to the UK provided the remittance basis has been claimed for that tax year. Individuals who leave the UK and become not resident for a period of less than five complete tax years may still be liable to tax on their return on any capital gains realised on assets owned prior to departure from the UK. This rule applies to those individuals who were resident for at least four out of seven tax years immediately preceding the year of departure.

**Income Tax rates in 2022/23**

| | Taxable Income (GBP) | Rate on Income Other than Dividends (%) | Rate on Dividends* (%) |
|---|---|---|---|
| Basic rate | 0 – 37,700 | 20 | 8.75% |
| Higher rate | 37,701 - 150,000 | 40 | 33.75% |
| Additional rate | Excess | 45 | 39.35% |

*From 6 April 2018, Scottish resident taxpayers are subject to the following tax rates and allowances on all non-saving and non-dividend income.

**Scotland Income Tax Rates in 2021/22**

| | Taxable Income (GBP) | Rate on Income Other than Dividends (%) |
|---|---|---|
| Starter rate | 0 – 2,161 | 19 |
| Basic rate | 2,161 – 13,118 | 20 |
| Intermediate rate | 13,118, – 31,092 | 21 |
| Higher rate | 31,092 – 150,000 | 41 |
| Top rate | Excess | 46 |

From 6 April 2018, individuals are entitled to a tax free dividend allowance of GBP 2,000.

## INHERITANCE TAX (IHT)

A UK domiciled or deemed domiciled individual is potentially subject to IHT on the transfer of any property owned by him or her, whilst a non-UK domiciled individual may only be subject to IHT on the transfer of property situated in the UK. IHT is a combination of gift and death tax. The first GBP 325,000 is free of IHT (the 'nil rate band'). It normally only arises on death but, in certain circumstances, lifetime gifts can also be chargeable to IHT. The rate on lifetime chargeable transfers is 20% and property passing on death is charged at 40%. The rate (applicable on death) was reduced to 36% from 6 April 2012 where the deceased leaves at least 10% of his or her net estate to charity. On death, IHT may also be levied on gifts made within the previous 7 years. Special rules apply to IHT on trusts.

There are some lifetime exemptions, which are completely free of IHT and are not subject to the 7 year rule. These include; an annual exemption of GBP 3,000; small gifts exemption of GBP 250 per donee; wedding gifts to a child GBP 5,000, grandchild/great-grandchild GBP 2,500 or to anyone else GBP 1,000.

From 6 April 2017, an additional nil-rate band will apply if the value of a deceased's estate includes a property which has been their residence at some point and is left to one or more direct descendants on death. The additional nil-rate band will also apply where the deceased has either down-sized to a less valuable residence or has ceased to own a residence on or after 8 July 2015. In such circumstances, the nil-rate band will be available in respect of the value of the original main residence, provided that the deceased has left the smaller residence, or assets of equivalent value, to direct descendants. The additional nil-rate band was phased in and it is set at GBP 175,000 until 6 April 2026. If the value of the estate is in excess of GBP 2,000,000, the additional nil-rate band will be reduced by GBP 1 for every GBP 2 by which the value of the estate exceeds GBP 2,000,000.

Transfers between spouses and civil partners are exempt from IHT except when the transfer is made to a foreign domiciled spouse/civil partner by a UK-domiciled spouse/civil partner. A foreign domiciled individual automatically acquires a 'deemed' domiciled in the UK for IHT purposes if he or she has been resident in the UK for 15 out of the past20 tax years, unless he or she is excluded from this rule under the terms of a double taxation treaty.

In addition, the non-domiciled individual may elect to be treated as UK domiciled for IHT purposes only. The effect of this would be that assets could be transferred from one member of a married couple/civil partnership to another, or left to them on death with no IHT arising. However, there may be IHT consequences in respect of any gifts or bequests made by the person treated as UK domiciled irrespective of the location of the assets concerned.

## J. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The table is for general guidance only. The rates in the table below reflect the lower of the treaty rate and the rate under domestic tax law. Where a treaty rate is higher than the domestic rate, the domestic rate applies. There is no withholding tax on dividends. If the conditions for the EU interest and royalties directive are satisfied, no tax is withheld on payments up to and including 30 May 2021. The UK has been updating its network of treaties, partly in response to the OECD BEPS project and partly in response to Brexit. Therefore the relevant treaty should always be reviewed and the below table should be viewed as indication of the applicable tax rates.

| | Interest[1] (%) | Royalties (%) |
|---|---|---|
| Non-treaty countries, e.g. Brazil | 20 | 20 |
| **Treaty countries:** | | |
| Albania | 6 | 0 |
| Algeria | 7 | 10 |
| Antigua and Barbuda | --[2] | 0 |
| Argentina | 12[7] | 3/5/10/15[3,4] |
| Armenia | 5[5] | 5 |
| Australia | 0/10[6] | 5 |
| Austria | 0 | 0 |
| Azerbaijan | 10 | 5/10[8] |
| Bahrain | 09 | 0 |
| Bangladesh | 7.5/10[10] | 10 |
| Barbados | 0 | 0 |
| Belarus | 5 | 0/5[11] |
| Belgium | 0/10[12] | 0 |
| Belize | 02 | 0 |
| Bolivia | 15[13] | 0/15[14] |
| Bosnia-Herzegovina[15] | 10 | 10 |
| Botswana | 10 | 10 |
| Brunei | --[2] | 0 |
| Bulgaria | 0/5[16] | 5 |
| Canada | 0/10[17] | 0/10[18] |
| Chile | 4/5/10/15[19] | 2/5/10[20] |
| China | 10 | 10[21] |
| Croatia | 0/5[22 23] | 5[23] |
| Cyprus | 0 | 0 |
| Czech Republic | 0 | 0/10[24] |
| Denmark | 0 | 0 |
| Egypt | 15 | 15 |
| Estonia | 0/10[25] | 0/5/10[26] |
| Eswatini (formerly Swaziland) | --[2] | 0 |
| Ethiopia | 0/5[27] | 7.5 |
| Falkland Islands | 0 | 0 |
| Faroe Islands | 0 | 0 |
| Fiji | 10 | 0/15[28] |
| Finland | 0 | 0 |
| France | 0 | 0 |
| Gambia, The | 15 | 12.5 |
| Georgia | 0 | 0 |
| Germany | 0 | 0 |
| Ghana | 12.5 | 12.5 |
| Greece | 0 | 0 |
| Grenada | 02 | 0 |
| Guernsey | --/0[29] | --/0[30] |

| | Interest[1] (%) | Royalties (%) |
|---|---|---|
| Guyana | 15 | 10 |
| Hong Kong | 0[9] | 3 |
| Hungary | 0 | 0 |
| Iceland | 0 | 0/5[31] |
| India | 10/15[10] | 10/15[32] |
| Indonesia | 10 | 10/15[32] |
| Ireland | 0 | 0 |
| Isle of Man | --/0[29] | --/0[30] |
| Israel | 5/10[33] | 0[33] |
| Italy | 0/10[34] | 8 |
| Ivory Coast | 15 | 10 |
| Jamaica | 12.5 | 10 |
| Japan | 0/10[35] | 0 |
| Jersey | --/0[29] | --/0[30] |
| Jordan | 10 | 10 |
| Kazakhstan | 10[36] | 10[36] |
| Kenya | 15 | 15 |
| Kiribati | --[2] | 0 |
| Korea, Republic of | 10 | 2/10[37] |
| Kosovo | 0 | 0 |
| Kuwait | 0 | 10 |
| Latvia | 10 | 0/5/10[38] |
| Lesotho | 0/10 | 7.5 |
| Libya | 0 | 0 |
| Liechtenstein | 0 | 0 |
| Lithuania | 0/10[39] | 0/5/10[40] |
| Luxembourg | 0 | 5 |
| Malawi | 0/--[42] | 0/--[42] |
| Malaysia | 10 | 8 |
| Malta | 10 | 10 |
| Mauritius | 0/-[43] | 15 |
| Mexico | 0/5/10/15[44] | 10 |
| Moldova | 0/5[45] | 5 |
| Mongolia | 7/10[10] | 5 |
| Montenegro[15] | 10 | 10 |
| Montserrat | --[2] | 0 |
| Morocco | 10 | 10 |
| Myanmar | --[2] | 0 |
| Namibia | --[2] | 0/5[46] |
| Netherlands | 0 | 0 |
| New Zealand | 10 | 10 |
| Nigeria | 12.5 | 12.5 |
| North Macedonia | 10[41] | 0 |
| Norway | 0 | 0 |
| Oman | 0 | 8 |
| Pakistan | 15 | 12.5 |
| Papua New Guinea | 10 | 10 |
| Philippines | 10/15[48] | 15/25[49] |
| Poland | 0/5[50] | 5 |
| Portugal | 10 | 5 |
| Qatar | 0/--[9] | 5 |
| Romania | 10 | 10/15[8] |
| Russian Federation | 0 | 0 |

| | Interest[1] (%) | Royalties (%) |
|---|---|---|
| St Kitts and Nevis | --[2] | 0 |
| Saudi Arabia | 0 | 5/8[32] |
| Senegal | 10 | 10[51] |
| Serbia[15] | 10 | 10 |
| Sierra Leone | --[2] | 0 |
| Singapore | 0/5[52] | 8 |
| Slovak Republic | 0 | 0/10[24] |
| Slovenia | 0/5[53] | 5 |
| Solomon Islands | --[2] | 0 |
| South Africa | 0 | 0 |
| Spain | 0 | 0 |
| Sri Lanka | 0/10[6] | 0/10[54] |
| Sudan | 15 | 10 |
| Sweden | 0 | 0 |
| Switzerland | 0 | 0 |
| Taiwan | 10 | 10 |
| Tajikistan | 0/10[55] | 7 |
| Thailand | 10/25[56] | 5/15[8] |
| Trinidad and Tobago | 10 | 0/10[28] |
| Tunisia | 10/12[10] | 15 |
| Turkey | 15 | 10 |
| Turkmenistan | 10 | 10 |
| Tuvalu | --[2] | 0 |
| Uganda | 15 | 15 |
| Ukraine | 0/5 | 0 |
| United Arab Emirates | 0/--[57] | 0 |
| United States | 0[58] | 0 |
| Uruguay | 0/10[59] | 10 |
| Uzbekistan | 5[60] | 5[60] |
| Venezuela | 0/5 | 5/7[61] |
| Vietnam | 10 | 10 |
| Zambia | 10 | 5 |
| Zimbabwe | 10 | 10 |

NOTES:

1. Many treaties provide for an exemption for certain types of interest, e.g. interest paid to the state, local authorities, the central bank, export credit institutions, or in relation to sales on credit. Such exemptions are not considered in this column.
2. The domestic rate applies; there is no reduction under the treaty.
3. A most favoured nation clause may be applicable with respect to interest and royalties.
4. The 3% rate applies to royalties paid for news; the 5% rate applies to copyright royalties (other than films, etc.); the 10% rate applies to industrial royalties.
5. A most favoured nation clause may be applicable with respect to interest.
6. The zero rate applies to interest paid to financial institutions (as defined).
7. A most favoured nation clause may be applicable with respect to interest and royalties.
8. The lower rate applies to copyright royalties.
9. The zero rate applies, inter alia, to interest (i) paid to an individual, a pension scheme, a financial institution and a company in whose principal class of shares there is substantial and regular trading on a stock exchange, provided that such interest is not paid as part of an arrangement involving back-to-back loans; and (ii) interest paid by the state or a bank, or interest on a quoted Eurobond. The domestic rate applies in other cases (no reduction under the treaty).
10. The lower rate applies to interest paid to financial institutions (as defined).
11. The general rate under the treaty is 5%. However, in respect of royalties relating to the use of or right to use industrial, commercial or scientific equipment the following applies: (i) the 5% rate is limited to the amount calculated as the difference between the gross amount of the payment and confirmed expenses related thereto, and (ii) a 0% rate applies where the contract under which the payments are made was concluded, and the equipment provided under the contract was delivered to the territory of the other contracting state, before 26 September 2017.
12. The zero rate applies, inter alia, to (i) interest paid in respect of a loan granted or a credit extended by an enterprise to another enterprise; and (ii) interest paid to a pension scheme (under conditions).
13. A most favoured nation clause may be applicable with respect to interest.
14. The general rate under the treaty is 15%. However by virtue of a most favoured nation clause the rate is reduced to 0% for royalties for the use of, or the right to use, any copyright of literary, dramatic, musical or artistic work (excluding royalties relating to cinematograph films, videotapes for use in connection with television, or magnetic gramophone records or tapes). Under the Bolivia and Spain treaty, the rate for such royalties is 0%.

15. The treaty concluded between the United Kingdom and the former Yugoslavia.
16. The zero rate applies to interest paid (i) in case of the sale on credit of any equipment, merchandise or services, (ii) on any loan of whatever kind granted by a financial institution, (iii) to a pension scheme or (iv) between companies, where one company holds directly at least 10% of the capital of the other company for at least 1 year prior to the payment of the interest or where both companies are held by a third company which holds directly at least 10% of the capital of both aforementioned companies for at least 1 year prior to the payment of the interest.
17. The zero rate applies, inter alia, if the beneficial owner of the interest is a resident of the other Contracting State and is dealing with the payer at arm's length, unless the interest is contingent or dependent on the use of or production from property or unless it is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion, or if it is computed by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a company.
18. The lower rate applies to copyright royalties (excluding films), computer software, patents and know-how.
19. The interest rates under the treaty are 5% and 15%. The 5% rate applies to interest from loans granted by banks and insurance companies, bonds or securities that are regularly and substantially traded on a recognised securities market, and to interest in relation to sales on credit. However, by virtue of a most favoured nation clause, under the Chile-Japan treaty the rates are reduced as follows:
    (a) from 1 January 2017, the rate for certain types of interest is reduced to 4% (restrictions may apply to back-to-back loans); and
    (b) from 1 January 2019 the general rate is reduced to 10%.

    For further details, including the updated text of article 11, see Circular No. 22/2018 issued by the Chilean tax administration and the update of 28 February 2018 issued by HMRC.
20. The royalty rates under the treaty are 5% and 10%. The 5% rate applies to equipment leasing. However, by virtue of a most favoured nation clause, the rate for equipment leasing is reduced to 2%. Under the Chile and Japan treaty the rate for such royalties is 2%.

    For further details, including the updated text of article 12, see Circular No. 22/2018 issued by the Chilean tax administration and the update of 28 February 2018 issued by HMRC.
21. For royalties received as a consideration for the use of, or the right to use, industrial, commercial, or scientific equipment, this rate applies to 60% of the gross amount of the royalties.
22. The zero rate applies for interest paid (i) in connection with the sale on credit of any industrial, commercial or scientific equipment, (ii) in connection with the sale on credit of any merchandise by one enterprise to another enterprise, or (iii) on any loan of whatever kind granted by a bank.
23. A most favoured nation clause may be applicable with respect to interest and royalties.
24. The lower rate applies to copyright royalties (including films, etc.).
25. The rate under the treaty is 10%. However, by virtue of a most favoured nation clause, the rate is reduced to 0% on interest paid to a bank (as defined). Under the 2005 amending protocol of the Estonia-Netherlands treaty, the rate on such interest is 0%. In addition, the tax rate on interest paid in respect of a loan made, guaranteed or insured by a financial institution of a public character is also reduced to 0%. Under the 2014 amending protocol of the Estonia-Switzerland treaty, the rate on such interest is 0%.
26. The rates under the treaty are 5% (equipment rentals) and 10%. However, by virtue of a most favoured nation clause the rates are reduced to 0% for royalties (as defined). Under the 2014 amending protocol of the Estonia-Switzerland treaty, the rate is 0%.
27. The zero rate applies to interest paid by the state, local authorities or the central bank.
28. The zero rate applies to copyright royalties (excluding films, etc.).
29. The zero rate applies, among others, to interest paid to an individual, pension scheme, bank or any unrelated financial institution, a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange, a company with a holding of less than 25% of non-residents of the recipient state or any other person provided that the competent authority determines that the establishment, acquisition or maintenance of such person does not have as its main or one of its main purposes to secure the treaty benefits, or if the interest is paid by the state or local authorities. Otherwise the domestic rate applies.
30. The zero rate applies, among others, to royalties paid to an individual, a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange, a company with a holding of less than 25% of non-residents of the recipient state or any other person provided that the competent authority determines that the establishment, acquisition or maintenance of that person does not have as its main or one of its main purposes to secure the treaty benefits. Otherwise the domestic rate applies.
31. The higher rate applies to payments for the use of, or the right to use, film copyrights and a trademark associated with, or any information concerning industrial, commercial or scientific experience provided in connection with, a rental or franchise agreement.
32. The lower rate applies to equipment rentals.
33. A protocol to the 1962 treaty was signed on 17 January 2019, in force as of 28 October 2019 and effective as of 1 January 2020 (Israel/UK) and 1 April/6 April 2020 (UK). The lower 5% rate applies to interest paid on a loan from a bank. The royalty rate will become 0% in all cases as from said date.
34. Lower rate applies to interest paid in connection with sale on credit of industrial, commercial or scientific equipment; or sale on credit of goods delivered by one enterprise to another enterprise.
35. The 10% rate applies to interest determined by reference to receipts, sales, income, profits or other cash flow of the debtor, to any change in the value of any property of the debtor or to any dividend, partnership distribution or similar payment.
36. The protocol contains a ' most favoured nation' clause where, if Kazakhstan signs a tax treaty with an OECD member providing for a lower withholding tax rates for interest and royalties, such lower rate will apply with respect to this treaty.
37. Lower rate applies to equipment rentals.
38. The rates for royalties under the treaty are 5% for equipment rentals and 10% in all other cases. However, by virtue of a most favoured nation clause the rate is reduced to 0%. Under the Japan-Latvia treaty the rate is 0%.
39. The lower rate applies to interest paid (i) to or by the government of Lithuania or a political subdivision thereof; or (ii) in respect of a loans made, guaranteed or insured by the Bank of Lithuania; or (iii) in connection with sale on credit of industrial, commercial or scientific equipment to a Lithuanian enterprise by a UK enterprise (unless they are related parties).
40. The rates for royalties under the treaty are 5% for equipment leasing and 10% in all other cases. However, by virtue of a most favoured nation clause, from 1 January 2019, the rates for certain types of royalties (as defined) are reduced to 0%. Under the Japan-Lithuania treaty the rate is 0% for certain types of royalties.
41. The lower rate applies to interest paid on a loan by one enterprise to another.
42. The domestic rate applies if the recipient company controls more than 50% of the voting power in the UK company.
43. The zero rate applies to interest paid to banks; the domestic rate applies in other cases (no reduction under the treaty).
44. The zero rate applies to interest paid to or by a public body; the 5% rate applies to interest paid to banks and insurance companies and to interest on bonds and securities regularly and substantially traded on a recognized securities market; the 10% rate applies to interest paid by a bank or by a purchaser of machinery and equipment in connection with a sale on credit.
45. The lower rate applies to interest paid to or by a public body, to interest paid to a financial institution, and to interest paid in connection with a sale on credit of any industrial, commercial or scientific equipment.

46. Zero rate applies to copyright royalties (excluding films, etc.) and the lower of 5% or half of the domestic rate applies to all other royalties.
47. The lower rate applies to interest paid (i) to a public body; or (ii) in connection with agreements concluded between the governments of the contracting states; or (iii) to a pension scheme; or (iv) to one enterprise by another, in connection with sale on credit of merchandise or equipment.
48. The lower rate applies to interest paid by a company in respect of the public issue of bonds, etc.
49. The lower rate applies to films, etc.
50. Lower rate applies to interest paid (i) to public body; or (ii) to a bank; or (iii) in connection with sale on credit of any industrial, commercial or scientific equipment.
51. The rate applies on 60% of the gross amount of the royalties in the case of payments for the use of, or the right to use, industrial, commercial or scientific equipment.
52. The zero rate applies, inter alia, to interest paid to or by a bank or similar financial institution.
53. The zero rate applies to interest paid to or by public bodies. It also applies where the payer and the recipient are both companies and either company owns directly at least 20% of the capital of the other company, or a third company, being a resident of a contracting state, holds directly at least 20% of the capital of both the paying company and the recipient company.
54. The lower rate applies to copyright royalties.
55. The zero rate applies in case the beneficial owner of the interest is a bank or a pension scheme, provided that such interest is not derived from the carrying on of a business by the pension scheme or through an associated enterprise.
56. Lower rate applies to interest derived by a bank or any other financial institution (including an insurance company).
57. The zero rate applies, inter alia, to interest (i) paid to an individual, a pension scheme, an unrelated financial institution, a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange or any other company provided that the competent authority determines that the establishment, acquisition or maintenance of such company does not have as its main or one of its main purposes to secure the treaty benefits; and (ii) interest paid by the state. The domestic rate applies in other cases (no reduction under the treaty).
58. Interest determined by reference to receipts, sales, income, profits or other cash flow of the debtor, to any change in the value of any property of the debtor or to any dividend, partnership distribution or similar payment may be taxed at 15%.
59. The zero rate applies to interest paid (i) to a financial institution on a loan of at least 3 years for the financing of investment projects and (ii) to a pension scheme (under conditions).
60. A most favoured nation clause may be applicable with respect to interest and royalties.
61. The lower rate applies to royalties for patents and know-how.

## UNITED STATES OF AMERICA

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## BASIC FACTS

| | |
|---|---|
| Full name: | United States of America |
| Capital: | Washington, D.C. |
| Main language: | English |
| Population: | 334 million (2022 estimate) |
| Monetary unit: | United States Dollar (USD) |
| Internet domain: | .us |
| International dialling code: | +1 |

## KEY TAX POINTS

- Taxes are chargeable at the federal, state and local level.
- Corporations incorporated in the United States (US) are generally subject to tax on their worldwide income. Certain dividends received from a foreign corporation are eligible for a 100% participation exemption when requirements are met. To avoid any double taxation on foreign branch income, foreign tax deductions or credits are available. To prevent a double utilisation of foreign branch loss by both US and foreign jurisdiction, the US tax owner is required to file a domestic use election in order to utilise such loss in the US.
- Foreign corporations are generally subject to US income tax on their income effectively connected to a US trade or business.
- A US corporation is entitled to a special deduction for dividends received from other domestic corporations.
- For corporations, capital gains are taxed at the same rates applicable to ordinary income.
- The tax on a foreign corporation's US branch's profits and earnings is the same as regular corporate tax, but an additional 30% branch profits tax (BPT) is imposed if the after-tax earnings of the branch are not reinvested in the business by the close of the tax year or are repatriated in a later tax year. Certain tax treaties could reduce the BPT.
- The US does not impose any VAT. However, most states impose single stage sales and use tax. Following a supreme court decision in 2018, many states have implemented new rules requiring out-of-state sellers to collect and remit sales tax to the state under certain circumstances, even without having physical presence in that state.
- Related party transactions negotiated at arm's length and meeting rigid substantiation standards are treated the same way as non-related party transactions.
- Taxes are required to be withheld from US source portfolio dividends, interest, rents, and royalties and certain other types of income paid to non-US payees. US tax treaties with a foreign country may provide reduced withholding tax rates when certain requirements are met or allocate the right to tax income to one of the treaty countries so that there is no withholding tax at all. Also, under certain circumstances, an exception to withholding tax on interest payments (the "portfolio interest exemption") may apply.
- The Foreign Account Tax Compliance Act of 2010 (FATCA) imposes broad reporting and withholding obligations (directly and indirectly) on most non-US entities receiving US-source income. This is in addition to regular tax withholding. FATCA also imposes reporting obligations for foreign entities such as foreign financial institutions that have US citizen and US resident account holders, and certain non-financial entities in which US citizens or US residents own foreign assets.

- US citizens and residents are subject to taxation and reporting requirements on their worldwide income even if they are not residing in the US. US citizens and residents living abroad may be entitled to a Foreign Earned Income Credit or Foreign Tax Credit, as allowed by treaty, to mitigate double taxation on income.
- Non-resident individuals are generally subject to tax on their income generated from US sources.
- Special lower tax rates apply to capital gains and dividend income of individuals, depending on how long the asset has been held, the type of asset and the taxpayer's income tax bracket.
- Other taxes for individuals which may be levied include alternative minimum tax (AMT), self-employment tax, social security and Medicare tax and qualified retirement plan tax. Taxes paid to the states and municipalities are generally deductible on the federal income tax return in the year paid, subject to limitations. However, for taxable years beginning after 31 December 2017 and before 1 January 2026, the state and local deduction is limited to USD 10,000 for individual taxpayers or persons who are married filing a joint return (USD 5,000 for married individuals filing separate returns). Some states have implemented Pass-Through-Entity-Tax rules for partnerships and S corporations. These rules allow a pass-through-entity, which otherwise would not be subject to tax themselves, to elect to pay state tax on behalf of its owners. If elected, this allows owners of these pass-through entities to deduct such state and local taxes paid by the entity, even if they are in excess of the cap described above.

## A. TAXES PAYABLE

### COMPANY TAX

Company tax is payable by all corporate entities, except for certain exempt organisations and pass-through corporations subject to special rules. Corporations incorporated in the US are generally subject to tax on their worldwide income. Domestic corporations that are US shareholders of a foreign corporation may be eligible for a 100% participation exemption under certain circumstances. The Global Intangible Low-Taxed Income rules (GILTI) and the Base Erosion and Anti-abuse Tax (BEAT), implemented with the Tax Cuts and Jobs Act of 2017, need to be considered as well. Foreign corporations are generally only subject to tax on their income effectively connected to a US trade or business.

For tax years beginning after 31 December 2017, the US corporate tax rate has been reduced to a flat 21% on all levels of taxable income.

Generally, a large US corporation, defined as having at least USD 1 million gross taxable income in any of its 3 previous tax years immediately preceding the current tax year, is required to prepay its estimated tax liability in up to four instalments. Corporations not meeting the large corporation income test can opt to pay 100% of the prior year tax under the "safe harbour" method. Penalties and interest may be assessed if estimated instalments are less than 100% of the actual liability.

The US imposes income taxation at both the corporate and shareholders' level. Corporate earnings are taxed first at the corporate level and again when distributed as dividends to shareholders. Business can also be conducted through flow-through entities such as traditional partnerships, limited liability companies (LLC), and certain tax-election corporations ('S corporations'). S corporations may not have non - US resident individuals or corporations as shareholders. After the federal corporate tax rate was reduced to 21% under the new tax law, a thorough analysis is needed when considering how to structure US operations to lower the tax burden as much as possible, particularly with the potential availability of a 20 percent qualified business deduction for businesses conducted through a pass-through entity.

Significant planning opportunities are available for both US and foreign taxpayers through the use of 'hybrid' entities. These companies are treated as flow-through entities by one jurisdiction and as taxable entities by another. US rules are often flexible in allowing US taxpayers to select the desired tax status of the entity under the "check-the-box" regime. However, attention must be paid to newly enacted anti-hybrid rules.

Corporate tax returns and payments are due by the 15th day of the fourth month following the end of the corporation's fiscal year. Flow-through entities are due on the 15th day of the third month following the end of the year. The original due date for calendar year taxpayers is April 15. An automatic extension to file the corporate federal and state tax return from five to seven months is permitted if requested by the original due date of the return. Extensions to file a return, however, do not extend the time for payment of tax due. Failure to pay sufficient taxes could result in an invalid extension, as well as penalties and interest for late and underpayment of tax due.

### CAPITAL GAINS TAX

For corporations, the excess of the net gains from the sale of capital assets over net losses from the sale of assets is taxed at the same rates applicable to ordinary income. However, capital losses may only be used to offset capital gains and the excess of losses over gains may be carried back three years or forward five years. Under certain circumstances, carry back is prohibited but carry forward is extended. Losses must be applied to the earliest carry back year before any carry forwards maybe used. Capital gains invested in qualified opportunity funds may be excluded from taxable income temporarily or permanently.

### ALTERNATIVE MINIMUM TAX (AMT)

For years beginning after 31 December 2017, the US corporate AMT has been repealed.



### BRANCH PROFITS TAX

A foreign corporation's US branch's profits and earnings are subject to the tax same as a US resident corporation. In addition, a 30% branch profits tax (BPT) is imposed on the after-tax earnings of the US branch that are not reinvested in the US business by the close of the tax year, or that are repatriated in a subsequent tax year. The branch profits taxable base is adjusted for any changes in the net equity of the US branch. The BPT may be reduced or eliminated by any relevant tax treaties or replaced by the secondary withholding tax.

In addition to the branch profits tax, a branch-level interest tax of 30% is imposed on any interest paid by the US branch to a foreign entity not engaged in the same business activity. The tax also is assessed on any excess interest deducted on the US tax return over the amount actually paid.

## SALES AND USE TAX

Sales and use tax are imposed at the state and local levels and vary in rates and in bases. It can be imposed on the sale, transfer, purchase or exchange of a taxable item or service. In the US, generally only tangible personal property and enumerated services are subject to sales and use tax. Sales tax generally applies on the sale to the end user or ultimate consumer. Use tax is imposed on the storage, use, or consumption of a taxable item or service on which no sales tax has been paid. Sales and use tax rates vary from state to state and generally range from 2.9% to 7% at the state level. Most states also allow a 'local option' that permits local jurisdictions, such as cities and counties, to impose an additional percentage on top of the state-level tax. The highest combined state and local tax rate is 10.5% in Tacoma, Washington and Fremont, Los Angeles and Oakland in California.

Following a US Supreme Court decision in June 2018 all states that impose sales and use tax have implemented new rules to require out-of-state sellers to collect and remit sales tax even without having a physical presence in that state. This was not the case prior to this decision. In the past only vendors with a physical presence in a state were required to collect and remit sales tax. Out-of-state sellers located outside the US are also impacted by the new rules. They may have to register for sales tax purposes in states where they are selling their products and services, collect sales tax and remit it to the state. In many states, a marketplace facilitator (i.e. Amazon) may remit sales tax on behalf of a seller, but the seller may still be required to register for sales and tax. It is also important to note that foreign sellers may be required to collect state sales tax even if not subject to state or local income taxes.

## CUSTOMS DUTIES AND IMPORT TARIFS

All goods imported into the US are subject to entry and are dutiable or duty-free in accordance with their classification under the applicable items in the Harmonised Tariff Schedule of the US. The classification also identifies eligibility for special programs and free trade agreement preferential duty rates.

When goods are dutiable, ad valorem, specific, or compound duty rates may be assessed. An ad valorem rate, which is the type of duty mechanism most often applied, identifies the percentage of tax that will be assessed on the value of the merchandise, such as 7% ad valorem. A specific rate is a specified amount per unit of weight or other quantity, such as 6.8 cents per dozen. A compound rate is a combination of both an ad valorem rate and a specific rate, such as 0.8 cents per kilo plus 8% ad valorem. Customs requires that the value of the goods be properly declared regardless of the dutiable status of the merchandise.

Liability for the payment of duty becomes fixed at the time an entry is filed with US Customs and Border Protection (CBP), although the amount of duty owed may change subsequently if any of the information declared on entry is later determined to be erroneous. The obligation for payment is upon the person or firm in whose name the entry is filed, the importer of record.

## VALUE ADDED TAX (VAT)

The US does not impose any VAT. Instead, states and local jurisdictions impose sales and use tax (see above). There is no concept similar to input VAT under sales and use tax rules and regulations in any state.

## FRINGE BENEFITS TAX (FBT)

The US does not impose any corporate level tax on fringe benefits provided to its employees. However, certain fringe benefits are taxable to employees receiving the benefits and are required to be reported on their personal income tax returns. The US does require employers and employees to pay certain payroll related taxes including:

(1) Social Security (FICA), taxable at 6.2% of the wage base (on up to USD 142,800 in 2021 and USD 147,000 in 2022, annually adjusted). The employer pays an equal amount.

(2) Federal unemployment tax (FUTA) to be paid by employers at 6.0% in 2021 and 2022 of the first USD 7,000 of wages to each employee (less credits of up to 5.4% for state unemployment tax).

(3) State unemployment tax (SUT) to be paid by employers which varies from state to state.

(4) Medicare at 1.45% of total wages paid (with no wage limitation cap). The employer pays an equal amount.

(5) Additional Medicare 0.9% (0.009) on employees only for wages in excess of USD 200,000 for individuals (the thresholds are USD 250,000 for couples filing joint returns and USD 125,000 for a married taxpayer filing a separate return).

## LOCAL TAXES

Most states and some municipalities of the US impose income or franchise taxes on corporations. Tax rates vary as do the measurement of tax bases. Most states allow income to be apportioned to various states if business is conducted in more than one state. Historically, a three-factor allocation formula consisting of tangible assets, sales and receipts, and payroll has generally been used. However, many states are moving to formulas that are more heavily weighted to sales. Increasingly, US states utilize the single sales factor to apportion income and tax bases. Most states begin with federal taxable income in the computation of their taxable base, followed with some required adjustments to calculate state taxable income.

Several states have imposed a tax on gross margin or gross sales in lieu of a tax on net income. It is also important to note that some states honour provisions of US tax treaties and some states do not. Therefore, some states consider foreign companies to be subject to their state income tax even if the company is not subject to US federal income tax by virtue of a double tax treaty.

While particular rules vary from state to state, state tax authorities generally assert income or franchise tax jurisdiction over a business whose presence within the state is sufficient to form a "nexus" with that state. Unbound by treaty terms, states often seek to define "nexus" broadly, setting a lower evidentiary hurdle than what may be needed to find a permanent establishment under US income tax treaties. Accordingly, a non-US company operating in the US should remain aware of potential state income tax liabilities, even where treaty benefits may be claimed at the US federal income tax level. However, in August 2021, the Multi-State-Tax Commission (MTC), an intergovernmental state tax agency, has published an updated version of its position paper on the application of a federal public law (P.L. 86-272) that protects businesses from state and local taxes in a state if the business has no physical presence in the state and activities do not exceed mere solicitation. The updated position paper suggests extending the list of unprotected activities significantly, especially when conducted via the internet. The suggestions would have to be adopted by states. California was one of the first states that issued a technical advisory memorandum in February 2022, announcing that California is basically following the MTC's suggestions. Businesses need to follow the developments closely, as it could create an increased risk of state tax for a broad range of businesses.

Other taxes that may be levied at the state level include real and personal property tax, franchise tax, intangibles tax, transfer tax, commercial activity tax, and tax on capital. Taxes paid to the states and municipalities are deductible on the federal income tax return in the year paid or accrued. For individuals and married couples filing joint returns there is a limitation on deductions in the amount of USD 10,000 (USD 5,000 in the case of a married individual filing a separate return) for taxable years 2018 through 2025. Some states have implemented Pass-Through-Entity-Tax rules for partnerships and S corporations. These rules allow a pass-through-entity, which otherwise would not be subject to tax themselves, to elect to pay state tax on behalf of its owners. If elected, this allows owners of these pass-through entities to deduct such state and local taxes paid by the entity, even if they are in excess of the cap described above.

## OTHER TAXES

In addition to corporation income taxes, the US also imposes the following taxes.

## ACCUMULATED EARNINGS TAX

Corporations (other than S corporations, domestic and foreign personal holding companies, corporations exempt from tax under Subchapter F of the Code, and passive foreign investment companies) accumulating earnings and profits for the purpose of avoiding shareholder personal income tax (PIT) are subject to a penalty tax in addition to any other tax that may be applicable. The accumulated earnings tax is equal to 20% of ‘accumulated taxable income’. Generally, accumulated taxable income is the excess of taxable income with certain adjustments, including a deduction for regular income taxes, over the dividends paid deduction and the accumulated earnings credit.

## PERSONAL HOLDING COMPANY (PHC) TAX

Closely-held corporations that receive substantial income from passive activities and do not distribute this income to shareholders are subject to the PHC tax. The tax is imposed at a rate of 20% on the undistributed income. This tax is in addition to the regular corporate tax.

## B. DETERMINATION OF TAXABLE INCOME

Corporate taxable income is determined by ascertaining assessable gross income and reducing it by allowable deductions. Allowable deductions must be segregated into ordinary and special deductions. Corporations are taxed at the entity level. For flow-through entities such as partnerships, limited liability companies and ‘S’ corporations, taxable income is determined in a similar fashion. However, these entities pass on income or losses and special deductions to its shareholders, members or partners, who are taxed at their level.

## DEPRECIATION AND DEPLETION

Property, plant and equipment may be depreciated over a statutory cost recovery system life. For property acquired or placed in service after 31 December 1986, the capitalised costs must be depreciated using the Modified Accelerated Cost Recovery System (MACRS) over a life of 3 - 39 years. Most tangible personal property is in the three, five and seven-year category while real property is categorised as 27.5 or 39 years for residential and non-residential property, respectively. However, depreciation on certain components of buildings and real property improvements can be accelerated to shorter lives through the use of cost segregation studies designed to identify the proper categorisation of costs for tax asset classification purposes.

For some smaller corporations, an election may be made to treat the cost of assets as an expense rather than as a depreciable capital expenditure. The maximum deduction for the year 2021 is USD 1,050,000 and is limited to taxable income determined without regard to the above election. This expense benefit is phased out on a dollar for dollar basis if qualified purchases exceed a certain threshold amount (USD 2,620,000).

Taxpayers may also qualify for a 100% bonus depreciation for certain qualified property. The property can be new or “original use” as well as used property.

A deduction for depletion is allowable for expenditures on natural resources. Generally, depletion may be calculated using either a cost or percentage method. Cost depletion is based on the adjusted basis of the property and an estimate of the number of units that make up the deposit and the number of units extracted during the year.

Under the percentage depletion method, a flat percentage of gross income is taken as the depletion deduction. It may not exceed 50% (100% for oil and gas properties) of the taxable income from the property before the depletion deduction. For independent oil and gas producers and royalty owners, the depletion deduction may not exceed 65% of the taxpayer’s taxable income.

## STOCK / INVENTORY

Inventories are generally stated at the lower of cost or market value on the first in, first out (FIFO) method, or cost only on the last in, first out (LIFO) method. Uniform capitalisation rules may require the inclusion in inventory or capital accounts of certain otherwise deductible indirect and administrative costs incurred for real or personal property produced or acquired for resale.

The tax law requires capitalisation for tax purposes of several costs allocable to the manufacturing process that frequently are expensed as current operating costs for financial reporting (e.g. a portion of general and administrative costs, significant cost variances, and the excess of tax depreciation over financial statement depreciation).

When inventory is sold, the cost of goods sold is subtracted from sales to compute gross profit. Amounts included in cost of goods sold are not subject to the BEAT unless the payments are made to an ‘expatriated entity’.

## GOODWILL

The cost of goodwill generally is capitalised and amortised rateably over 15 years, beginning in the month the goodwill is acquired.

## START-UP EXPENSES

Generally, start-up expenditures must be amortised over a 15-year period; however, certain taxpayers may elect to deduct some expenses in the tax year in which the trade or business begins.

## CAPITAL GAIN AND LOSSES

See above Capital Gains Tax discussion.

## DIVIDENDS

For tax years beginning after 31 December 2017, a US corporation generally may deduct 50% of dividends received from other US corporations in determining taxable income. The dividends received deduction (DRD) is increased from 50% to 65% if the recipient of the dividend distribution owns at least 20% but less than 80% of the distributing corporation. Generally, dividend payments between US corporations that are members of the same affiliated group are deferred or eliminated until a transaction with a third party occurs. For tax years beginning before 31 December 2017, the 50% DRD was 70% and the 65% DRD was 80%

A 100% DRD is provided for the foreign-source portion of dividends received by a US corporation from certain foreign corporations with respect to which it is a 10% US shareholder. The 100% DRD applies to distributions made after 31 December 2017.

Stock dividends - A US corporation can distribute a tax-free dividend of common stock proportionately to all common stock shareholders. If the right to elect cash is given, all distributions to all shareholders are taxable as dividend income whether cash or stock is taken. There are exceptions to these rules, and extreme caution must be observed before making such distributions.

## INTEREST DEDUCTIONS

A taxpayer generally may deduct business interest paid or accrued within the tax year on certain indebtedness. However, such debt must pertain to the debt of the taxpayer and must result from a genuine debtor-creditor relationship. Numerous exceptions and limitations exist regarding the deductibility of interest. For example, if a corporation's average annual gross receipts (on an aggregated basis of a controlled group) for the prior three years exceed USD 25 million, then a significant limitation applies. Interest deductions are limited to 30% of taxable income before interest, depreciation, amortisation and depletion for tax years beginning before 1 January 2022 (the limitation is 50% of taxable income in 2019 and 2020). For tax years beginning after 31 December 2021, depreciation, amortisation, and depletion must be deducted in determining taxable income. Any interest disallowed under this limitation can be carried forward indefinitely.

## LOSSES

Generally, net operating losses from certain trade or business arising in tax years ending after 2017 may not be carried back as allowed in past years but can only be carried forward for an indefinite period.

Losses generated in tax years beginning before 2018 can still offset 100% of taxable income. Under the new law the deduction of losses arising in tax years beginning after 2017 is limited to 80% of taxable income. A successor corporation may use carryovers of a predecessor to a limited extent in a change of ownership, a subsidiary liquidation or a specified reorganisation. Significant limitations could apply for corporations which have experienced a "change of control".

Net operating losses (NOLs) incurred in 2018, 2019, and 2020 can be carried back five years and fully offset taxable income. The 80% taxable limitation applies again for NOLs incurred after 2017 in 2021 and onward.

## FOREIGN SOURCE INCOME

US corporations are generally taxed on worldwide income, i.e., foreign-source income may be subject to US taxation under most circumstances. Subject to certain limitations, foreign taxes may be taken as a deduction or as a foreign tax credit.

### Foreign income (Subpart F income) of US taxpayers

In the case of controlled foreign companies (CFCs), certain types of undistributed income are taxed currently to certain US shareholders (Subpart F income). More specifically, in situations in which a foreign corporation is a CFC, every US shareholder owning 10% or greater of the total value of shares of all classes of stock or the total combined voting power of all classes of stock entitled to vote of such a foreign corporation (US shareholder) must include in gross income its pro rata share of the

Subpart F income earned by the CFC, regardless of whether the income is distributed to the US shareholders.

With certain exceptions, Subpart F income generally includes passive income and other income that is readily movable from one taxing jurisdiction to another (i.e. income that is separated from the activities that produced the value in the goods or services generating the income). In particular, Subpart F income includes insurance income, foreign base company income, and certain income relating to international boycotts and other violations of public policy. There are several subcategories of foreign base company income, the most common of which are foreign personal holding company income (FPHCI), foreign base company sales income (FBCSI), and foreign base company services income (FBCSVI).

FPHCI is passive income (e.g. dividends, interest, royalties, and capital gains). FBCSI and FBCSVI are sales and services income earned in cross-border, related-person transactions. There are a number of common exceptions that may apply to exclude certain income from the definition of Subpart F income, including exceptions relating to highly taxed income, certain payments between related parties, and active business operations.

In situations in which the US shareholder is a domestic corporation, the domestic corporate shareholder may claim a foreign tax credit for foreign taxes paid or accrued by a CFC. Furthermore, certain rules track the earnings and profits of a CFC that have been included in the income of US shareholders as Subpart F income to ensure that such amounts (known as previously taxed income or PTI) are not taxed again when they are actually distributed to the US shareholders.

Three significant tax regimes introduced by the TCJA in 2017 and effective for tax years from 2018 onwards should be noted.

**Global Intangible Low-Taxed Income rules (GILTI)**

US shareholders of controlled foreign corporations (CFCs) have to include on a current basis the aggregate amount of certain income generated by its CFSs, regardless of actual repatriation, effective for tax years beginning after 31 December 2017. Generally, this amount is the earnings and profits of the CFC not subject to Subpart F, reduced by a return for tangible assets. Losses in one CFC may offset income in another CFC for GILTI purposes.

The full amount of GILTI is includible in the US shareholder's income, and generally is then reduced through a 50% deduction for corporate taxpayers in tax years beginning after 31 December 2017 and before 1 January 2026, and a 37.5% deduction in tax years beginning after 31 December 2025. A corporate taxpayer generally also can claim a credit for 80% of the foreign taxes associated with GILTI. An election is available for an individual taxpayer to be treated as a corporation for these purposes. In addition, certain high-taxed income (greater than 90% of the U.S. corporate tax rate) can be excluded from the calculation of GILTI.

**Foreign-Derived Intangible Income (FDII)**

The Tax Act provides US companies with a new permanent deduction in regards to Foreign-Derived Intangible Income (FDII). The incentive is available to C-corporations or corporations that have not made an S-election to be treated as a flow-through entity. The incentive allows C-corporations who generate income from foreign markets to deduct a portion of their eligible export income, or FDII. Thus the effective tax rate on such eligible export income after the FDII deduction is 13.125%. Beginning in tax years after 2025, the deduction is reduced and the effective tax rate will be 16.406%. FDII is a new category of income and it does not have to come from intangible assets. Instead, the new tax law assumes a fixed rate of return on a corporation's tangible assets. Any remaining income is deemed to be generated by intangible assets.

The FDII deduction may represent a significant deduction for C corporations if they generate income from the sale of property to a foreign person for foreign use by unrelated parties. A sale includes any lease, license, exchange, or other disposition. FDII also applies to services provided to any foreign person. Many related-party property and service transactions are also eligible for the deduction, although special rules apply

Both calculations are complex and require companies to keep track of the data needed.

**Base erosion and anti-abuse tax (BEAT)**

The Tax Act creates a new US federal tax called the 'Base Erosion and Anti-abuse Tax' (BEAT). BEAT targets US tax-base erosion by imposing an additional corporate tax liability on corporations (other than regulated investment companies [RICs], real estate investment trusts [REITs], or S corporations) that, together with their affiliates, have average annual gross receipts for the three previous years immediately preceding the current tax year of at least USD 500 million and that make certain base-eroding payments to related foreign persons during the tax year of 3% (2% for certain banks and securities dealers) or more of all their deductible expenses apart from certain exceptions. The most notable of these exceptions are the Net Operating Loss (NOL) deduction, the new Dividends Received Deduction (DRD) for foreign-source dividends, the new deduction for Foreign-Derived Intangible Income (FDII) and the deduction relating to the new category of Global Intangible Low-Taxed Income (GILTI), qualified derivative payments defined in the provision, and certain payments for services.

The BEAT is imposed to the extent that 10% (2019 through 2025, 12.5% in 2026 and beyond) of the taxpayer's 'modified taxable income' (generally, US taxable income determined without regard to any base-eroding tax benefit or the base-erosion percentage of the NOL deduction) exceeds the taxpayer's regular tax liability net of most tax credits. The above percentages are changed to 11 % and 13.5%, respectively, for certain banks and securities dealers. After 2025, regular tax liability is reduced for all tax credits.

A base-eroding payment generally is any amount paid or accrued by the taxpayer to a related foreign person that is deductible, made to acquire property subject to depreciation or amortisation, or for reinsurance payments. The category also includes certain payments by 'expatriated entities' subject to the anti-inversion rules of Section 7874. The provision is effective for tax years beginning after 31 December 2017.

## INVESTMENT TAX CREDIT

The Investment Credit comprises five components:

(1) The rehabilitation credit;

(2) The energy credit;

(3) The qualifying advanced coal project credit;

(4) The qualifying gasification project credit; and

(5) The qualifying advanced energy project credit.

For flow-through entities, the credits must be allocated to the individual partners, shareholders or beneficiaries on a pro rata basis. Generally, the credit is 10% of qualifying expenses (20% in the case of certified historic structures). It should be noted that no investment credit is allowed for investment credit property to the extent it is financed with nonqualified non-recourse debt and also that the 2018 tax reform repealed the 10% credit for pre-1936 buildings for amounts paid or incurred after 2017.

## INCENTIVES

In addition to investment tax credits, other preferential tax incentives are available for activities such as those related to export, activities engaged in US possessions, qualified private activity bonds, research and development expenditures, for hiring certain specified individuals, and for engaging in the production of renewable energy. Also, a deduction of up to 9% of taxable income attributable to domestic production activities before 2018 is available. However, such incentive is repealed for the corporations' production activities after 2017.



## OTHER

Other issues that need to be mentioned include the following:

(1) Deductions are generally allowable for charitable contributions, but for corporations may not exceed 10% of taxable income computed without regard to the contributions. Excess contributions may be carried forward for five years.

(2) Organisational and business start-up expenditures are deductible up to USD 5,000 apiece (USD 10,000 total), subject to certain limitations, and the remainder must be written off over 180 months.

(3) The cost of certain business meals is subject to a 50% limitation (not applicable in 2021 and 2022). In general, entertainment expenses are entirely non-deductible.

(4) Bad debts, except for certain financial institutions, are deductible only under the specific write-off method for receivables that become uncollectible in whole or in part during the tax year. Other debts can only be deducted for tax purposes if worthlessness can be proved as a result of an identifiable event.

(5) Life insurance premiums paid on key employees are deductible only to the extent that they are:

  (a) Included in the employees' compensation;

(b) Not unreasonable in amount (statutory limited amount);

(c) The employer is not directly or indirectly a beneficiary.

## C. FOREIGN TAX RELIEF

A US corporation or a foreign corporation engaged in trade or business in the US may elect to claim either a credit or a deduction for income taxes paid to another country if the taxes are connected with or related to its business and if the income is also taxed by the US. Generally, the tax credit is available only if such foreign tax is based on foreign source income. The tax credit may not reduce the US tax liability on income from US sources. Any unused foreign tax credit in one year may be carried back to the prior year and forward ten years.

The tax reform modified foreign tax credit rules in several ways. Included in the changes is the introduction of two new foreign tax credit limitation categories which are the Global Intangible Low-Taxed Income (GILTI) and the foreign branch category income. For instance, deemed paid foreign taxed credits related to GILTI are limited to 80% of the taxes paid or accrued, and the unused foreign tax credits are lost permanently which is different than the general foreign tax credit as mentioned above.

## D. CORPORATE GROUPS

Affiliated groups of US corporations (parent has 80% ownership) are permitted to offset the losses of one affiliate against the profits of another via the filing of consolidated federal income tax returns. A parent's usage of prior subsidiary losses before its acquisition may be limited. State and local rules vary from federal rules in this regard and may not permit loss offsetting. Some may also require, alternatively, that returns are filed to include results of all related companies, including companies that are not includable in a federal consolidated income tax return.

## E. RELATED PARTY TRANSACTIONS

Related party transactions negotiated at arm's length are treated the same as non-related party transactions. However, in general, a deduction may not be taken by one party until the transaction has been included in gross income by the other party. Deductions are also not allowed for certain amounts paid or accrued pursuant to a hybrid transaction or by, or to, a hybrid entity. The Internal Revenue Service may make any adjustments necessary to reflect the income of the related parties.

For multi-national groups, additional emphasis is placed on the 'transfer price' among members of the group. Several methods are provided to determine a proper arm's length price such as the comparable uncontrolled price, cost plus, comparable profits and various profit split methods. Significant compliance burdens now apply in these situations. Failure to maintain contemporaneous documentation of pricing determinations could result in substantial penalties (up to 40% of the tax adjustment due). US regulations require taxpayers to conduct transfer pricing studies to determine the 'best method' under the applicable circumstances.

Transfer pricing determinations must often meet standards in multiple jurisdictions. US rules for determining transfer pricing may vary from the rules of other countries that have introduced transfer pricing standards and from OECD guidelines. US states are increasingly interested in both multi-national and multi-state transfer pricing and may at times take positions differing from those of the Internal Revenue Service (IRS).

## F. WITHHOLDING TAXES - NON-US PAYEES

Taxes are required to be withheld from portfolio dividends, interest, rents, and royalties, and certain other types of income paid to non-US payees. The statutory rate is 30% but reduced rates may apply if the recipient is qualified to obtain the benefits of a US tax treaty. US source income that is connected with a US trade or business is not subject to withholding, but instead is taxed at the highest tax rate applicable to the beneficiary (i.e., currently 21% for corporations or 37% for individuals). This exemption from withholding is not available unless the foreign recipient provides notice to the US payor prior to payment. Exemptions from withholding include portfolio interest, interest earned on US bank deposits if such interest is not effectively connected with the conduct of a trade or business within the US and interest earned on obligations payable 183 days or less from the date of original issue.

Special withholding tax rules apply to non-US partners in US or foreign partnerships with a US trade or business or income treated as effectively connected. The highest rate in effect will be used as the withholding tax rate and is applied to a foreign partner's annual allocable share of the partnership's US source income (whether an individual or corporation). The current rates are 37% for individuals and 21% for corporations. Special withholding tax rules also apply to direct or indirect sales or other dispositions of US real property by foreigners. A 15% withholding rate applies to the gross amount realised or sales price on the disposition of US real property. Certain exceptions may apply, e.g., the sales price is USD 300,000 or less or specific permission is granted for a reduction in the withholding.

A further addition to the framework of US withholding obligations is found in the Foreign Account Tax Compliance Act of 2010 (FATCA). Intended as a countermeasure against perceived tax abuse through the use of foreign accounts, FATCA imposes broad reporting and withholding obligations (directly and indirectly) on most non-US entities receiving US-source income, including the proceeds from sale or disposition of US property that can produce interest or dividends. While many FATCA rules focus on what the law refers to as ''FFIs", or foreign financial intuitions, FATCA's impact extends to financial and non-financial operating companies. Further, FATCA compliance may be required as a condition to eligibility for benefits under any applicable US tax treaty.



## G. EXCHANGE CONTROL

No direct exchange controls exist. Transactions in currency of USD 10,000 or more must be reported to the US Department of Treasury. Multiple related transactions must be treated as a single transaction for disclosure purposes. The direct or indirect transportation of currency or other monetary instruments exceeding USD 10,000 to a foreign jurisdiction must also be reported. Transfers through normal banking procedures that do not involve the physical transportation of currency are not required to be disclosed. However, US financial institutions are required to report cash transactions exceeding USD 10,000.

## H. PERSONAL TAX

US citizens and other US- resident individuals are subject to the same tax rules. Taxes are assessed on worldwide income reduced by certain adjustments, deductions, and exemptions. Non-US resident individuals are generally subject to tax on their income generated from US sources. Certain credits are available to reduce the tax liability. Generally, income consists of compensation from employment services, interest and dividends, income or loss from self-employment, capital gains and losses, rents and royalties and income or loss from pass-through entities. Allowable deductions include medical expenses, home mortgage and investment interest, state, local and real estate taxes (USD 10,000 limit), certain casualty losses, charitable contributions.

Limitations exist for the amount of losses and deductions that may be claimed by a taxpayer. Most deduction limitations are based upon the income levels of the individual. Income tax rates vary depending upon the filing status of the taxpayer. The five categories of filing status are:

(1) Single;

(2) Married filing a joint return;

(3) Married filing separate returns;

(4) Head of household; and,

(5) Qualifying widow(er) with dependent child.

The current maximum personal income tax rate is 37%. Effective 1 January 2013, a new 3.8% tax applies on certain net investment income for taxpayers with modified adjusted gross incomes in excess of USD 200,000 for individuals (the thresholds are USD 250,000 for married filing joint returns, USD 125,000 for married filing separately and USD 250,000 for qualifying widow(er)). Examples of income that would be subject to the 3.8% investment tax are dividends, interest, royalties, capital gains, passive income from businesses, and net rental income.

The US requires employers to withhold federal and state income taxes, social security and Medicare tax from an employee's salary. These taxes must be remitted to the government on a periodic basis. Self-employed individuals are required to make quarterly estimated payments equal to at least 90% of their current year actual tax liability in most cases. Higher income individuals may need to pay in 100% of the current year's tax or 110% of the prior year's tax. Penalties and interest may be assessed for underpayment of these taxes.

Special tax rates apply to long term capital gains and "qualified" dividend income of individuals. The tax rate is based on the length of time that the asset is held, the type of capital asset, and the overall tax bracket of the individual. Many dividends also receive a preferential tax rate. Non-US resident individuals are typically subject to tax on income generated from US sources and are generally not taxed on US source capital gains unless the gains are directly or indirectly related to sales of US real property. Many non-US resident individuals do not receive preferential tax rates on dividend income. The current federal top marginal rate for qualified dividends and long term capital gains is 20% (23.8% total inclusive of the net investment income tax).

In addition to the regular income tax, individuals may also be liable for other taxes on their tax returns. These taxes include the alternative minimum tax (AMT), self-employment tax, social security and Medicare tax and qualified retirement plan tax. Most states and some municipalities also impose income taxes that vary in rates and bases. The US imposes other taxes on individuals such as gift tax and estate tax.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Dividends Substantial Holdings[1] (%) | Interest[2] (%) | Royalties[3] (%) |
|---|---|---|---|---|
| **Non-treaty countries** | 30 | 30 | 30 | 30 |
| **Treaty countries: Resident corporations and individuals** | Nil | Nil | Nil | Nil |
| **Treaty countries: Non-resident corporations and individuals:** | | | | |
| Armenia[5] | 30[4] | 30[4] | 30/0[4] | 0 |
| Australia | 15 | 5/0 | 10 | 5 |
| Austria | 15 | 5 | 0 | 10/0 |
| Azerbaijan[5] | 30[4] | 30[4] | 30/0[4] | 0 |
| Bangladesh | 15 | 10 | 10 | 10 |
| Barbados | 15 | 5 | 5 | 5 |
| Belarus[5] | 30[4] | 30[4] | 30/0[4] | 0 |
| Belgium | 15 | 5/0 | 0 | 0 |
| Bulgaria | 10 | 5 | 5 | 5 |
| Canada | 15 | 5 | 0 | 10/0 |
| China | 10 | 10 | 10 | 10/7 |
| Cyprus | 15 | 5 | 10 | 0 |
| Czech Republic | 15 | 5 | 0 | 10/0 |
| Denmark | 15 | 5/0 | 0 | 0 |
| Egypt | 15 | 5 | 15 | 30/15 |
| Estonia | 15 | 5 | 10 | 10/5 |
| Finland | 15 | 5/0 | 0 | 0 |
| France | 15 | 5/0 | 0 | 0 |
| Germany | 15 | 5/0 | 0 | 0 |

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| | Dividends (%) | Dividends Substantial Holdings[1] (%) | Interest[2] (%) | Royalties[3] (%) |
|---|---|---|---|---|
| Georgia[5] | 30[4] | 30[4] | 30/0[4] | 0 |
| Greece | 30 | 30 | 0 | 30/0 |
| Hungary | 15 | 5 | 0 | 0 |
| Iceland | 15 | 5 | 0 | 5/0 |
| India | 25 | 15 | 15 | 15/10 |
| Indonesia | 15 | 10 | 10 | 10 |
| Ireland, Republic of | 15 | 5 | 0 | 0 |
| Israel | 25 | 12.5 | 17.5 | 15/10 |
| Italy | 15 | 5 | 10 | 8/5/0 |
| Jamaica | 15 | 10 | 12.5 | 10 |
| Japan | 10 | 5/0 | 10 | 0 |
| Kazakhstan | 15 | 5 | 10 | 10 |
| Korea, South | 15 | 10 | 12 | 15/10 |
| Kyrgyzstan[5] | 30[4] | 30[4] | 30/0[4] | 0 |
| Latvia | 15 | 5 | 10 | 10/5 |
| Lithuania | 15 | 5 | 10 | 10/5 |
| Luxembourg | 15 | 5 | 0 | 0 |
| Malta | 15 | 5 | 10 | 10 |
| Mexico | 10 | 5/0 | 15 | 10 |
| Moldova[5] | 30[4] | 30[4] | 30/0[4] | 0 |
| Morocco | 15 | 10 | 15 | 10 |
| Netherlands | 15 | 5/0 | 0 | 0 |
| New Zealand | 15 | 5/0 | 10 | 5 |
| Norway | 15 | 15 | 0 | 0 |
| Pakistan | 30 | 15 | 30 | 0 |
| Philippines | 25 | 20 | 15 | 15 |
| Poland | 15 | 5 | 0 | 10 |
| Portugal | 15 | 5 | 10 | 10 |
| Romania | 10 | 10 | 10 | 15/10 |
| Russia | 10 | 5 | 0 | 0 |
| Slovak Republic | 15 | 5 | 0 | 10/0 |
| Slovenia | 15 | 5 | 5 | 5 |
| South Africa | 15 | 5 | 0 | 0 |
| Spain | 15 | 10 | 10 | 10/8/5 |
| Sri Lanka | 15 | 15 | 10 | 10/5 |
| Sweden | 15 | 5/0 | 0 | 0 |
| Switzerland | 15 | 5 | 0 | 0 |
| Tajikistan[5] | 30[4] | 30[4] | 30/0[4] | 0 |
| Thailand | 15 | 10 | 15 | 15/8/5 |
| Trinidad and Tobago | 30 | 30 | 30 | 15/0 |
| Tunisia | 20 | 14 | 15 | 15/10 |
| Turkey | 20 | 15 | 15 | 10/5 |
| Turkmenistan[5] | 30[4] | 30[4] | 30/0[4] | 0 |
| Ukraine | 15 | 5 | 0 | 10 |
| United Kingdom | 15 | 5/0 | 0 | 0 |
| Uzbekistan[5] | 30[4] | 30[4] | 30/0[4] | 0 |
| Venezuela | 15 | 5 | 10 | 10/5 |

NOTES:

1. Refer to the relevant treaty for details of the necessary interest that the recipient needs to hold in the payor in order for this rate to apply.
2. Certain interest paid by banks and insurance companies to non-residents are exempt.
3. For copyright royalties the individual treaties should be consulted due to rate variations. Royalties may include personal property rentals.

4. The domestic rate applies. There is no reduction under the treaty.
5. The treaty concluded between the United States and the former USSR.

# URUGUAY

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Montevideo | Federico Carrau | +598 2600 2255<br>fcarrau@pkfuruguay.com.uy |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republica Oriental del Uruguay |
| Capital: | Montevideo |
| Main languages: | Spanish |
| Population: | 3.49 million (2022 estimate) |
| Monetary unit: | Uruguayan Peso (UYU) |
| Internet domain: | .uy |
| Int. dialling code: | +598 |

## KEY TAX POINTS

- Corporate net income obtained by legal entities resident in Uruguay and by non-residents operating through a permanent establishment is taxed by IRAE at a rate of 25%. Under certain conditions there are options to be liquidated in a fictional form if it is more convenient (IRAEFIC) - (IRAEFA).
- Uruguay operates a territorial system of taxation, subject to certain exceptions regarding worldwide taxation.
- Resident and non-resident individuals are subject to personal income tax (IRPF - IRNR) on Uruguayan source income at varying tax rates depending on the type of income concerned. Personal income tax consists of two categories:
- Category 1: tax capital income (capital gains and leasing of real estate) and equity increases (sales of shares, patents, real estate, etc).
- Category 2: tax personal services income (dependent and independent) from Uruguayan source of individuals taxed at progressive rates up to 36%.
- The standard VAT rate is 22% but there is a reduced rate of 10% for certain items while some are VAT-exempt.

## A. TAXES PAYABLE

### TERRITORIALITY

Uruguay taxes income under the territorial system of taxation. Thus, foreign source income is not taxable in Uruguay. However, this principle has some exceptions such as technical services, passive financial income, advertising, derivative instruments, internet platforms, image rights of athletes and operations with low-taxed companies.

### CORPORATE TAX

Resident legal entities (corporations and individuals) and non-resident entities with a permanent establishment in Uruguay are subject to corporate income tax (IRAE) on their net income of Uruguayan source obtained from industrial, commercial and agricultural activities at a rate of 25%.

Individuals and some corporate types with income not exceeding certain threshold amounts may choose to be taxed under IRAEFIC instead of IRAE at progressive rates from 3.3% to 12% on income.

Companies or individuals deriving income from agricultural activities may opt to be subject to IRAE, IRAEFA or IMEBA, which depends on the type of company, amount of income and amount of hectares exploited. Agricultural income subject to IRAEFA is taxed at a rate ranging from 3% to 3.75% while agricultural income subject to IMEBA is taxed at a rate ranging from 0.01% to 2%.

Non-resident entities without a permanent establishment in Uruguay are subject to a specific tax on income of non-residents (IRNR). It is not a corporate tax since it does not apply to activities that combine capital and labor, except for works of less than 3 months.

Dividends, profit distributions or remittances generated by income taxed under IRAE, paid or credited in Uruguay or abroad by taxpayers subject to IRAE are also subject to a withholding tax at the rate of 7% (otherwise they are exempt from tax). The name of the tax is IRPF for residents and IRNR for non-residents (Category 1). Dividends, distributions of profits or remittances generated by income taxed under IRAE that remain undistributed after four fiscal years are treated as a deemed distribution and are subject to a 7% deemed dividend tax.

The tax year is the same as the commercial year of the company, provided that adequate accounting records are kept. Otherwise, the fiscal year is the calendar year (31 December). The fiscal ending date for agricultural companies is mandatorily 30 June and for non-residents without a permanent establishment in Uruguay it is 31 December. In all cases, companies must file their tax returns before the end of the fourth month following the end of their tax year. Advance tax payments are made on account of the final liability for the relevant tax year. If the total advance payments exceed the final liability, a refund is made by means of credit certificates, which may be used to pay the taxpayer’s future taxes but may not be repaid.

## CAPITAL GAINS TAX

Capital gains earned by corporations and permanent establishments of non-residents are subject to the same fiscal treatment as normal taxable income and must be included in the same tax return.

Capital gains earned by individuals resident in Uruguay are subjects to IRPF at a rate ranging from 0% to 12%. Foreign-sourced passive financial income is taxed at a 12% rate.

Capital gains earned by non-resident entities without a permanent establishment in Uruguay are subject to IRNR at a rate ranging from 0% to 12%.

## BRANCH PROFITS TAX

Branches of foreign corporations are subject to IRAE and IMEBA at the same rate as resident companies. Dividends, profit distributions or remittances generated by income taxed by IRAE, paid or credited abroad by taxpayers are also subject to a withholding tax called IRNR at the rate of 7%. Repatriations of branch profits to a head office outside Uruguay are subject to this tax.

## VALUE ADDED TAX (VAT)

Imports and the supply of goods and services in Uruguay are subject to VAT at the basic rate of 22%. Land, leases of real estate, cattle, non-industrial agricultural products, agricultural machines, newspapers, foreign currency, precious metals, public and private securities and certain essential goods and services are exempted. Certain essential goods, as well as medicines, new buildings, fruits, flowers, vegetables and land transport of passengers are subject to the minimum rate of 10%. A monthly payment is due on the sales of the previous month. Tax included in the purchases of merchandise, services and fixed assets (input VAT) is deductible from the tax billed to customers (output VAT).

## FRINGE BENEFITS TAX

No tax is levied specifically on fringe benefits as they are taxed along with Personal Income Tax (IRPF Category 2) (the taxpayers are the employees) and social security contributions (the taxpayers are the employers and employees).

Note: see section H for Personal Income Tax.

## SOCIAL SECURITY CONTRIBUTIONS

Employers (corporations and individuals) are subject to social security taxation on all salaries and fringe benefits paid to employees (subject to some specific exceptions) at the rate of 7.5% plus 5% of medical care.

Employees are subject to a withholding tax on their social security contributions from 18% to 23% on the gross amounts received (excluding withholding tax). In addition, they are subject to a withholding tax on their personal income tax from 0% to 36% on the gross amounts received (excluding withholding tax).

Social security contributions and personal income tax are due monthly on amounts paid for the previous month.

## LOCAL TAXES

Two principal municipal (state) taxes are in force. The main one, so-called “Real Property Contribution”, is collected by the municipal authorities. Taxpayers are the owners (companies, individuals and non-resident entities) of land and buildings located in urban and rural areas. It represents a percentage (from 0.25% to 1%) of the cadastral value and is due yearly spread over three to six payments.

The second local tax is payable by owners of buildings (companies, individuals and non-resident entities) on a monthly basis for the services rendered by the local authority. This amount is adjusted periodically according to current inflation.

## OTHER TAXES

A very important tax is the “Net Wealth Tax” which is determined as a percentage of the net fiscal equity at the end of the tax year.

Corporations, individuals and non-resident entities that pay IRAE are subject to the tax at a standard rate of 1.5% on their net worth in Uruguay, calculated on the difference between taxable assets and deductible liabilities. All must file their tax returns before the end of the fourth month following the end of their tax year. Advance tax payments are made on account of the final liability for the relevant tax year. If the total advance payments exceed the final liability, a refund is made by means of credit certificates, which may be used to offset against the taxpayer’s future taxes but may not be repaid.

On the other hand, individuals not taxed under IRAE must file the tax returns related to their net worth as per 31 December before 31 May of the following year. In this case, the tax has several peculiarities regarding its calculation and the tax rates range from 0% to 1%.

Excise tax “IMESI” applies to the first transaction effected in the domestic market by manufacturers or importers of some listed goods, e.g. vehicles, alcoholic beverages, cigarettes and cosmetics. The tax rates vary for each item.

Another tax is the “Tax on Primary Education”, which taxes both urban and rural real estate. The former are taxed at a value equivalent to 1/3 of the real estate contribution while the latter are taxed at a rate ranging from 0% to 0.3%.

# B. DETERMINATION OF TAXABLE INCOME

## DEPRECIATION

Depreciation of assets used in business activities must be computed using the fixed fiscal percentage established by the tax authority. If there is no established percentage, it must be determined based on the number of years of probable useful life of the assets. Depreciation is calculated under the straight-line method. Key depreciation rates include the following:

| Asset | Rate |
|---|---|
| Machinery and equipment | 10% |
| Automobiles | 10% |

| Asset | Rate |
|---|---|
| Buildings in rural areas | 3% |
| Buildings in urban areas | 2% |

## STOCKS / INVENTORY

On the basis of original costs in local currency, companies are free to choose between FIFO or average cost. The method chosen cannot be changed without the agreement of the Tax Authority. Tax regulations do not allow generic deductions of any kind (obsolescence) or global increases (revaluations), but it allows the deduction of the value of merchandise that has suffered losses of value.

## CAPITAL GAINS AND LOSSES

No special tax rules apply to capital gains or losses. They must be included in the tax return along with the current income.

## INTEREST DEDUCTIONS

Interest paid to banks, financial institutions and companies that pay IRAE is deductible without limitation. Interest paid to individuals or to financial institutions located abroad is deductible up to a limited percentage that is established by the Tax Authority.

## LOSSES

Losses resulting from the tax return are deductible from gains of the next five years, and, up to that date, are revaluated according to inflation coefficients.

## INCENTIVES

Uruguay has an Investment Law that could benefit investors, depending on several factors such as who makes the investment in Uruguay. There are benefits for generic areas and others for specific ones, that include tax reduction on the corporate net income tax, net wealth tax and VAT.

## FREE TRADE ZONES

Strategically located within Mercosur, Uruguay offers a very liberal treatment for free trade zones. Those areas of the national territory with a distinctive economic regime enjoy customs and tax exemptions and are excluded from the jurisdiction of the state monopolies. All types of export focused activities such as commercial, industrial or service oriented activities may be developed in free trade zones. Uruguay also has a very liberal treatment in the ports areas similar to free trade zone areas.

## C. FOREIGN TAX RELIEF

Foreign tax relief is not available under Uruguayan fiscal law because overseas income is not taxable.

## D. CORPORATE GROUPS

There are no special tax rules relating to corporate groups.

## E. RELATED PARTY TRANSACTIONS

Taxation of related party transactions must be calculated on the basis of the fair market value, independently of the agreement between the parties. Uruguay applies transfer pricing regulations according to the OECD model.

### LONT countries

The Tax Authority issued Resolution No. 001/2020 on 3 January 2020 containing a single unified list of countries, jurisdictions and special regimes with low or no taxation (LONT). The list unifies the lists of low and no-tax countries and jurisdictions that had been published separately with respect to transfer pricing, corporate income tax, non-resident income tax, individual income tax and net wealth tax.

The list comprises the following 40 countries and jurisdictions:

Angola, Antigua and Barbuda, Ascension, Brunei, Christmas Islands, Cocos Island (Keeling Island), Djibouti, Dominica, Eswatini (formerly Swaziland), Falkland Islands, Fiji Islands, French Polynesia, Guam, Guyana, Honduras, Jamaica, Jordan, Kiribati, Labuan, Liberia, Maldives Islands, Niue, Norfolk Island, Oman, Pacific Islands, Palau Islands, Pitcairn Island, Puerto Rico, Saint Helena Island, Saint Martin, Saint Pierre and Miquelon, Solomon Islands, Svalbard, Tokelau, Tonga, Tristan da Cunha, Tuvalu, Virgin Islands, and Yemen.

## F. WITHHOLDING TAX

The following income paid or credited in Uruguay or abroad by taxpayers subject to IRAE are subject to a withholding tax at the rate of:

| Asset | Rate |
|---|---|
| Dividends, profit distributions or remittances | 7% |
| Interest[1] | 7% to 12% |
| Royalties[1] | 12% |
| Technical assistance fees[1] | 12% |

1. Interest, royalty and technical assistance payments to non-resident entities located in LONT (low or no tax, see above list) jurisdictions are subject to an increased 25% withholding tax.

The name of the tax is IRPF for residents and IRNR for non-residents.

## G. EXCHANGE CONTROL

No exchange controls are in force in Uruguay. All remittances to foreign countries can be carried without limitations through banks, financial institutions and authorised currency exchange houses. All transfers must be verified under money laundry regulations.

## H. PERSONAL TAX

Resident and non-resident individuals are subject to personal income tax (IRPF - IRNR) on Uruguayan source income at varying tax rates depending on the type of income concerned. Personal income tax consists of two categories:

Category 1: tax capital income (capital gains and lease of real estate) and equity increases (sales of shares, patents, real estate, etc). Note: see section A subtitle CAPITAL GAINS TAX for capital gains.

Income from lease of real estate is subject to tax at the standard rate of 12% while equity increases are subject to tax at 12% on the difference between price and tax cost.

Category 2: tax personal services income (dependent and independent) from Uruguayan source of individuals at progressive rates up to 36%.

Individuals not taxed under IRAE are subject to “Net Wealth Tax”. Note: see section A subtitle OTHER TAXES.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies1 (%) | | |
| **Domestic rates** | | | | |
| Companies | 7 | 7 | 7/12/25 | 12/25 |
| Individuals | 7 | -- | 7/12 | 12 |
| **Treaty countries:** | | | | |
| Belgium | 15 | 5 | 0/10 | 10 |
| Chile | 15 | 5 | 4/15 | 10 |
| Ecuador | 15 | 10 | 15 | 10/15 |
| Finland | 15 | 5 | 10 | 5/10 |
| Germany | 15 | 5 | 10 | 10 |
| Hungary | 15 | 15 | 15 | 15 |
| India | 5 | 5 | 10 | 10 |
| Italy[2] | 15 | 5 | 0/10 | 10 |
| Japan[3] | 10 | 5 | 0/10 | 10 |
| Korea | 15 | 5 | 10 | 10 |
| Liechtenstein | 10 | 5 | 10 | 10 |
| Luxembourg | 15 | 5 | 0/10 | 5/10 |
| Malta | 15 | 5 | 10 | 5/10 |
| Mexico | 5 | 5 | 10 | 10 |
| Paraguay | 15 | 15 | 15 | 15 |
| Portugal | 10 | 5 | 10 | 10 |
| Romania | 10 | 5 | 10 | 10 |
| Singapore | 10 | 5 | 10 | 5/10 |
| Spain | 5 | 0 | 10 | 5/10 |
| Switzerland | 15 | 5 | 0/10 | 0 |
| United Arab Emirates | 7 | 5 | 0/10 | 0/5/10 |
| United Kingdom | 15 | 5 | 0/10 | 10 |
| Vietnam | 10 | 5 | 10 | 10 |

1. The reduced rate depends on the minimum participation percentage in capital: 10% for Belgium, Germany, Italy, Japan, Liechtenstein, Luxembourg, Singapore and the United Kingdom, 20% for South Korea, 25% for Ecuador, Finland, Malta, Romania and Switzerland, 70% for Vietnam and 75% for Spain.
2. Effective date: 1 January 2021.
3. Effective date: 1 January 2022.

Uruguay has also signed Tax Information Exchange Agreements (TIEA) with Argentina, Australia, Belgium, Canada, Chile, Denmark, Ecuador, Faroe Islands, Finland, France, Germany, Greenland, Guernsey, Hungary, Iceland, India, Korea, Liechtenstein, Luxembourg, Malta, Mexico, the Netherlands, Norway, Paraguay, Portugal, Romania, Singapore, South Africa, Spain, Sweden, Switzerland, the United Arab Emirates, the United Kingdom and Vietnam.

# UZBEKISTAN

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Tashkent | Oybek Saidkhodjaev | +998 71 294 73 86<br>oybek@pkf.uz |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Uzbekistan |
| Capital: | Tashkent |
| Main languages: | Uzbek, Karakalpak, Russian |
| Population: | 34.4 million (2022 estimate) |
| Monetary unit: | Uzbekistan Soum (UZS) |
| Internet domain: | .uz |
| Int. dialling code: | +998 |

## KEY TAX POINTS

- A significant tax reform was enacted in 2020 and a new edition of the Tax Code got adopted (replacing the 2008 Tax Code).
- As from 1 January 2020, the standard corporate income tax rate is increased from 12% to 15%.
- As from 1 January 2020 VAT is set at a single rate of 15% while the simplified VAT procedure is repealed as from the same date.
- As of 1 January 2022, ordinary losses can be carried forward for an indefinite period and can be used without any restrictions to reduce the current year's taxable income. Losses cannot be carried back.
- Dividends distributed to non-resident companies are subject to a 10% final withholding tax on the gross amount, subject to the application of a double tax treaty. Starting from 1 April 2022 until 31 December 2024, dividends paid by resident legal entities to non-resident legal entities are subject to a 5% reduced withholding tax rate.
- Interest paid to non-resident companies is subject to a 10% final withholding tax on the gross amount, subject to the application of a double tax treaty. Starting from 1 April 2022 until 31 December 2024, interest income from bonds is exempt from taxation.
- Royalties, technical fees and management fees paid to non-resident companies are subject to a 20% final withholding tax, subject to the application of a double tax treaty.
- Transfer pricing, controlled foreign companies (CFC) and group taxation regulations are introduced effective 1 January 2022.
- Thin capitalisation regulations were introduced effective 1 January 2020.
- All entities having a turnover of more than UZS 1 billion as well as permanent establishments are considered VAT payers.

## A. TAXES PAYABLE

### CORPORATE TAX

Uzbek tax residents are subject to tax on worldwide profits. Non-resident companies are subject to tax only on their profits from activities performed in Uzbekistan.

As a result of a significant tax reform enacted in 2020 and the adoption of a new Tax Code, the standard corporate income tax rate is increased from 12% to 15% effective 1 January 2020.

The corporate income tax rate for commercial banks, companies producing cement and polyethylene granules, companies providing mobile services, markets and shopping malls is 20% while for taxpayers included in the national register of e-commerce entities the rate is 7.5%.

### CAPITAL GAINS TAX

Capital gains are generally included in taxable profits and are subject to tax at the standard corporate income tax rate.

### BRANCH PROFITS TAX

Income derived by a permanent establishment is generally subject to tax at the corporate income tax rate applicable to resident companies.

There is no branch remittance tax in Uzbekistan.

### VALUE ADDED TAX (VAT)

As from 1 January 2020 VAT is set at a single rate of 15% while the simplified VAT regime is repealed as from the same date and replaced with the general VAT rate.

The following goods are zero-rated:

- Goods and services purchased under a product sharing agreement;
- Export of goods; and
- Services related to international transportation.

The following entities will become VAT payers as from 1 January 2020:

- Foreign legal entities carrying out the sale of goods and/or services on the territory of Uzbekistan, if the Uzbekistan is recognised as the place of sale of such goods and/or services;

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- Permanent establishments of foreign legal entities regardless of the amount of income from the sale of goods and/or services.

## INCENTIVES AND BENEFITS

As from 1 January 2020 tax benefits can be provided only by the Tax Code. The exceptions are reductions in taxes such as VAT, excise tax and subsoil-use tax (calculated on the value of mineral resources produced), which can be provided by Presidential decision to the extent of not more than 50% and for no more than 3 years.

The Law on Guarantees and Protective Measures for the Rights of Foreign Investors protects against adverse changes in investment, tax and customs law within 10 years, starting from the registration date of a company, for example against increases in the WHT rate on dividends distributable to foreign investors or (partial) repeal of tax incentives. If tax law is adversely amended during that period, investors and investment targets are entitled to apply the more favourable tax conditions, including corporate income tax, VAT, property tax, social tax and turnover tax, for 10 years starting from their incorporation date, if total investment exceeds USD 5 million.

The following incentives are available among others:

- Incentives for oil and gas exploration and extraction;
- Incentives for textile industry;
- Capital expenditure relief;
- Investment deduction;
- Incentives for direct private foreign investments;
- Industrial zones;
- IT innovation centres.

## B. DETERMINATION OF TAXABLE INCOME

Uzbek tax residents are subject to tax on their worldwide income. Taxable income is defined as total income, including capital gains, interest and royalties reduced by deductible expenses and allowances.

## DEPRECIATION

Depreciation methods that may be used are the straight-line method, the production method, the double declining balance method and the sum-of-the-years digit method. The accelerated depreciation method is not accepted for tax purposes;

Depreciation rates for various fixed assets:

| | |
|---|---|
| Buildings and related structures | 3% |
| Constructions (e.g. bridges, landing strips, oil wells etc.) | 5% |
| Installation and transmission facilities, power machines and equipment | 8% |
| Lorries, buses, industrial machinery and equipment etc. | 15% |
| Railway, river and air transport vehicles | 4% |
| Cars, tractors, special equipment, data processing equipment, computer peripherals etc. | 20% |
| Other assets | 15% |

Land and natural resources, productive livestock, capital investments not classified as fixed assets and intangible assets, and fully amortised property among other things may not be depreciated.

## LOSSES

As of 1 January 2022, ordinary losses can be carried forward for an indefinite period and can be used without any restrictions to reduce the current year's taxable income. Losses cannot be carried back.

## C. FOREIGN TAX RELIEF

Uzbekistan does not grant unilateral relief from double taxation. Under the double tax treaties entered into by Uzbekistan, a foreign tax credit is available for foreign tax paid on income earned abroad (subject to certain documentary requirements: copy of tax payment order, confirmation from a competent tax authority or any other document confirming payment of tax outside of Uzbekistan).

## D. CORPORATE GROUPS

Under the new Tax Code it became possible to form a consolidated group of taxpayers consisting of two or more Uzbek companies, subject to certain conditions:

- One company must have a participation of at least 90% in the capital of the other company;
- Companies may not be under liquidation or bankruptcy procedures;
- Their net assets must be higher than the share capital; and
- All companies forming the consolidated tax group must meet other criteria related to turnover and taxes paid.

The tax consolidation regulations became effective as from 1 January 2022.

## E. ANTI-AVOIDANCE RULES

**Transfer pricing**

The new Tax Code introduced detailed full-fledged TP regulations which took effect on 1 January 2022, including a definition of related parties, controlled transactions, pricing methods, documentation and reporting requirements, advance pricing agreements (APAs) etc. Previously there were no such regulations. Some of the salient features of the new regulations are as follows:

- Transactions between Uzbek resident related parties are considered controlled if the amount of annual turnover between such parties is more than UZS 5 billion (approximately EUR 457,000 or USD 494,000) per calendar year;
- At the request of the State Tax Committee, the taxpayer should submit TP documentation in relation to a specific transaction (such as justification of the used price determination method). Such a request cannot be made before 1 June of the year following the year in which the transaction was executed;
- Large taxpayers can apply for an APA, which may be valid for a period of up to 3 years and may be extended for an additional 2 years upon request of the taxpayer;
- TP audits may be conducted only by the State Tax Committee and may be initiated generally no later than 4 years from the date on which the relevant transaction was reported.

**Controlled foreign companies (CFC)**

The new Tax Code introduced the concept of a controlled foreign company (CFC) and similar to the new TP regulations, CFC rules are effective as from 1 January 2022.

An Uzbek tax resident (either a company or an individual) will in principle be deemed to have a CFC if it holds a direct or indirect participation in a foreign company of at least 50% of the shares (25% as from 1 January 2023), unless such company (among other conditions):

- is deemed to be an active foreign holding company (according to the tests set in the new Tax Code) and is not incorporated in an offshore jurisdiction, the list of which is to be approved jointly by the State Tax Committee, the Central Bank and the State Customs Committee; or
- is subject to an effective corporate income tax rate of at least 15% and is located in a country with which Uzbekistan has concluded a double tax treaty.

If an Uzbek tax resident is deemed to have a CFC, it should pay corporate or personal income tax on the undistributed profits of such CFC in proportion to its participation in said CFC. However, income of a CFC is only added to the taxable base of the controlling company or individual if the amount of such income is higher than UZS 300 million (approximately EUR 27,000 or USD 30,000).

**Thin capitalisation**

As from 1 January 2020, the new Tax Code imposes limitations on the deductibility of 'controlled debt' by a local borrower for corporate income tax purposes. Controlled debt is debt owed to a related party (which includes a person or entity holding more than 25% of shares in the borrower), as well as to a lender that has obtained a guarantee or other security of repayment from a borrower's related party.

The debt-to-equity ratio thus introduced is 3:1 (13:1 for banks and leasing companies).

## F. WITHHOLDING TAX

- Dividends distributed to non-resident companies are subject to a 10% final withholding tax on the gross amount, subject to the application of a double tax treaty. Starting from 1 April 2022 until 31 December 2024, dividends paid by resident legal entities to non-resident legal entities are subject to a 5% reduced withholding tax rate;
- Interest paid to non-resident companies is subject to a 10% final withholding tax on the gross amount, subject to the application of a double tax treaty. Starting from 1 April 2022 until 31 December 2024, interest income from bonds is exempt from taxation;
- Royalties, technical fees and management fees paid to non-resident companies are subject to a 20% final withholding tax, subject to the application of a double tax treaty.

## G. PERSONAL TAX

The personal income tax rates for residents are as follows:

- Employment income, rent income and capital gains are subject to a 12% flat rate;
- Dividends and interest paid to residents are subject to a 5% rate. However, starting from 1 April 2022 until 31 December 2024, dividends paid to resident individuals are tax-exempt.

Uzbekistan-sourced personal income of non-resident individuals is subject to the following rates:

- Dividends and interest: 10%. However, starting from 1 April 2022 until 31 December 2024, dividends paid to resident individuals are exempt from withholding tax;
- Transportation (freight) services: 6%;
- Other income (including employment income, royalties etc.): 20%.

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| **Domestic rates** | | | | |
| Companies | 10 | 10 | 10 | 20 |
| Individuals | 10 | -- | 10 | 20 |
| **Treaty countries:** | | | | |
| Austria | 15 | 5 | 10 | 5 |
| Azerbaijan | 10 | 10 | 10 | 10 |
| Bahrain | 8 | 8 | 8 | 8 |

| | Dividends | | Interest (%) | Royalties (%) |
|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | |
| Belarus | 15 | 15 | 10 | 15 |
| Belgium | 15 | 5 | 10 | 5 |
| Bulgaria | 10 | 10 | 10 | 10 |
| Canada | 15 | 5 | 10 | 5/10 |
| China | 10 | 10 | 10 | 10 |
| Czech Republic | 10 | 5 | 5 | 10 |
| Egypt | 10 | 5 | | |
| Estonia | 10 | 5 | 5 | 10 |
| Finland | 15 | 5 | 5 | 0/5/10 |
| France | 8/10 | 5 | 0/5 | 0 |
| Georgia | 15 | 5 | 10 | 10 |
| Germany | 15 | 5 | 5 | 3/5 |
| Greece | 8 | 8 | 10 | 8 |
| Hungary | 10 | 10 | 10 | 10 |
| India | 10 | 10 | 10 | 10 |
| Indonesia | 10 | 10 | 10 | 10 |
| Iran | 8 | 8 | 10 | 5 |
| Ireland | 10 | 5 | 5 | 5 |
| Israel | 10 | 10 | 10 | 5/10 |
| Italy | 10 | 10 | 5 | 5 |
| Japan | 15 | 15 | 10 | 0/10 |
| Jordan | 10 | 7 | 10 | 20 |
| Kazakhstan | 10 | 10 | 10 | 10 |
| Korea (South) | 15 | 5 | 5 | 2/5 |
| Kuwait | 0/5 | 0/10 | 8 | 20 |
| Kyrgyzstan | 5 | 5 | 5 | 15 |
| Latvia | 10 | 10 | 10 | 10 |
| Lithuania | 10 | 10 | 10 | 10 |
| Luxembourg | 15 | 5 | 10 | 5 |
| Malaysia | 10 | 10 | 10 | 10 |
| Moldova | 15 | 5 | 10 | 15 |
| Netherlands | 15 | 0/5 | 10 | 10 |
| Oman | 7 | 7 | 7 | 10 |
| Pakistan | 10 | 10 | 10 | 15 |
| Poland | 15 | 5 | 10 | 10 |
| Romania | 10 | 10 | 10 | 10 |
| Russia | 10 | 10 | 10 | 0 |
| Saudi Arabia | 7 | 7 | 7 | 10 |
| Singapore | 5 | 5 | 5 | 8 |
| Slovak Republic | 10 | 10 | 10 | 10 |
| Slovenia | 8 | 8 | 8 | 10 |
| Spain | 10 | 0/5 | 5 | 5 |
| Switzerland | 15 | 5 | 0/5 | 5 |
| Tajikistan | 10 | 5 | 10 | 10 |
| Thailand | 10 | 10 | 10/15 | 15 |
| Turkey | 10 | 10 | 10 | 10 |
| Turkmenistan | 10 | 10 | 10 | 10 |
| Ukraine | 10 | 10 | 10 | 10 |
| United Arab Emirates | 15 | 5 | 10 | 10 |
| United Kingdom | 10 | 5 | 5 | 5 |
| Vietnam | 15 | 15 | 10 | 15 |

# VENEZUELA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Caracas | Beniamino Carpentieri | +58 212 952 4050<br>bcarpentieri@pkfve.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Bolivarian Republic of Venezuela |
| Capital: | Caracas |
| Main languages: | Spanish |
| Population: | 28.29 million (2022 estimate) |
| Monetary unit: | Venezuelan Bolívar (VES) |
| Internet domain: | .ve |
| Int. dialling code: | +58 |

## KEY TAX POINTS

- Venezuelan resident or domiciled companies are subject to profit tax only on their worldwide income whereas non-residents are subject to tax on their Venezuelan source income even when they do not have a permanent establishment or a fixed base in Venezuela.
- There is a progressive system of corporation tax rates which applies to income and capital gains.
- VAT is payable on imports and the supply of goods and services. The standard rate is 16%.
- Regarding VAT, a new “additional tax rate” or surcharge tax ranging from 5% to 25% is applicable to the payment of goods and services in foreign currencies or in cryptocurrencies different from those backed by the government. The surcharge tax entered into force on 28 February 2020.
- Withholding taxes apply to interest and royalty payments to residents and non-residents. Dividends are also subject to withholding tax when they represent profits that have not been subject to corporation tax. A similar principle applies to branch profits repatriated from Venezuela to an overseas territory.
- Credit is available for overseas tax paid on foreign income against Venezuelan tax payable on the same income.
- A wealth tax was introduced in August 2019 and will apply to individuals and legal entities, designated as “special taxpayers” by the tax authorities, which own or possess wealth with a value exceeding 150 million tax units (TUs).
- Resident individuals are subject to income tax on their worldwide income. Non-residents are taxable on their Venezuelan source income.
- Tax on large financial transactions is levied at a rate of 2% and 3%. This tax has come into effect on 25 March 2022 (“Law of Tax on Large Financial Transactions”).
- In August 2018, the Venezuelan government announced a monetary reconversion which created a new currency, the Sovereign Bolivar, which gradually replaced from 20 August 2018 the previous currency Strong Bolivar at a conversion rate of Sovereign Bolivar 1 to Strong Bolivar 100,000. Entities need to adapt their systems and processes to the new currency.
- In August, 2021, the Venezuelan government announced a new monetary reconversion which created a new currency, the Digital Bolivar, which gradually replaces from 1 October 2021 the previous currency the Sovereign Bolivar at a conversion rate of Digital Bolivar 1 to Sovereign Bolivar 1,000,000.

  Entities need to adapt their systems and processes to the new currency.

## A. TAXES PAYABLE

### COMPANY TAX

Venezuelan resident or domiciled companies are subject to profit tax on their worldwide income. Non-resident or non-domiciled companies are subject to corporation tax only on Venezuelan-sourced income even when they do not have a permanent establishment or a fixed base in Venezuela. Foreign resident or domiciled companies who have a permanent establishment or fixed base in the country will exclusively pay taxes on the income of national or foreign source attributable to this permanent establishment or fixed base.

Tax is imposed on a current year basis. The tax year adopted is generally that specified in a company’s statutory documents with the standard year being a calendar year. However, it should be noted that other periods are also allowed, including periods of 12 months or less. Final tax is payable when lodging the final corporation tax return, usually required within three months of the end of the accounting period. The taxable income is expressed in tax units. The tax unit (*unidad tributaria*, TU) is a tax adjustment index. Its value is adjusted annually by the tax authorities in accordance with inflation and amounts to Digital Bolivar 0.02 (gazetted on 6 April 2021 Official Gazette No. 42,100; the new TU value applies as from its publication in the Official Gazette). The corporate income tax rates are as follows:

| Taxable income (Tributary unit (TU)) | Rate (%) |
|---|---|
| 0 to 2,000 | 15 |
| 2,001 to 3,000 | 22 |
| Over 3,001 | 34 |

Income from banking activities, financial, insurance and reinsurance are taxed at a fixed rate of 40%.

## CAPITAL GAINS TAX

There is no separate or distinct tax on capital gains. However, capital gains and/or losses from the sale of assets belonging to companies that are situated in Venezuela are included in the calculation of the income for the purposes of determining the tax liability of companies (income tax). A flat tax of 34% is established for dividends arising from the excess of the dividend payer's net income (on which dividends were declared) over its taxable net income (taxed fiscal net income). Dividends received from companies incorporated and domiciled abroad or incorporated abroad and domiciled in Venezuela are excluded from net income but tax paid on such dividends may be applied outside Venezuelan territory.

There is no tax on earnings of branch offices in Venezuela. Venezuelan branches of foreign companies are taxed in Venezuela on income obtained in the country pursuant to corporate tax. According to income tax law, companies or community estates established abroad and domiciled in Venezuela or established and domiciled abroad, which have a permanent establishment in Venezuela, are liable for paying a tax of 34% on any excess of the net income of the permanent establishment that is neither exempt nor exonerated over its taxed fiscal net income for the fiscal year on behalf of their partners, shareholders or joint owners. This presumed dividend does not apply in cases where the branch can prove to the Tax Administration's satisfaction that it reinvested the full amount of the difference between its net income and its taxed fiscal net income in the country. The reinvestment must remain in the country for at least five years.

## VALUE ADDED TAX (VAT)

VAT is applicable to the sales, transmission or transfer of chattels, the rendering of services and the importation of goods, as specified in the law, and is applicable throughout the entire Venezuelan territory (the Free Port of the State of Nueva Esparta, Paraguana Peninsula in the State of Falcon and in the Cultural Scientific and Technological Tax-Free zone in the State of Merida, will be exempt from VAT). It will be paid by individuals and corporations, unincorporated or de facto companies, joint ventures and other public or private legal or economic entities, in their capacity as importers of goods, habitual or not. It will also be paid by manufacturers, producers, assembly plants, independent merchants and service providers, who engage in activities that are defined by the law as taxable acts. Certain imports of goods and services are exempt from tax. Exporters who are regular taxpayers are entitled to recover the tax paid upon the purchase of tangible chattels or receipt of services related to their export activities. This also applies in the case of chattels imported for export.

The VAT amount accruing is determined by taxation periods of one calendar month, subtracting the aggregate tax credit amounts from the respective aggregate tax debit amount. The result is the VAT to be paid. The standard rate, currently 16%, is charged on the net price of the transaction.

A new "additional tax rate" or surcharge tax ranging from 5% to 25% is applicable to the payment of goods and services in foreign currencies or in cryptocurrencies different from those backed by the government. The additional tax rate entered into force on 28 February 2020.

## TEMPORARY ADVANCE PAYMENT SCHEME OF INCOME TAX APPLICABLE TO SPECIAL TAXPAYERS

| General aspects | Income tax |
|---|---|
| Scope | Applicable to special taxpayers engaged in economic activities other than mine development, hydrocarbon exploitation and related activities and who do not receive royalties from those activities. |
| Who is exempted from making advance payments? | Individuals under employment, classified as special taxpayers. |
| Advance payment's taxable base | Calculated based on gross income obtained during the previous taxable period in relation to Value Added Tax, multiplied by a set percentage. |
| Applicable tax rate | • Two percent (2%) for financial entities, banking and insurance and reinsurance sectors;<br>One percent (1%) for other taxpayers. |
| Tax return and payment | Advance payments will apply to daily gross income received by taxpayers, which shall be reported and paid on a fortnightly basis. However, payment and reporting conditions shall be determined by the Tax Authorities by way of general administrative rulings |
| Taxable period | • For special taxpayers, fortnightly periods;<br>• For financial entities, banking, and insurance and reinsurance sectors: daily periods.<br>Note: Until the Administrative Rulings is issued |
| ANC's Decree enforceability | This Decree corresponds to a temporary scheme and shall stay in force until it is totally or partially overturned by the Executive Branch. The Decree shall come into force as from 1 September 2020. |

## TAX ON LARGE FINANCIAL TRANSACTIONS

The Law of Tax on Large Financial Transactions has come into effect from 1 February 2016. Starting from 8 November 2018 the tax rate is 2 % and it is paid by legal and economic entities without legal entity status qualified as special taxpayers by the Tax Administration. This tax is applied on debits in bank accounts or against custody deposits or any other kind of deposits, debits in liquid funds, trust assets and other financial market funds or any other financial instrument, made in banks and other financial institutions.

On 25 February 2022, the Venezuelan government reformed the Tax Law on Large Financial Transactions, which entered into force on 27 March 2022. Under the old measures, the financial transactions tax was levied at a rate of 2% on specified transactions by designated "special taxpayers", i.e., large taxpayers, as well as entities related to special taxpayers and those acting on behalf of special taxpayers. The new measures introduced a financial transactions tax liability at an initial rate of 3% on payment transactions by all individuals, legal entities, and unincorporated ventures where payments are made in foreign currency or cryptocurrency through Venezuelan banks, without the intervention of foreign intermediary banks. The same also applies for payments in foreign currency or cryptocurrency to special taxpayers when not made through Venezuelan banks. The financial transactions tax does not apply in respect of cryptocurrencies issued by the Venezuelan government (e.g., “El Petro”). It is also provided that the rate may be adjusted in the range of 2% to 8% for payments made through Venezuelan banks and in the range of 2% to 20% for payment to special taxpayers not made through Venezuelan banks.

The Tax on Large Financial Transactions is not deductible for Income Tax purposes.

## LARGE PATRIMONY TAX

The Constitutional Law of Great Patrimony Tax approved by the National Constituent Assembly introduced a tax on the net worth of special taxpayers, natural or legal persons, when it is equal to or greater than 150 million Tax Units (UT). The tax rate will range from a minimum limit of 0.25% to a maximum of 1.50%. The Tax will be levied annually on the Net Equity as of September 30 of each year. The Tax Rate applicable from the entry into force of the Law on 30 September 2019 is 0.25%. The Large Patrimony Tax is not deductible from Income Tax.

## FRINGE BENEFITS TAX (FBT)

There is no tax payable by the company on fringe benefits. Instead, any benefits provided to an employee are included in their personal income and are subject to tax.

## LOCAL TAXES

There is only a municipal tax that is assessed on gross income from commercial industrial activities at different percentages, depending on the business activities conducted and the geographic jurisdiction in which the company is located.

## OTHER TAXES

## CUSTOMS DUTIES

This involves paying tax on goods that are imported in accordance with the customs tariff which is calculated based on the cost, insurance and freight (CIF) value.

## STAMP DUTY

This is applied on certain transactions including transfer of ownership, formation of companies and a wide range of legal transactions and operations.

## PUBLIC REGISTRY

These are duties that are incurred for the registration and certification of authenticity of various documents in the Main and Subsidiary Registry Offices of each geographic jurisdiction in which the operation is conducted.

## MANDATORY SOCIAL SECURITY (MSS)

These are payments that are made monthly by employers and employees on the payroll of companies for the purpose of guaranteeing the functioning of the national worker social security system.

## LAW FOR PROVIDING HOUSING AND HABITAT

Companies must contribute to the obligatory savings fund with 2% monthly of workers payroll. Workers’ contribution shall be 1% of their salary. The savings fund must finance housing programs for the workers.

## NATIONAL INSTITUTE OF EDUCATIONAL CO-OPERATION (NIEC)

Employers must contribute to this Institute on a quarterly basis at the rate of 2% of the total wages and compensation paid to their workers. Workers must contribute 0.5% of the profits paid to them by the employer at the end of the corporate business year. These contributions are for the purpose of professional training of workers and young apprentices, and tackling national illiteracy.

## INHERITANCE AND GIFT TAXES

This is assessed on gratuitous transfers of rights *causa mortis* or *inter vivos*.

## ORGANIC LAW ON SCIENCE, TECHNOLOGY AND INNOVATION (LOCTI)

This Law establishes several contributions that companies must make according to the activities they engage in, as follows:

(a) Hydrocarbon companies, 2% of annual gross revenues;

(b) Companies in mining and electrical power activities, 1% of annual gross revenues;

(c) Companies engaged in other production sectors of goods and services must contribute annually the equivalent of 0.5% of gross income.

The highest percentage will apply to any company which performs several activities and may as a consequence fall into more than one category above. The Law establishes that such contributions may be made in research developed in the same companies or into Government dependent Funds.



## ORGANIC LAW ON DRUGS

This Law establishes a contribution of 1% of annual net income of companies employing 50 or more workers. This contribution must be invested in programs for the prevention of drug traffic and consumption within the same company for its workers and their family environment. Likewise, the Law establishes that 2% of their annual net income must be contributed by companies manufacturing or importing alcoholic beverages, tobacco and its mixtures, like chewing tobacco, to maintain and operate prevention and rehabilitation centres for consumers of these substances.

## ORGANIC LAW ON TELECOMMUNICATIONS

In the Organic Law of Telecommunications, various taxes and duties are set forth on companies engaging in the business of telecommunications and making use of radio-electric spectrum, sound broadcasting and open television, among others. The various taxes and duties they must pay range between 0.05% and 2.3% of their annual gross revenue.

## ORGANIC LAW ON TOURISM

The Organic Law on Tourism sets forth a contribution of 1% monthly on gross revenue obtained, that must be paid by those rendering tourist services.

## ORGANIC LAW ON SPORT, PHYSICAL ACTVITY AND PHYSICAL EDUCATION

The law establishing the National Fund for the Development of Sport, Physical Activity and Physical Education will be constituted by contributions made by companies or other public and private organisations engaged in economic activities in the country for profit. The fund will be used to finance plans, projects and programs for the development and promotion of sport and physical activity, and social security and athletes. The contribution by companies or other organisations, will be 1% of the net profit or annual accounting profit when the profit exceeds TU 20,000.

## CONSTITUTION LAW ON THE TAX REGIME FOR THE SOVEREIGN DEVELOPMENT OF THE MINING ARC

On 29 December 2017, the Constitution Law on the Tax Regime for the Sovereign Development of the Mining Arc was published, the purpose of which is the creation of a special tax regime in the field of Income Tax. The tax rate to be applied will be set by the President of the Republic and will depend on the capacity of production and/or processing of the gold of each subject.

## B. DETERMINATION OF TAXABLE INCOME

Taxable net income is calculated by deducting the allowable costs and deductions (prescribed under the law) from gross taxable income.

## INVESTMENT ALLOWANCE

The benefits of tax investment abatements were eliminated in the Reform of the Income Tax Law 2015 that came into effect on 31 December 2015.

## DEPRECIATION

The amount allowed as deduction for depreciation during the tax year is the percentage necessary to recover the cost of such assets during the time that they are available to be used in production. Depreciation may be increased by adjusting depreciable fixed assets for inflation. Only the straight-line or the production unit method is admitted. The Tax Administration may admit other methods. Accelerated depreciation of assets is not admitted.

## STOCK / INVENTORY

Taxpayers shall draw up an inventory of all goods intended for sale at the start of their activities and at the close of each tax year. The inventoried goods shall be appraised at the cost price. They can also be appraised at the wholesale market price when the latter is less than the cost price.

## DIVIDENDS

From 1 January 2001, net income from dividends is considered to be a portion of income from dividends paid or credited to account, in cash or in kind, and arising from net income that is neither exempt nor exonerated, that exceeds the taxed fiscal net income, and accordingly, has not been subject to income tax. Dividend income is taxed at the rate of 34% of the amount paid. The full amount of the tax must be withheld at the time of payment or credit to account. Tax on dividends from companies in the oil and mining industry are taxed at the rate of 67.7% and 60% respectively and tax is to be withheld in full at source.

Dividends received from companies incorporated and domiciled abroad or incorporated abroad and domiciled in Venezuela are excluded from net income but tax paid on such dividends may be applied outside Venezuelan territory.

## INTEREST DEDUCTIONS

Interest on capital borrowed and invested in income-producing activity is deductible. In case of interest received by companies abroad, withholding tax will be levied at the following rates:

| Beneficiary | Rate (%) |
|---|---|
| Financial Institutions (domiciled) | 5.00 |
| Financial Institutions (non-domiciled) | 4.95 |
| Parent Company | 5.00 |
| Legal entity other than the above | 32.30 |

## LOSSES

Operating losses can be used for three consecutive periods from the fiscal year in which they occur but only in a proportion of 25% of the total taxable income of each successive period.

## FOREIGN SOURCED INCOME

The current Income Tax Law established the obligation for residents of Venezuela and for companies domiciled in the country to pay income tax on all revenue obtained, whether in Venezuela or abroad.

## INCENTIVES

Customs duties paid on imports of goods and products used in the production of goods for export would be reimbursed by the Banco Central de Venezuela (BCV).

## REGULAR ADJUSTMENT FOR INFLATION

The income tax law considers the regular adjustment for inflation, which represents the greater or lesser value of the net worth obtained by recognising the effects of the inflation in non-monetary assets and liabilities through the application of Consumer General Price Index, based on procedures established in the Venezuelan tax legislation. The fiscal adjustment for inflation, thus calculated, is considered a taxable gain or a deductible loss in determining the income tax expense. According to the reform of the Income Tax Law 2015 (published on 30 December 2015 and effective for periods beginning on 1 January 2016), the financial entities, the insurance and reinsurance activities, and taxpayers qualified as special by the tax administration are excluded from having to make a regular adjustment for inflation.

## C. FOREIGN TAX RELIEF

Venezuela has signed a number of agreements in order to avoid double taxation and in relation to shipping and air transportation (see hereafter under Treaty and non-treaty withholding rates).

## D. CORPORATE GROUPS

There are no provisions for consolidated tax returns.

## E. RELATED PARTY TRANSACTIONS

In cases involving commercial transactions between companies that could be considered related, they must follow the prescribed methodology regarding transfer pricing to determine their income. The rules on transfer pricing stipulate that application thereof is mandatory in the case of operations between related parties. The law also determines when a relationship shall be deemed to exist, and therefore, when the transaction is between related parties.

## F. WITHHOLDING TAX

- Dividends paid by Venezuelan companies and profits repatriated by PEs of foreign companies to the head office country are taxable to the extent that their net income exceeds net taxable income.
- Net income is the financial income approved by the shareholders' meeting based on the financial statements while net taxable income is the resulting income subject to tax after tax reconciliation, which is the procedure for determining the income tax liability. However, the tax does not apply to repatriations paid by PEs of foreign companies if the PE can prove that the excess amount is re-invested in Venezuela for at least five years.
- The applicable withholding tax rate depends on the business of the dividend-paying company: (i) hydrocarbon or mining companies (50% or 60% withholding tax respectively) (ii) for dividends paid by other companies, the withholding tax rate is 34%.
- Interest paid to non-resident companies is taxed at progressive rates (at 15%, 22% or 34%; see higher, under 'Company tax') on 95% of the gross amount, provided that the loan is invested in the production of income in Venezuela, if not the rates apply to 100% of the gross amount. The effective tax rates are thus 14.25% (0 – 2,000 TU), 20.90% (2,001 – 3,000 TU) or 32.3% (over 3,000 TU). Interest paid to foreign financial institutions that are not domiciled in Venezuela is subject to withholding tax at a flat rate of 4.95%.
- Royalties paid to non-resident companies are taxed at progressive rates (at 15%, 22% or 34%; see higher, under 'Company tax') on 90% of the gross amount. The effective tax rates are thus 13.50% (0 – 2,000 TU), 19.80% (2,001 – 3,000 TU) or 30.6% (over 3,000 TU).

## G. EXCHANGE CONTROL

Exchange controls were repealed. Foreign currency transactions are not currently controlled by any authority. Financial Institutions are free to participate in a currency business without the prior official approval of the Central Bank of Venezuela.

## H. PERSONAL TAX

Tax on individuals is levied on revenue received annually, provided that such revenue exceeds TU 1,500. They are allowed personal abatements and abatements for family charges, as well as personal expenses incurred during the fiscal year, e.g. medical expenses, school payment, insurance policies, etc.

The personal income tax rates are as follows:

| Taxable income (Tributary unit) | Rate (%) |
|---|---|
| 0 – 1,000 | 6 |
| 1,001 – 1,500 | 9 |
| 1,501 – 2,000 | 12 |
| 2,001 – 2,500 | 16 |
| 2,501 – 3,000 | 20 |
| 3,001 – 4,000 | 24 |
| 4,001 – 6,000 | 29 |
| Over 6,001 | 34 |

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

| | Dividends (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Domestic rates** | | | |
| Companies | 0/34 | 4.95/15/22/34[14] | 15/22/34[1] |
| Individuals | 0/34 | 34[15] | 34[15] |
| **Treaty countries:** | | | |
| Austria | 5/15[2] | 0/4.95/10[16, 17] | 5 |
| Barbados | 5/10[3] | 5/15[17] | 10 |
| Belarus | 5/15[4] | 5 | 5/10[19] |
| Belgium | 5/15[4] | 0/10[18] | 5 |
| Brazil | 10/15[5] | 15 | 15 |
| Canada | 10/15[4] | 10 | 5/10[19] |
| China | 5/10[6] | 5/10[17] | 10 |
| Cuba | 10/15[4] | 0/10[16] | 5 |
| Czech Republic | 5/10[2] | 0/10[16] | 12 |
| Denmark | 5/15[4] | 0/5[16] | 5/10[20] |
| France | 0/5/15[7] | 0/5[16] | 5 |
| Germany | 5/15[2] | 5 | 5 |
| Indonesia | 10/15[6] | 0/10[16] | 10/20[20] |
| Iran | 5/10[2] | 0/5[17] | 5 |
| Italy | 10 | 0/10[16] | 7/10[21] |
| Korea | 5/10[6] | 5/10 | 5/10[22] |
| Kuwait | 5/10[6] | 5 | 20 |
| Malaysia | 5/10[6] | 15 | 10 |
| Netherlands | 0/10[4] | 0/5[16] | 5/7/10[23] |
| Norway | 5/10[6] | 0/5/15[16, 17] | 9/12[20] |
| Portugal | 10 | 0/10[16] | 10/12[20] |
| Qatar | 5/10[6] | 0/5[16] | 5 |
| Russia | 10/15[8] | 5/10[17] | 10/15[20] |
| Saudi Arabia | 5 | 5 | 8 |
| Spain | 0/10[4] | 4.95/10[17] | 5 |
| Sweden | 5/10[9] | 0/10[16] | 7/10[24] |
| Switzerland | 0/10[4] | 0/5[16] | 5 |
| Trinidad and Tobago | 5/10[4] | 0/15[16] | 10 |
| United Arab Emirates | 0/5/10[10] | 0/10[16] | 10[25] |
| United Kingdom | 0/10[11] | 0/5[16] | 5/7[26] |
| United States | 5/15[12] | 4.95/10[16, 17] | 5/10[24] |
| Vietnam | 5/10[13] | 0/10[16] | 10[25] |

NOTES:

1. Taxed at progressive rates at the level of non-resident entities (at 15%, 22% or 34%; see higher, under 'Company tax') on 90% of the gross amount. The effective tax rates are thus 13.50% (0 – 2,000 TU), 19.80% (2,001 – 3,000 TU) or 30.6% (over 3,000 TU).
2. The lower rate applies to direct participations of at least 15% of capital.
3. The lower rate applies to direct participations of at least 5% of capital.
4. The lower rate applies to direct or indirect participations of at least 25% of capital or voting power (depending on the treaty).
5. The lower rate applies to participations (direct or indirect) of at least 20% of capital.
6. The lower rate applies to direct participations of at least 10% of capital.
7. The 0% rate applies when the beneficial owner is a company that holds at least 10% of the capital of the company paying the dividends. The 5% rate applies in all other cases. The 15% rate applies if the beneficiary of the dividends is a resident of Venezuela that receives from a company resident in France dividends that would give rise to a tax credit (avoir fiscal). For dividends received by a resident of France, the recipient has a right to a payment from the French Treasury for an amount equal to the avoir fiscal.
8. The lower rate applies to direct participations of at least 10% of capital and an investment of at least USD 100,000.
9. The lower rate applies to Venezuelan companies holding at least a 25% direct participation in the capital of a Swedish company.
10. The 0% rate applies to dividends paid to government institutions and state-owned entities. The 5% rate applies to direct participations of at least 10% of capital. The 10% applies in other cases.
11. The 0% rate applies to direct or indirect participations of at least 10% of voting power.
12. The lower rate applies to participations of at least 10% of the voting stock.
13. The lower rate applies to direct participations of at least 10% of capital.
14. Taxed at progressive rates at the level of non-resident entities (at 15%, 22% or 34%; see higher, under 'Company tax') on 95% of the gross

amount, provided that the loan is invested in the production of income in Venezuela, if not the rates apply to 100% of the gross amount. The effective tax rates are thus 14.25% (0 – 2,000 TU), 20.90% (2,001 – 3,000 TU) or 32.3% (over 3,000 TU). Interest paid to foreign financial institutions that are not domiciled in Venezuela is subject to withholding tax at a flat rate of 4.95%.

15. Interest paid to non-resident individuals is subject to a 34% withholding tax on 95% of the gross amount, provided that the loan is invested in the production of income in Venezuela, if not the rate applies to 100% of the gross amount. Royalties paid to non-resident individuals are subject to a 34% withholding tax on 90% of the gross amount.
16. The 0% rate applies, inter alia, to interest paid by public bodies.
17. The lower rate applies to interest paid to banks or financial institutions.
18. The 0% rate applies, inter alia, to interest on deposits (not represented by bearer instruments) with a bank and interest on commercial debt-claims (including debt-claims represented by commercial paper) resulting from deferred payments for goods, merchandise or services supplied by an enterprise.
19. The lower rate applies to royalties paid in respect of computer software or any patent or information concerning industrial, commercial or scientific experience.
20. The lower rate applies to payments for technical assistance.
21. The lower rate applies to copyright royalties (including films and tapes for radio and television broadcast).
22. The lower rate applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment.
23. The 5% rate applies to royalties for patents, leasing of equipment and know-how while the 7% rate applies to trademark royalties and the 10% rate to copyright royalties (including films and tapes for radio and television broadcast).
24. The 10% rate applies to copyright royalties (including films and tapes).
25. The rate also applies to payments for technical assistance.
26. The 5% rate applies to patents, trademarks and know-how royalties while the 7% rate applies to copyright royalties (including films and tapes for radio and television broadcast).

# VIETNAM

## MEMBER FIRMS

| City | Name | Contact Information |
|---|---|---|
| Hanoi / Ho Chi Minh City | Ngoc Hai Le | +8428 222 00237<br>+84 906 700 782<br>lengochai@pkf.acvietnam.vn |
| Hanoi / Ho Chi Minh City | Van Dang | +84 28 22 200 237<br>+84 944 622 461<br>dangmyvan@pkf.afcvietnam.vn |

### BASIC FACTS

| | |
|---|---|
| Full name: | Socialist Republic of Vietnam |
| Capital: | Hanoi |
| Main languages: | Vietnamese |
| Population: | 97.34 million (2022 estimate) |
| Monetary unit: | Vietnam Dong (VND) |
| Internet domain: | .vn |
| Int. dialling code: | +84 |

## KEY TAX POINTS

- Corporate Income Tax is charged on any enterprise carrying on a trade, business in Vietnam. All Income (including income from overseas) of enterprises registered in accordance with the Law of Enterprises are subject to Corporate Income Tax (CIT).
- For resident individuals Personal Income Tax is levied on their income earned within and outside Vietnam's territory, while non-residents are taxed only on their income earned in Vietnam.
- Value Added Tax (VAT) is a tax levied on imported goods and goods and services used in manufacturing, trading or consumption in Vietnam (except for exempted cases stipulated in the law). There are two (2) methods to calculate VAT, which are the deduction method and the direct method.
- Special Sales Tax is applied to specific luxury goods and services.



## A. TAXES PAYABLE

## COMPANY TAX - CORPORATE INCOME TAX (CIT)

The standard CIT rate is 20% as from 2016. Companies operating in the oil and gas industry are subject to a CIT rate ranging from 32% to 50% depending on the location and specific project conditions. Companies engaged in prospecting and exploration of mineral resources (e.g. silver, gold, gemstones) are subject to a CIT rate of 40% or 50% based on the project's location.

### Tax incentives

Tax incentives are granted to new investment projects based on regulated encouraged sectors, encouraged locations and the size of the project. Business expansion projects (including expansion projects licensed or implemented during the period from 2009 to 2013 which were not entitled to any CIT incentives previously) that meet certain conditions are also entitled to CIT incentives. New investment projects and business expansion projects do not include projects established as a result of certain acquisitions or reorganisations.

- The sectors which are encouraged by the Vietnamese Government include education, health care, sport/culture, high technology, environmental protection, scientific research, infrastructural development, processing of agricultural and aquatic products, software production and renewable energy.
- Locations which are encouraged include qualifying economic and high-tech zones, certain industrial zones and challenging socio-economic areas.
- Large manufacturing projects (excluding those related to the manufacture of products subject to special sales tax or those exploiting mineral resources) with a total capital of VND 6,000 billion or more, disbursed within 3 years of being licensed can also qualify for CIT incentives if the projects meet either of the following criteria:
  - minimum revenue of VND 10,000 billion per annum by the fourth year of operations at the latest; or
  - head count of more than 3,000 by the fourth year of operations at the latest.

As of 2015, large manufacturing projects are defined to also include projects with a total capital of VND 12,000 billion or more, disbursed within 5 years of being licensed (excluding those related to the manufacture of products subject to special sales tax or those exploiting mineral resources) and using technologies appraised in accordance with relevant laws.

Further, new investment projects engaged in manufacturing industrial products prioritized for development will be entitled to CIT incentives if they meet one of the following conditions:

- The products support the high technology sector; or
- The products support the garment, textile, footwear, IT, automobile assembly, mechanical sectors and are not produced domestically as at 1 January 2015, or if produced domestically, they meet the quality standards of the EU or equivalent.

The two common preferential rates of 10% and 20% are available for 15 years and 10 years respectively, starting from the commencement of operating activities. From 1 January 2015, a preferential rate of 15% will apply in certain cases. The duration of application of the preferential tax rate can be extended in certain cases. From 1 January 2016, enterprises having projects entitled to the preferential CIT rate of 20% will enjoy a rate of 17% instead. When the preferential rate expires, the CIT rate reverts to the standard rate. Certain socialised sectors (e.g. education, health) enjoy the 10% rate for the life of the project.

Taxpayers may be eligible for tax holidays and reductions. The tax holidays take the form of a complete exemption from CIT for a certain period beginning immediately after the enterprise first makes profits, followed by a period where tax is charged at 50% of the applicable rate. However, where the enterprise has not derived taxable profits within 3 years of the commencement of operations, the tax holiday/tax reduction will start from the fourth year of operation. Criteria for eligibility for these tax holidays and reductions are set out in the CIT regulations.

Additional tax reductions may be available for companies engaging in manufacturing, construction and transportation activities which employ many female staff or employ ethnic minorities.

Tax incentives which are available for investment in encouraged sectors do not apply to other income (except for income which directly relates to the incentivised activities such as disposal of scrap), which is broadly defined.

For fiscal year 2000, companies with an annual revenue of less than VND 200 billion are subject to a 30% reduction on CIT payable.

**Administration**

Enterprises shall make a self-declaration of CIT payable. The enterprise shall pay the amount of CIT provisionally payable determined each quarter during the year and shall finalize the whole CIT payable for the fiscal year within 90 days after the year end. Generally, the fiscal year for the purpose of tax finalisation shall be the calendar year, except for an enterprise that is permitted to apply a fiscal year other than the calendar year.

## CAPITAL GAINS TAX

There is no specific capital gains tax in Vietnam. Capital gains are treated as ordinary income for the purpose of calculating income tax.

## BRANCH PROFITS TAX

There is no specific branch profits tax in Vietnam. Foreign Enterprises and Foreign Individuals are subject to Withholding Tax on Income that they earn from carrying out business.

## VALUE ADDED TAX (VAT)

VAT is a tax levied on imported goods and goods and services used for manufacturing, trading or consumption in Vietnam (except for the exempted cases stipulated in law).

There are two methods to calculate VAT, i.e. the Direct Method and the Deduction Method.

1. Under the Direct Method, VAT is calculated as follows:

   VAT to be paid = sales price x rate of VAT

   The sales price includes VAT to be paid. The VAT rates that apply under the Direct Method are:

   - 1% for distribution or supply of goods;
   - 5% for services or construction (excluding building materials);
   - 3% for manufacturing, transport, services (associated with goods), construction (including building materials); and
   - 2% for other lines of business.

2. Under the Deduction Method, VAT is calculated as follows:

   Output VAT = sales price (excluding VAT) x VAT rate

And VAT to be paid is calculated as follows :

VAT to be paid = Output VAT – deductible VAT

Output VAT is the total VAT on goods sold and services recorded on the VAT sales invoices.

Deductible VAT comprises :

- Input VAT which is total VAT on VAT invoices for purchases of goods and services (including fixed assets) serving the manufacture or sale of taxable goods and services;
- VAT on imported goods at Customs; and
- VAT paid on behalf of foreign enterprises mentioned in the Withholding Tax.

**VAT Rate (applied under the Deduction Method)**

There are three VAT rates in place. In general, goods or services are subject to a rate of 10%, while some goods or services are subject to a rate of 5% and a 0% rate is applied for goods and services exported abroad.

**Administration**

VAT shall be declared and paid monthly. For enterprises which have a turnover in the previous year below VND 50,000,000,000 (fifty billion) or newly established enterprises, VAT can be declared and paid quarterly.

**VAT refund**

From 1 July 2016, the VAT refund policy has changed. Where the taxpayer's input VAT for a period exceeds its output VAT, it will have to carry the excess forward to the subsequent period.

The taxpayer can claim a refund from the tax authorities in the following two instances only:

- refund VAT for investment project: when the input VAT of the investment project (after deduction of the amount of VAT payable on business activities for the same period) is VND 300 million or higher (except for an investment project where the product is built/destined for sale or for rent);
- refund VAT on exported goods or services: when VAT payables for the period exceed VND 300 million.

## SPECIAL SALES TAX

Special Sales Tax is applied to specific luxury goods, either imported or manufactured in Vietnam, and services. Special Sales Tax is calculated based on the quantity of taxable goods (services) sold at their taxable value and their corresponding tax rate. The taxable value is the sales price (excluding VAT) for manufactured goods and services or customs value for imported goods. Specific goods (services) and their respective tax rates are as follows:

| | **Description** | **Rate** |
|---|---|---|
| A. | Goods | |
| 1. | Cigarettes, cigars and other tobacco products | |
| | - before 1 January 2016 | 65% |
| | - from 1 January 2016 to 31 December 2018 | 70% |
| | - from 1 January 2019 | 75% |
| 2. | Liquor | |
| | a. from 20 degrees proof | |
| | - before 1 January 2016 | 50% |
| | - from 1 January 2016 to 31 December 2016 | 55% |
| | - from 1 January 2017 to 31 December 2017 | 60% |
| | - from 1 January 2018 | 65% |
| | b. under 20 degrees proof | |
| | - before 1 January 2016 | 25% |
| | - from 1 January 2016 to 31 December 2017 | 30% |
| | - from 1 January 2018 | 35% |
| 3. | Beer | |
| | - before 1 January 2016 | 50% |
| | - from 1 January 2016 to 31 December 2016 | 55% |
| | - from 1 January 2017 to 31 December 2017 | 60% |
| | - from 1 January 2018 | 65% |
| 4. | Automobiles under 24 seats | |
| | **Description** | **Rate** |
| | a. up to 9 seats | 45% - 60% |
| | b. from 10 to 16 seats | 30% |
| | c. from 15 to under 24 seats | 15% |
| 5. | Two- and three-wheeled motorcycles of a cylinder capacity of over 125 $cm^3$ | 20% |
| 6. | Aircrafts | 30% |
| 7. | Yachts | 30% |
| 8. | Gasoline of various kinds, naphtha, reformed components and other compounds for mixing gasoline | 7% - 10% |
| 9. | Air-conditioners with capacity of 90,000 BTU or less | 10% |

V

| | Description | Rate |
|---|---|---|
| 10 | Playing cards | 40% |
| 11 | Votive paper and votive objects | 70% |
| **B** | **Services** | |
| 1. | Discotheque | 40% |
| 2 | Massage parlours and karaoke bars | 30% |
| 3. | Casino and reward games, including jackpot, slot and other similar machines | 35% |
| 4. | Betting business | 30% |
| 5. | Golf business, including sale of membership cards and golf game tickets | 20% |
| 6. | Lottery business | 15% |

As from 1 July 2016, the items under No.4 of the above table have changed in description and rates as follows:

| **Description** | | **Rate** |
|---|---|---|
| 4 | Under-24 seat cars | |
| | - Cylinder capacity of 1,500 $cm^3$ or less | |
| | + From 1 July 2016 to 31 December 2017 | 40% |
| | + From 1 January 2018 | 35% |
| | - Cylinder capacity between 1,500 $cm^3$ and 2,000 $cm^3$ | |
| | + From 1 July 2016 to 31 December 2017 | 45% |
| | + From 1 January 2018 | 40% |
| | - Cylinder capacity between 2,000 $cm^3$ and 2,500 $cm^3$ | 50% |
| | - Cylinder capacity between 2,500 $cm^3$ and 3,000 $cm^3$ | |
| | + From 1 July 2016 to 31 December 2017 | 55% |
| | + From 1 January 2018 | 60% |
| | - Cylinder capacity between 3,000 $cm^3$ and 4,000 $cm^3$ | 90% |
| | - Cylinder capacity between 4,000 $cm^3$ and 5,000 $cm^3$ | 110% |
| | - Cylinder capacity between 5,000 $cm^3$ and 6,000 $cm^3$ | 130% |
| | - Cylinder capacity of over 6,000 $cm^3$ | 150% |
| | b) Passenger cars of between 10 seats and under 16 seats, except those specified at Points 4dd, 4e, and 4g of the Tariff specified in this Article | 15% |
| | c) Passenger cars between 16 seats and under 24 seats, except those specified at Points 4dd, 4e, and 4g of the Tariff specified in this Article | 10% |
| | d) Cars for both passenger and cargo transportation, except those specified at Points 4dd, 4e, and 4g of the Tariff specified in this Article | |
| | - Cylinder capacity of 2,500 $cm^3$ or less | 15% |
| | - Cylinder capacity between 2,500 $cm^3$ and 3,000 $cm^3$ | 20% |
| | - Cylinder capacity of over 3,000 $cm^3$ | 25% |
| | e) Cars running on gasoline in combination with electricity or bio-fuel, with gasoline accounting for not more than 70% of the consumed fuel | 70% of the tax rate for cars of the same kind as specified at Points 4a, 4b, 4c and 4d of the Tariff specified in this Article |
| | f) Cars running on bio-fuel | 50% of the tax rate for cars of the same type as specified at Points 4a, 4b, 4c and 4d of the Tariff specified in this Article |
| | g) Electrically-operated cars | |
| | - Passenger cars of 9 seats or fewer | 15% |

| Description | | Rate |
|---|---|---|
| | - Passenger cars of between 10 seats and under 16 seats | 10% |
| | - Passenger cars of between 16 seats and under 24 seats | 5% |
| | - Cars for both passenger and cargo transportation | 10% |
| | h) Motorhome, regardless of cylinder capacity | |
| | - From 1 July 2016 to 31 December 2017 | 70% |
| | - From 1 January 2018 | 75% |

## LICENSING FEES

As of 2017, Business Licence Fees are renamed into Licensing fees and are levied on the licence of organisations based on their chartered capital while for households and individuals they are based on revenue.

Annually, Business Licence Tax shall be paid by 31 January. For new business establishments the deadline is the end of the first month of operations.

| | Description | Amount (VND) |
|---|---|---|
| | A. Organisations - Entities | |
| 1. | Chartered capital over VND 10 billion | 3,000,000 |
| 2. | Chartered capital equal to VND 10 billion or lower | 2,000,000 |
| | B. Other organisations | |
| 1. | Branches, representative offices, business location | 1,000,000 |
| | C. Household, individuals | |
| 1. | Revenue over VND 500 million | 1,000,000 |
| 2. | Revenue from VND 300 million up to VND 500 million | 500,000 |
| 3. | Revenue from VND 100 million up to VND 300 million | 300,000 |

As of 2017, the following exemptions from licence fees apply:

- Business households, individuals having annual revenue of more than VND 100 million;
- Business households, individuals producing salt;
- Organisations, business households, individuals having irregular activities, without fixed location;
- Organisations, business households, individuals rendering aquaculture, fisheries and fishing logistics services;
- Commune cultural post offices and press agencies;
- Branches, representative offices (Ro.) of co-operatives having direct technical service activities in agriculture;
- The communal people's credit fund, co-operatives specialised in service business for agriculture production, branches, Ro. and business locations of co-operatives and private enterprises carrying out business in the mountains.

As of 25 February 2020, additional cases of exemptions from licence fees apply:

- exemption from licence fees :
  - o Public compulsory education and public preschool education institutions;
- exemption for 3 years
  - o Small and medium-sized enterprises transformed from business households;
- exemption in the first year of commencement of activities
  - o Newly-established organisations;
  - o Business households, individuals starting their trade/production activities for the first time.

## EXPORT – IMPORT TAX

Export – Import Tax is levied on goods exported or imported across the Vietnamese border, on goods brought from the domestic market into non-tariff zones and vice versa and on other traded or exchanged goods that are considered imports or exports.

Export – Import Tax rate for each exported or imported item is determined by the Export Tax and Import Tax tariff.

## NATURAL RESOURCES TAX

Natural Resources Tax is levied on organisations and individuals conducting the exploitation of natural resources in Vietnam. Natural Resources Tax is determined by the actual natural resources exploited, the unit price and the tax rate stipulated for the specific resources.

V

## B. DETERMINATION OF TAXABLE INCOME

Generally, deductible expenses which are deductible for the purpose of calculation of taxable income include expenses actually used for the production or trading in goods and services and expenses incurred with receipts or source documents issued in accordance with the law.

- CIT payables = (Taxed income – Allocation to R&D fund) x CIT rate.
- R&D fund is Science and Technology Development Fund.
- Taxed income = Taxable Income – Exempt Income – Prior year loss carried forward.
- Taxable income = Turnover – Deductible Expenses + Other Income.

## DIVIDENDS

Income divided from capital contribution, share purchase, joint venture or economic association with domestic enterprises, after contributed capital recipients, share issuers or joint venture or association parties have paid Corporate Income Tax (CIT) under the Law on CIT shall be exempted from CIT.

When the enterprises receive this income (dividends) before the tax calculation, the income shall not be exempted from CIT. In this case, the enterprise must pay CIT on this income at the common rate applied to this enterprise.

For individuals, dividends are liable to tax at a rate of 5%.

## LOSSES

Enterprises which suffer losses shall be entitled to carry forward those losses to taxable income of the following years. Losses may be carried forward within five (5) years from the year following the year the loss arose.

## FOREIGN SOURCE INCOME

Vietnamese enterprises which make an offshore investment and derive income from production and business activities overseas shall declare and pay CIT in accordance with the current Law on CIT of Vietnam.

## C. FOREIGN TAX RELIEF

Vietnamese enterprises which make an offshore investment and derive income from production and business activities overseas shall declare and pay CIT in accordance with the current Law on CIT of Vietnam. In case these enterprises have paid income tax on income arising overseas, the paid tax amount may be subtracted (in Vietnam) but must not exceed the CIT amount payable under the Law on Corporate Income Tax.

## D. CORPORATE GROUPS

There are no provisions for any form of consolidated filing or group loss relief.

## E. RELATED PARTY TRANSACTIONS

Decree 132/2020/ND-CP, which came into force on 20 December 2020 replaces Decree 20/2017/ND-CP and Decree 68/2020/ND-CP. This decree amended the transfer pricing (TP) regulations which have been set out by Decree 20/2017/ND-CP and amended by Decree 68/2020/ND-CP. The prescribed TP methodology generally follows the OECD Transfer Pricing Guidelines although some modifications and additional requirements are in place.

A 25% controlling threshold (previously 20%) is sufficient for enterprises to be deemed related parties. The definition also extends to companies under the common control of an individual through capital contribution or direct management, and where a company is substantially controlled or managed by another company.

Total deducted loan interest cost shall not exceed 30% (previously 20%) of total net profit generated from business activities plus loan interest costs and amortisation costs arising within that period. The portion of non-deducted loan interest is carried forward for a maximum consecutive period of five years, counting from the year following the year in which non-deductible loan interest costs arise.

The prescribed TP methods are: (i) comparable uncontrolled price (ii) resale price (iii) cost-plus (iv) transactional net margin and (v) profit split. The circular does not stipulate the preference of any method over the others.

Advance pricing agreements (APAs) can be concluded.

An annual declaration of related party transactions must be submitted together with the taxpayer’s annual corporate income tax return, comprising a Master File, a Local File and a Country-by-Country (‘CbC’) report. Taxpayers are also required to prove that arm’s length pricing has been adopted and are required to maintain contemporaneous records.

The taxpayer must perform CbC reporting if (i) the ultimate parent company also is obliged to prepare and submit such documents in its respective tax jurisdiction or (ii) the taxpayer is a Vietnamese ultimate parent company with worldwide consolidated revenue in a fiscal year exceeding VND 18 trillion.

The taxpayer is exempt from preparing TP documentation if one of the following conditions is met:

- The taxpayer engages in transactions with related parties having to pay corporate income tax in Vietnam, being subject to the same rate of corporate income tax and the taxpayer and related parties are not offered any corporate income tax incentive;
- The taxpayer has revenue below VND 50 billion and the total value of related party transactions is below VND 30 billion in a tax period;
- The taxpayer concludes an APA and submits annual APA reports; or
- The taxpayer has revenue below VND 200 billion and performs simple functions and achieves at least the following ratios of EBIT to revenue on its respective business: distribution (5%), manufacturing (10%), processing (15%).

If the pricing strategy is found not to be at arm’s length, the tax authorities may impose the deemed appropriate pricing and deemed taxable profits in order to impose the deemed tax.



## F. WITHHOLDING TAX

Foreign enterprises and foreign individuals subject to Withholding Taxes are:

- Foreign enterprises and individuals doing business in Vietnam or earning income in Vietnam on the basis of contracts, agreements with Vietnamese organisations, individuals, or between foreign contractors and foreign sub-contractors to perform a part of the Contractor agreement;
- Foreign enterprises and individuals supplying goods in Vietnam in the form of on the spot export/import and earning income in Vietnam on the basis of contracts, agreements with Vietnamese organisations, individuals, or between foreign contractors and foreign sub-contractors to perform a part of the Contractor agreement.

Branches of foreign companies that carry out business or supply services in Vietnam shall be subject to Value Added Tax (VAT) and Corporate Income Tax (CIT) if they fully satisfy the following conditions:

- Having a permanent establishment in Vietnam;
- The business duration in Vietnam is 183 days or more;
- Applying the Vietnamese accounting regime, carrying out tax registration and obtaining the tax identification number from tax agencies.

These branches are subject to the same rules and the same tax rate as resident enterprises. Corporate Income Tax shall only be levied on the net profits arising from business carried on in Vietnam.

Branches of foreign companies that do not satisfy these conditions shall be subject to the Withholding Tax which comprises VAT and CIT as mentioned below:

a) VAT rate (%) calculated upon taxable turnover applicable to business lines:

| No. | Business line | Rate |
|---|---|---|
| 1 | Services, machinery and equipment lease, insurance; construction or installation without supply of raw materials, machinery and equipment | 5% |
| 2 | Production, transportation, services provided together with goods; construction and installation involving the supply of raw materials, machinery and equipment | 3% |
| 3 | Other business activities | 2% |

b) CIT rate (%) calculated upon taxable turnover (excluding VAT, if any) applicable to business lines:

| No. | Business line | Rate |
|---|---|---|
| 1 | Trade: Distributing, providing goods, raw materials, supplies, machinery and equipment; distributing, providing goods, raw materials, supplies, machinery and equipment attached to services in Vietnam (including the provision of goods in the form of on-spot export and import (except for processing goods for foreign organisations, individuals); providing goods under delivery conditions of the Incoterms) | 1% |
| 2 | Services, insurance, leasing machinery and equipment, leasing drilling rigs, particularly: | 5% |
| | - Restaurant, hotel, casino management services; | 10% |
| | - Derivative financial services. | 2% |
| 3 | Leasing airplanes, airplane engines, spare parts of airplane, ships. | 2% |
| 4 | Construction, installation including or excluding materials, machinery, equipment. | 2% |
| 5 | Other production and business, transport (including the transport by seaway, by airway). | 2% |
| 6 | Transfer of securities, deposit certificates, reinsurance abroad, and commission of the reinsurance transfer. | 0.1% |
| 7 | Interest on loans. | 5% |
| 8 | Royalties. | 10% |

Generally, the Vietnamese party is responsible for declaring, deducting and paying Withholding Tax on behalf of the foreign party and is responsible for paying this Tax within fifteen (15) days from the day of payment to the foreign party.

## G. EXCHANGE CONTROL

Within the territory of Vietnam, except for cases that are allowed by State Bank, any transaction, payment, listing, advertising, quotation, valuating, pricing in any contract, agreement and other similar forms (including the conversion or price adjustment of goods, services, value of contract, agreement) of residents, non-residents, shall not be performed in foreign exchange. Foreign currency revenues of residents earned from the import and export of goods and services or other current sources overseas must be deposited into the foreign currency accounts opened at authorized credit institutions in Vietnam, which correspond to the payment terms specified in the relevant contracts or payment records, except for some cases that the State Bank of Vietnam considers allowing to retain part of or the entire amount of foreign currency revenue overseas.

Foreign currency payment and transfer regarding imported and exported goods and services must be performed by wire transfer through authorized credit institutions. Upon entry into, or exit from, Vietnam, (and without declaration to the border Customs) individuals can carry foreign currency as follows:

- USD 5,000 or other foreign currency of the same value;
- VND 15,000,000;
- Precious metals, gemstones (excluding gold) valued at VND 300,000,000;
- Negotiable instrument valued at VND 300,000,000.

Vietnamese individuals and foreigners are not allowed to bring gold bars and gold materials to entry into or exit from Vietnam, but can carry gold jewelleries and gold arts with a total weight of under 300 grams. In excess of these norms, Vietnamese and foreigners shall be required to declare to the border Customs.



## H. PERSONAL INCOME TAX

All residents and non-residents are subject to Personal Income Tax. A resident is a person that meets one of the conditions below:

- Has been present in Vietnam for 183 days or longer in a calendar year, or for 12 consecutive months from the day on which that person arrives at Vietnam;
- Has a regular residence in Vietnam in one of the two cases below:
  - o Has a regular residence according to the legislation on residence;
  - o Rents a house in Vietnam according to legislation on housing under a contract that lasts 183 days or longer in the fiscal year.

Non-residents are the persons that fail to meet the conditions listed above.

A resident is liable to pay tax on income earned in Vietnam and overseas, except for non-taxable income, such as income from real estate transferred between spouses and between blood-relations. Personal income tax derived from wages for a resident is equal to assessable income multiplied by the tax rate. Assessable income is taxable Personal Income less deductions. For personal income from wages, deductions are as follows:

- Personal deduction per month comprises deduction for taxpayer and deduction for each dependant which are children under 18, unemployed spouse, elderly and parents;
- Insurance premium.
- Payment for business trips;
- Office clothes (not exceeding VND 5,000,000);
- Overtime premium;
- One-off allowance for relocation;
- Transportation to and from work;
- Once a year home leave round trip airfare for expatriate employees and Vietnamese working overseas;
- Training;
- Mid-shift meals (subject to a cap if the meals are provided in cash);
- Allowances/ benefits for wedding, funeral (subject to a cap).

**Personal income tax rates:**

| Level | Assessable income/year (million VND) | Assessable income/month (million VND) | Tax rate |
|---|---|---|---|
| 1 | Up to 60 | Up to 5 | 5% |
| 2 | Over 60 to 120 | Over 5 to 10 | 10% |
| 3 | Over 120 to 216 | Over 10 to 18 | 15% |
| 4 | Over 216 to 384 | Over 18 to 32 | 20% |
| 5 | Over 384 to 624 | Over 32 to 52 | 25% |
| 6 | Over 624 to 960 | Over 52 to 80 | 30% |
| 7 | Over 960 | Over 80 | 35% |

A non-resident is liable to pay Personal Income Tax only on income earned in Vietnam. For Income from wages, Personal Income Tax is equal to taxable income from wages multiplied by a rate of 20% (with no personal deduction).

Other calculation of Personal Income Tax is stipulated in the relevant legal documents.

**Non-taxable income**

Lump-sum moving allowances for foreigners that move and reside in Vietnam and Vietnamese people that go and work abroad, is non-taxable income.

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

Withholding Tax rates for dividends, interest and royalties are as follows:

| | Dividends[1] (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| **Domestic rates** | | | |
| Companies | 0 | 5 | 10 |
| Individuals | 5 | 5 | 5 |
| **Treaty countries:** | | | |
| Algeria[2] | 15 | 15 | 15 |
| Australia | 10 | 10 | 10 |
| Austria | 5/10/15 | 10 | 7.5/10[4] |
| Azerbaijan | 10 | 10 | 10 |
| Bangladesh | 15 | 15 | 15 |
| Belarus | 15 | 10 | 15 |
| Belgium | 5/10/15 | 10 | 5/10/15 |
| Brunei | 10 | 10 | 10 |
| Bulgaria | 15 | 10 | 15 |
| Cambodia | 10 | 10 | 10 |
| Canada | 5/10/15 | 10 | 7.5/10[4] |
| China | 10 | 10 | 10 |
| Croatia[3] | 10 | 10 | 10 |
| Cuba | 5/10/15 | 10 | 10 |
| Czech Republic | 10 | 10 | 10 |
| Denmark | 5/10/15 | 10 | 5/15 |

| | Dividends[1] (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Estonia | 5/10 | 10 | 10 |
| Finland | 5/10/15 | 10 | 10 |
| France | 7/10/15 | Nil | 10 |
| Germany | 5/10/15 | 10 | 7.5/10[4] |
| Hong Kong | 10 | 10 | 7/10 |
| Hungary | 10 | 10 | 10 |
| Iceland | 10/15 | 10 | 10 |
| India | 10 | 10 | 10 |
| Indonesia | 15 | 15 | 15 |
| Iran | 10 | 10 | 10 |
| Ireland | 5/10 | 10 | 5/10/15 |
| Israel | 10 | 10 | 5/7.5/15[4] |
| Italy | 5/10/15 | 10 | 7.5/10[4] |
| Japan | 10 | 10 | 10 |
| Kazakhstan | 5/15 | 10 | 10 |
| Korea (North) | 10 | 10 | 10 |
| Korea (South) | 10 | 10 | 5/10 |
| Kuwait | 10/15 | 15 | 20 |
| Laos | 10 | 10 | 10 |
| Latvia | 5/10 | 10 | 7.5/10[4] |
| Luxembourg | 5/10/15 | 5/7/10 | 5/10 |
| Macau | 10 | 10 | 10 |
| Malaysia | 10 | 10 | 10 |
| Malta | 5/15 | 10 | 5/10/15 |
| Mongolia | 10 | 10 | 10 |
| Morocco | 10 | 10 | 10 |
| Mozambique | 10 | 10 | 10 |
| Myanmar | 10 | 10 | 10 |
| Netherlands | 5/7/10/15 | 10 | 5/10/15 |
| New Zealand | 5/15 | 10 | 10 |
| Norway | 5/10/15 | 10 | 10 |
| Oman | 5/10/15 | 10 | 10 |
| Pakistan | 15 | 15 | 15 |
| Palestine | 10 | 10 | 10 |
| Panama | 5/7/12.5 | 10 | 10 |
| Philippines | 10/15 | 15 | 15 |
| Poland | 10/15 | 10 | 10/15 |
| Portugal | 5/10/15 | 10 | 7.5/10[4] |
| Qatar | 5/12.5 | 10 | 5/10 |
| Romania | 15 | 10 | 15 |
| Russia | 10/15 | 10 | 15 |
| San Marino | 10/15 | 10/15 | 10/15 |
| Saudi Arabia | 5/12.5 | 10 | 7.5/10[4] |
| Serbia | 10/15 | 10 | 10 |
| Seychelles | 10 | 10 | 10 |
| Singapore | 5/7/12.5 | 10 | 5/10 |
| Slovak Republic | 5/10 | 10 | 5/10/15 |
| Spain | 5/7/10/15 | 10 | 10 |
| Sri Lanka | 10 | 10 | 15 |
| Sweden | 5/10/15 | 10 | 5/15 |
| Switzerland | 7/10/15 | 10 | 10 |
| Taiwan | 15 | 10 | 15 |

| | Dividends[1] (%) | Interest (%) | Royalties (%) |
|---|---|---|---|
| Thailand | 15 | 10/15 | 15 |
| Tunisia | 10 | 10 | 10 |
| Turkey | 5/10/15 | 10 | 10 |
| Ukraine | 10 | 10 | 10 |
| United Arab Emirates | 5/15 | 10 | 10 |
| United Kingdom | 7/10/15 | 10 | 10 |
| Uruguay | 5/10 | 10 | 10 |
| Uzbekistan | 15 | 10 | 15 |
| Venezuela | 5/10 | 10 | 10 |

Notes:

1. Dividends paid to non-resident corporate investors are not subject to withholding tax. Distributions repatriated abroad by foreign invested enterprises are not subject to withholding tax. A foreign investor generally may repatriate its after-tax dividends out of Vietnam after fulfilling all tax and financial obligations towards the Vietnamese Government. The rates provided in certain treaties represent the maximum withholding tax rate should Vietnam impose a withholding tax on dividends in the future.
2. Treaty not yet in force.
3. Effective date: 1 January 2020.
4. The 7.5% reduced rate applies to fees for technical services.

# ZAMBIA

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Lusaka | Ravi Sankar | +260 211 267124/267267<br>rravisankar@zm.pkf.com |
| Livingstone | Simon Njelemba | +260 213 321476 / 320767<br>snjelemba@zm.pkf.com |
| Ndola | Musonda M Kambikambi | +260 212 610297 - 8 / 610302<br>mmulenga@zm.pkf.com |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Zambia |
| Capital: | Lusaka |
| Main languages: | English |
| Population: | 18.75 million (2021 estimate) |
| Monetary unit: | Zambian Kwacha (ZMW) |
| Internet domain: | .zm |
| Int. dialling code: | +260 |

## KEY TAX POINTS

- Companies whether resident or non-resident and are in receipt of income, which has a source or deemed source in Zambia, are liable for tax.
- Standard Corporate Income Tax payable by Zambian companies on their taxable income is 30%. The tax is payable by both public and private companies as well as small businesses. Other concessional income tax rates are as follows:

| | |
|---|---|
| Mineral processing | 30% |
| Mining | 30% |
| Manufacturing and other companies | 30% |
| Public Benefit Organisation (on income from business) | 15% |
| Agro processing | 10% |
| Farming | 10% |
| Non-traditional exports | 15% |
| Chemical manufacture of fertilizer | 15% |
| Organic manufacture of fertilizer | 15% |
| Trusts, deceased or bankrupt estates | 30% |
| Accommodation and food service providers | 15% |

- There is no capital gains tax in Zambia. Instead there is what is known as Property Transfer Tax (PTT) which is levied on the sale or deemed sale of all immovable property, shares and intellectual property at 5% of the realisable value. PTT is also levied on the transfer of a mining right or mineral processing licence or an interest in the mineral processing licence at the rate of 10%.
- VAT is chargeable on all taxable goods and services supplied by a registered supplier at a standard rate of 16%. Where cross-border services are engaged in, reverse VAT needs to be paid on the foreign supplier of service using an approved tax agent. This is applicable where the recipient of the services is registered for VAT in Zambia.
- Zambian resident individuals and companies are subject to tax in Zambia on foreign interest and dividends.
- Tax credits are granted in respect of foreign taxes paid on foreign sources of income in accordance with the Income Tax Act and the numerous Double Tax Treaties.
- Mineral royalty is a deductible expenditure in computing the tax taxable income for any person that has paid mineral royalty in accordance with the Mines and Minerals Development Act, 2015.
- Group taxation is not applicable in Zambia. All group companies are taxed as separate entities.
- The Zambia Revenue Authority Commissioner-General is empowered to make adjustments to non-arm's length cross-border transactions and thin capitalisation between related parties.
- Income from royalties, commission, dividends, management and consultancy and other professional services are subject to withholding taxes when received by residents. Non-residents are subject to withholding tax on payments for construction and haulage operations, royalties, management & consultancy, commission, public entertainment, dividends and interest.
- Zambian resident individuals are subject to tax on their income from a source or deemed source within Zambia. Foreign interest and dividends received by individuals ordinarily resident in Zambia including companies are taxable.

## A. TAXES PAYABLE

### COMPANY TAX

A Company is resident in Zambia for any charge year if it is incorporated or formed under the Laws of Zambia or if the central management and control of the company's business or affairs are exercised in Zambia for that year. In Zambia all companies whether they are resident or non-resident and are in receipt of income, which has a source or deemed source in Zambia are liable for tax. For the purposes of the Zambian Income Tax Act, income for any charge year includes:

- Gains or profits from any business for whatever period of time carried on;
- Emoluments;
- Annuities;
- Dividends;
- Interest, charges and discounts;
- Royalties, premiums or any like consideration for the use or occupation of any property;
- Income from letting of any property;
- Lump sum payments, capital recoveries;
- Income includes amounts received by way of maintenance or allowance under any judicial order or decree in connection with matrimonial proceedings, or under a written separation agreement.

Standard corporate income tax is payable by Zambian companies on their taxable income at the rate of 30%. The tax is payable by both public and private companies as well as small businesses. However, there are concessional rates of tax applicable to certain sectors as follows:

| Category | Rate (%) |
|---|---|
| Mineral processing | 30 |
| Mining | 30 |
| Manufacturing of products using copper cathodes | 15 |
| Manufacturing & other companies | 30 |
| Approved Public Benefit Organisation (on income from business) | 15 |
| Agro-processing | 10 |
| Farming | 10 |
| Non-traditional exports - Agro-processing & Farming | 10 |
| Non-traditional exports - Others | 15 |
| Chemical manufacture of fertilizer | 15 |
| Organic manufacture of fertilizer | 15 |
| Trusts, deceased or bankrupt estates | 30 |
| Gross Rental Income of up to ZMW 800,000 per annum | 4% of turnover |
| Gross Rental Income in excess of ZMW 800,000 per annum | 12.5% of turnover |
| Rural enterprises | Tax chargeable reduced by 1/7 for 5 years |
| Income from providing accommodation and food services (for the charge years 2021 and 2022) | 15 |
| Income from carrying on the business of manufacturing ceramic products (for the charge years 2022 and 2023) | 0 |

The tax rates applicable to the Mobile Telecommunications sector are as follows:

| | |
|---|---|
| On income up to ZMW 250,000 | 30% |
| On income in excess of ZMW 250,000 | 40% |

Small businesses with gross income of up to ZMW 800,000 in a charge year, subject to certain exemptions, can register to pay tax at 4% on gross income, under the turnover tax system. However, small business providing management or consultancy services are not covered by this exemption. Mining companies involved in the mining of base metals that earn income from tolling or processing of purchased mineral ores, concentrates and any other semi-processed minerals pay tax at 30%.

## TRUSTS

Zambian Trusts like deceased estates and bankruptcy estates pay tax at a flat rate of 30%. Notwithstanding the aforementioned, the Trust needs not be taxed on all of its net income where a beneficiary is entitled to the whole or part of the income of the trust, as it is taxed in his hands instead of being taxed as income of the Trust. Where tax has already been paid on such income before it reaches the hands of the beneficiary it will be set off against any tax raised on him (beneficiary). In practice under Zambian Law, the beneficiary and not the Trust is to be taxed on:

- Income in which the beneficiary has a vested interest where this is paid or accumulated to him;
- Sums applied for the benefit of the beneficiary under the terms of the Trust; and,
- Sums paid to or applied for the benefit of the beneficiary in exercise of discretion.

Under the tax avoidance rules, the Commissioner-General may void a trust where he determines that the main aim or purpose of a trust was to minimise or avoid tax.

## CAPITAL GAINS TAX

There is no capital gains tax in Zambia. However, there is a Property Transfer Tax (PTT) which is charged on the realisable value of the property being transferred. PTT is payable by the transferor of the property. It is charged on the sale or transfer of all immovable property and any shares issued by a company incorporated in Zambia. PTT is also chargeable on the sale or transfer of mining right/interest in mining right, mineral processing licence or an interest in the mineral processing as well as intellectual property.

PTT in relation to immovable property excludes letting or sub-letting of property and leasing, under-leasing or sub-leasing for a period of less than 5 years. In relation to shares, transfer of property excludes the allocation of the same by the company to the member in whose name the share was first registered. PTT rates are as on the table below:

| **Category** | **Rate (%)** |
|---|---|
| Land (including buildings, structures or improvements thereon) | 5 |
| Shares | 5 |
| Intellectual Property (including trademarks, patents, copyright or industrial design) | 5 |
| Mining Right/Interest in Mining Right | 10 |
| Mining processing Licence/Interest in the mineral processing licence | 10 |

With respect to transfer of a share issued by a company incorporated outside the Republic where that company directly or indirectly owns at least ten (10) percent of a company incorporated in Zambia, tax shall be charged and collected from the Zambian incorporated company. However, where the Commissioner-General is satisfied that a transfer with the realised value is made for the purposes of group reorganisation and that there is no change in effective shareholding with respect to the Zambian Company, the Tax Authority may determine a nil value but this will not apply to a company that has not been part of the group companies for at least three years preceding the transfer. Furthermore, only public benefit organisations which are approved shall be exempt from PTT.

## BRANCH PROFITS TAX

Where a branch of a foreign company operates in Zambia, the branch taxable income is subject to tax at the rate of 35% or any other rate applicable according to the sector the branch is operating in.

## DIVIDEND TAX

Dividends paid or that become payable by a Zambian company to its resident or non-resident shareholders are subject to withholding tax at 15% and 20% respectively. Any withholding tax on dividends paid to foreign shareholders can be reduced or tax credits claimed in terms of any applicable double tax treaty.

## PARTNERSHIPS

In Zambia a Partnership is not recognised as a distinct taxable entity. For this reason, it is not chargeable to tax instead, each partner is assessed separately. Taxable income for the Partnership is computed jointly and then shared between the partners according to the agreed ratios and each partner is subject to tax on his share of profits as trade income.

## VALUE ADDED TAX (VAT)

VAT is imposed on taxable goods and services supplied by a vendor at the standard rate except for zero-rated and exempt supplies. All exports are zero-rated and the growing of a selected few agricultural products are also zero-rated. Exempt supplies in most cases constitute mostly agricultural products, food stuffs as well as educational services. Compulsory VAT registration is triggered when the value of taxable supplies in a 12-month period exceeds or is expected to exceed ZMW 800,000. However, other companies may register voluntarily without meeting the threshold. This type of registration is renewable every year. The table hereafter shows the applicable VAT rates:

| Category | Rate (%) |
|---|---|
| Standard Rate | 16 |
| Zero-Rate | 0 |
| Exempt | Not taxable |

## FRINGE BENEFITS TAX

The Income Tax Act provides that any advantage or benefit which is not capable of being turned into money or money's worth that is provided to employees is not allowed as a deduction for tax purposes. Such benefits or advantages are not subject to tax in the hands of the employees. These include the following:

- Free housing: In the case of residential accommodation provided to an employee by the employer in a house owned by that employer, thirty per cent of the taxable income paid to the employee shall be disallowed in the employer's tax computation, provided that where an independent and objective valuation is made for such accommodation, the cost to be disallowed shall be the value of that accommodation.
- In the case of housing leased by the employer and provided to an employee:
  (i) Where housing is occupied by a single employee, the amount of rentals will be added to the employee's emoluments and taxed under PAYE;
  (ii) Where housing is occupied by more than one employee, the total amount of the rentals will be disallowed at the level of the employer's tax computation.
- In the case of the provision of motor vehicles to an employee on a personal-to-holder basis, the benefit to be disallowed at the level of the employer's tax computation is per engine capacity of the vehicles as follows:

  Engine capacity of motor vehicle:
  - Below 1800cc – ZMW 18,000 per annum;
  - 1800cc and below 2800cc – ZMW 30,000 per annum;
  - 2800cc and above – ZMW 40,000 per annum;

In all other cases, where the employer, on behalf of the employee, makes payment of electricity bills, telephone bills, water bills, school fees and association and club membership fees, the employer will be required to gross up and add such payments to the salary of the employee and deduct tax under PAYE. The above expenses are allowable deductions in arriving at the taxable income of the employer. All cash benefits, given in the form of allowances, are taxable in the hands of the employees.

### Gratuity

On fixed contracts the gratuity rate is fixed at 25% for all employees as per employment Act 3 of 2019.

Gratuity paid on expiration of the employment contract is subject to NAPSA threshold calculation as part of emolument for NAPSA.

## WITHHOLDING TAX

Royalties, dividends, management and consultancy fees, commission and interest are subject to withholding taxes at source. The withholding tax rate applicable to residents is 15%.

The withholding tax rate on royalties, commission, management and consultancy fees, dividends, interest, public entertainment and foreign contractors applicable to non-residents is 20%, except for commodity royalty which is at 15%. The withholding tax rates are as follows:

| Category | Charge year | | |
|---|---|---|---|
| | **2022** | **2021** | **2020** |
| **Withholding tax and other rates** | | | |
| Non-mining dividend pay-outs - Residents | 15% | 15% | 15% |
| Non-mining dividend pay-outs - Non-Residents | 20% | 20% | 15% |
| Profits distribution by branches of foreign companies | 20% | 20% | 15% |
| Management fees to non-residents | 20% | 20% | 20% |
| Management fees to residents | 15% | 15% | 15% |
| Royalties to non-residents | 20% | 20% | 20% |
| Winnings from gaming, lotteries and betting (Final tax) | 20% | 20% | 20% |
| Debentures interest paid to Zambian investors in a property loan stock company listed on the Lusaka Stock Exchange | 0% | 0% | 0% |
| Interest for individuals (interest earned on all interest –earning accounts held by individuals with institutions registered under the Banking & Financial Services Act, 2017) | 0% | 0% | 0% |
| Interest payable to Banks and Financial institutions for local banks registered with Bank of Zambia | Exempt | Exempt | 15% |
| Interest on Treasury Bills, Government bonds & Corporate Bonds - Residents (Final Tax for individuals & Exempt Organisations Only) | 15% | 15% | 15% |
| Interest on Government bonds & Treasury bills – Non-residents | 20% | 15% | 15% |
| Interest (residents) | 15% | 15% | 15% |

| Category | Charge year | | |
|---|---|---|---|
| | 2022 | 2021 | 2020 |
| Interest (non-residents) | 20% | 20% | 20% |
| Commissions to non-residents | 20% | 20% | 20% |
| Public entertainment fees to non-residents (final tax) | 20% | 20% | 20% |
| Non-resident contractors | 20% | 20% | 20% |
| Rentals (final tax) | 0% | 10% | 10% |
| Medical levy | 0% | 0% | 0% |
| NAPSA tax allowable threshold / month | ZMW 0 | ZMW 0 | ZMW 0 |
| Commodity royalty | 15% | 15% | 0% |

## TURNOVER TAX

A business with an annual turnover of ZMW 800,000 or less is subject to turnover tax, and so is rental income from letting of property. The turnover tax rates are shown in the table below:

| Turnover per annum (ZMW) | Tax rate |
|---|---|
| 800,000 or below | 4% |
| 800,000 or below - Rental | 4% |
| above 800,000 - Rental | 12.5% |

Interest, dividends and royalties do not fall under the scope of turnover tax, and also not income earned from the provision of consultancy services or from mining operations.

## CARBON EMMISSIONS SURTAX

This is levied on all vehicles being imported as well as those visiting and transiting. For registered vehicles in the country, it is an annual charge based on the engine capacity of the vehicle as follows:

| Engine capacity in cubic centimetres | Surtax rate |
|---|---|
| Motor cycles | USD 12 or Kwacha Equivalent |
| 1500 cc and below | USD 12 or Kwacha Equivalent |
| Between 1500 cc and 2000 cc | USD 24 or Kwacha Equivalent |
| Between 2000 cc and 3000 cc | USD 36 or Kwacha Equivalent |
| 3001 cc and above | USD 48 or Kwacha Equivalent |

## STAMP DUTY

In Zambia Stamp Duty is levied on the increase of share capital and registration of debentures. The Stamp Duty on the increase of share capital is presently at 2.5% on the amount of increase. The Stamp Duty on the registration of debentures is 1% of the debenture value up for registration to the minimum of ZMW 300 and the maximum of ZMW 3,000.

## B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company is determined by deducting expenditure so allowed to be deducted in terms of the Income Tax Act. In all instances, unless specifically excluded by the provisions of the Income Tax act, expenditure incurred wholly and exclusively for the purposes of generating income from that source is allowable.

The Act provides for three types of deductions which are specific deductions, general deductions and prohibited deductions. Specific deductions are deductions allowable for a specific source. If a source of income does not exist in a charge year no specific deductions relating to that source should be allowed. General deductions are those deductions which are allowable from total income liable for tax from all sources. And prohibited deductions are those deductions which are not deductible in computing income. Capital allowances and tax losses from the same source are also allowable in determining taxable income.

## FOREIGN EXCHANGE TAX TREATMENT

Foreign exchange losses are tax deductible as long as they are realised and not of a capital nature. However, foreign exchange losses of a capital nature incurred on borrowings used for the building and construction of an industrial or commercial building shall be deductible. All foreign exchange gains which are revenue in nature are taxable as part of income based on source of income.

## CAPITAL ALLOWANCES

| Asset | Initial Allowance | Investment Allowance | Improvement Allowance | Wear & Tear Allowance | Notes |
|---|---|---|---|---|---|
| Industrial buildings | 10 | 10 | - | 5 | 1,2 |
| Commercial buildings | - | - | - | 2 | 3 |
| Farm, agro, plant and machinery | - | - | - | 100 | 9 |
| Farm improvements | - | - | - | 100 | 7 |
| Farm works | - | - | - | 100 | 8 |
| Farm dwelling | - | - | - | 100 | 5 |

| Asset | Initial Allowance | Investment Allowance | Improvement Allowance | Wear & Tear Allowance | Notes |
|---|---|---|---|---|---|
| Manufacturing plant and machinery | - | - | - | 50 | 4 |
| Leased machinery and equipment | - | - | - | 50 | 4 |
| Implements, machinery and plant used in generation of electricity | - | - | - | 50 | - |
| Tourism implements and machinery | - | - | - | 50 | 4 |
| Commercial motor vehicles | - | - | - | 25 | - |
| Non-commercial vehicles | - | - | - | 20 | - |
| Plant, machinery and equipment | - | - | - | 25 | - |
| Low cost housing | 10 | | - | 25 | 1,5 |

NOTES:

1. Initial allowance is granted on a newly constructed industrial building. No initial allowance is granted on an industrial building which has been in existence for some time and is subsequently purchased. But initial allowance can be granted on a new addition to an existing industrial building. Housing units (Low cost housing) constructed or acquired to house employees will qualify for industrial building allowance but the cost of each housing unit should not exceed ZMW 20,000. All housing units constructed or acquired on or after 1 April 1997 will qualify for industrial building allowance provided the cost does not exceed ZMW 20,000 per unit.
2. The investment allowance is also granted on capital expenditure incurred on the construction of, addition to or alteration of any industrial building to be used for purposes of business as a manufacturer.
3. The improvement allowance on constructed industrial and commercial buildings is only granted to those operating in industrial parks and multi facility economic zones.
4. Accelerated wear and tear allowances at 50% are only available on manufacturing, and tourism and leased assets under operating lease.
5. The cost for farm dwelling and low-cost housing for wear and tear purposes is restricted to ZMW 20,000 per unit per year.
6. Premium allowance is also granted for the right to use any patent, design, trade mark or copy right or for the use of other property which the Commissioner-General determines is of a like nature, where such right is used for purposes of business. The amount of allowance allowed for any charge year shall not exceed the amount of the premium or like consideration divided by the number of years for which the right of use is granted.
7. Farm improvements means any permanent work, which includes farm dwelling, fencing and any building constructed for and used for the welfare of employees, and in relation to farming land owned or occupied by the farmer claiming the allowance.
8. Farm works includes expenditure on stumping, clearing, boreholes, wells, aerial and geophysical surveys, prevention of soil erosion and water conservation.
9. Capital allowances is 100% (wear and tear) on implements machinery and plant used in farming and agro-processing.
10. Where a person carrying on agro-processing or manufacturing incurs in a charge year, expenditure, other than expenditure of a capital nature on growing or purchase of a prescribed agricultural product, a local content allowance of 2% of expenditure shall be deducted in ascertaining the gains or profits of that business for the charge year.
11. Where a person incurs expenditure on the growing of rose flowers, tea, coffee, or banana plant or citrus fruit trees or other similar plants or trees, a development allowance of 10% of such expenditure shall be deducted in ascertaining the gains or profits of that business for the charge year and may, in the case of a person growing for first time plants or trees be carried forward to the following charge years up to the first year of production, but in no case shall the development allowance in respect of more than five consecutive years be carried forward.

## STOCK / INVENTORY

All trading stock on hand at the end of the tax year must be added to income while all trading stocks on hand at the beginning of the year ranks as a deduction. Trading stock is valued at the lower of cost or net realisable value. Consumable stores and work-in-progress on hand constitute trading stock. The LIFO stock valuation method is not acceptable for tax purposes in Zambia.

## RESEARCH AND DEVELOPMENT EXPENDITURE

Qualifying expenditure and other expenditure of a capital nature, incurred in the charge year in carrying out scientific experiments or research relating to the business is allowed in full. Also allowed are contributions to a scientific and educational society or institution or like body approved by the Commissioner-General subject to stipulated conditions.

## INTELLECTUAL PROPERTY

A deduction is allowed for the right of use of any patent, design, trade mark or copyright or for the use of other property which the Commissioner- General determines is of a like nature, where such right is used by that person for purposes of his business. The deduction allowed for any charge year shall not exceed the amount of the premium or like consideration divided by the number of years for which the right of use is granted.

Intellectual property valuation may need to be considered where there is capital restructuring in calculation of Property Transfer Tax based on rules on realisable value.

## SUBSIDIES

The income Tax Act provides for capital allowances only for capital expenditure actually incurred. If the taxpayer is able to recover part of this expenditure from subsidy or grant from public funds the capital allowances will be calculated on the net amount.

## INTEREST AND FINANCE CHARGES

Interest incurred in the production of income is a deductible expense. Interest of a revenue nature incurred within 18 months prior to the commencement of trade is deductible in the year in which business commences. Interest of a capital nature is not deductible but ranks for capital allowances as part of the cost of capital expenditure.

However effective 1 January 2019, a deduction shall not be allowed on gross interest expense that exceeds 30% of the Tax Earnings before Interest, Tax, Depreciation and Amortisation. Despite this change, interest including disallowed interest is subject to deduction of Withholding Tax. Interest on which deduction is not allowed may be carried forward and treated as incurred during the next tax year but will not exceed 30% of EBITDA. It will also not be carried forward for more than 5 years except that interest may be carried forward for 10 years by a person carrying on a mining operation and generating electricity.

## TAX LOSSES

Subject to certain anti-avoidance provisions, tax losses are carried forward to the following year provided such losses may not be carried forward for a period of more than 5 years in any other case and 10 years for hydro and thermal power generation and mining operations. Losses carried forward can only be deducted from income of the same source.

## INTEREST RECEIVED

Interest received (or accrued) is included in the gross income. Normally interest is regarded as having accrued at the date on which it becomes due as income of the charge year in which that date occurs. If the interest, for some reason, remains unpaid in the year in which it was due and payable, it should nevertheless, still be assessed in that year. The taxpayer can claim, if he can prove to the satisfaction of the Commissioner-General, unpaid interest.

## FOREIGN SOURCED INCOME

Foreign interest and dividends received by resident individuals and companies are subject to tax in Zambia. However, this general principle may be overridden by the provisions of a Double Tax Treaty or certain unilateral relief provisions contained in the Zambian tax legislation.

## TAX ON BETTING AND GAMING

| Type of Game | Monthly Tax Rate or Monthly tax Amount |
|---|---|
| Online Casino Live games | 20% of gross takings |
| Online Casino Machine Games | 35% of gross takings |
| Casino Games (Brick & Mortar) | ZMW 5,000 per table |
| Lottery Winnings | 35% of net proceeds |
| Betting | 25% of gross takings |
| Gaming Machines | ZMW 500 per machine |

## OTHER RATES – INSURANCE PREMIUM LEVY AND TOURISM LEVY

| Type of Levy | Rate |
|---|---|
| Insurance Premium Levy | 5% |
| Skills Development Levy | 0.5% |
| Tourism Levy | 1.5% |

## INCENTIVES

A person operating a business in a priority sector declared under the Zambia Development Agency Act, 2006 may claim on a straight line basis, wear and tear at an accelerated rate, not exceeding 100 percent in respect of any new implement, plant or machinery acquired and used by the business for the purposes of that business

## MINING TAX RATES

| Category | Charge year | | |
|---|---|---|---|
| | 2022 | 2021 | 2020 |
| Mining - Base Metals/Gemstones/Precious Metals | 30% | 30% | 30% |
| Other Mining operations | 30% | 30% | 30% |

**Mineral royalty rates:**

| (A) Copper | | | |
|---|---|---|---|
| **Norm Price Range** | **Mineral Royal Rate** | | |
| Less than USD 4,500 | 5.5% | 5.5% | 5.5% |
| USD 4,500 but less than USD 6,000 | 6.5% | 6.5% | 6.5% |
| USD 6,000 but less than USD 7,500 | 7.5% | 7.5% | 7.5% |
| USD 7,500 but less than USD 9,000 | 8.5% | 8.5% | 8.5% |
| USD 9,000 and above | 10% | 10% | 10% |
| **(B) Other Minerals** | | | |
| **Description** | **Mineral Royalty Value** | | |
| Base Metals (Other than Copper, cobalt, and Vanadium) | 5% on norm value | | |
| Energy and Industrial Minerals | 5% on gross value | | |
| Gemstones | 6% on gross value | | |

| Category | Charge year | | |
|---|---|---|---|
| | 2022 | 2021 | 2020 |
| Precious Metals | 6% on norm value | | |
| Cobalt and Vanadium | 8% on norm value | | |
| **Capital allowances deductions:** | | | |
| Mining equipment and related capital expenditure (*claim when asset is brought into use) | 20% | 20% | 20% |
| Commercial motor vehicles and other plant and machinery | 25% | 25% | 25% |
| Non-commercial motor vehicles | 20% | 20% | 20% |
| Carry forward of tax losses: | | | |
| Mining operations | 10 Years | 10 Years | 10 Years |
| Prospecting and exploration | 5 Years | 5 Years | 5 Years |
| Other special incentives: | | | |
| Import duty on certain mining equipment | Rebate | Rebate | Rebate |
| Vat deferment scheme | Yes | Yes | Yes |
| **Other rates:** | | | |
| Withholding tax on dividends | 0% | 0% | 0% |
| Export duty on Copper and Cobalt concentrates | 10% | 10% | 10% |
| Companies involved in value addition to copper cathodes | 15% | 15% | |
| Export duty on all other unprocessed or semi processed mineral ores | 10% | 10% | 10% |
| Thin capitalisation threshold | 3:1 | 3:1 | 3:1 |
| Taxation of hedging income | 35% | 35% | 35% |
| Property transfer tax on sale or transfer of mining right and mineral processing licence | 10% | 10% | 10% |
| Transfer pricing rules on interest payments made by mining companies to apply | Yes | Yes | Yes |

Note:

A deduction shall be allowed in ascertaining gains or profits of a business of any mineral royalty payable and paid for a charge year in pursuance to the provisions of the Mines and Minerals Development Act, 2015.

## C. FOREIGN TAX RELIEF

Tax credits are granted in respect of foreign taxes paid on foreign income in accordance with unilateral provisions contained in the Income Tax Act and numerous Double Tax Treaties. Where income is sourced in Zambia, no foreign tax credit will be allowed.

## D. CORPORATE GROUPS

Group taxation is not applicable. However, corporate rules exist which provide relief in respect of transactions between group companies and between founding shareholders and their company. The relief provisions deal with the following transactions:

- Asset-for-share transactions;
- Intra-group transactions;
- Unbundling transactions;
- Transactions relating to liquidation, winding-up or deregistration; and,
- Amalgamation transactions.

Summarised, the corporate rules provide for Property Transfer Tax (PTT) relief in respect of the above-mentioned transactions, subject to certain requirements.

## E. RELATED PARTY TRANSACTIONS

The Commissioner-General of the Zambia Revenue Authority is empowered to make adjustments to cross-border transactions between related parties that are not conducted on arm's length terms based on actual conditions.

While no specific thin capitalisation rules apply, the normal arm's length transfer pricing principle applies in respect of loans as well. As such, related party loans are initially deemed not to be at arm's length whether in writing or not between two or more entities until justified by the Tax Authority based on the transfer pricing policy in place.

Mining companies are subject to a 3:1 debt-to-equity ratio. There are also limitations on certain deductions on transactions between related parties.

Effective 1 January 2019, a penalty of ZMW 24 million was introduced for failure to comply with Transfer Pricing regulations (SI24 of 2018).

## F. EXCHANGE CONTROL

There are no exchange control regulations under the liberalised Zambian economy. No restrictions on the repatriation of profits or investment capital. However, evidence of tax payments should be produced before repatriation as well as meeting anti money laundering regulations.

## G. PERSONAL INCOME TAX

A natural person will be regarded as a resident for tax purposes if he is ordinarily resident in Zambia or where the person is not ordinarily resident in Zambia but spends more than 183 days in Zambia in a tax year (the physical test). The tax rates applicable to natural persons for the year ending 31 December 2022 are:

| Income Tax Bands Per Annum | Rate |
|---|---|
| First ZMW 54,000 | 0% |
| Above ZMW 54,000 up to ZMW 57,600 | 25% |
| Above ZMW 57,600 up to ZMW 82,800 | 30% |
| Above ZMW 82,800 | 37.5% |

Rental income earned by an individual is taxed at:

- 4% where the annual gross rental income is ZMW 800,000 or below: and
- 12.5% where the annual gross rental income is above ZMW 800,000.

**N.B:** Skill Development Levy is at the rate of 0.5% on Gross Emoluments.

National Health Insurance contribution is at the rate of 1% on Basic Emoluments.

## H. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The withholding tax rates applicable to payments to non-residents on dividends, interest, royalties and management and consultancy fees under the various Double Tax Treaties are as follows:

| | Dividends (%) | Interest (%) | Royalties (%) | Management Fees (%) |
|---|---|---|---|---|
| Botswana | 5/7[1] | 10 | 10 | 10 |
| Canada | 15 | 15 | 15 | 0 |
| China | 5 | 10 | 5 | 0 |
| Denmark | 15 | 10 | 15 | 0 |
| Finland | 5/15[1] | 15 | 5/15 | 0 |
| France | --[6] | --[6] | --[6] | --[6] |
| Germany | 5/15[1] | 10 | 10 | 0 |
| India | 5/15[2] | 10 | 10 | 10 |
| Ireland | 7.5 | 10 | 8[7]/10 | 0 |
| Italy | 5/15[1] | 10 | 10 | 0 |
| Japan | 0 | 10 | 10 | 0 |
| Kenya | --[6] | --[6] | --[8] | --[8] |
| Mauritius[11] | 5/15[1] | 10 | 5 | 0 |
| Netherlands[4] | 5/15[5] | 10 | 7.5 | 0 |
| Norway | 5/15[1] | 10 | 10 | 20 |
| Romania | 10 | 10 | 15 | 0 |
| Seychelles | 5/10[1] | 5 | 10 | 20 |
| South Africa | 20 | 20 | 20 | 20 |
| Sweden | 5/15[1] | 10 | 10 | 0 |
| Switzerland[9] | 0/5/15[10] | 10 | 5 | 0 |
| Tanzania | 0 | 0 | 0 | 20 |
| Uganda | 0 | 0 | 0 | 20 |
| United Kingdom | 5/15[3] | 10 | 5 | 0 |
| Non-treaty countries | 20 | 15/20[12] | 20 | 20 |

NOTES:

1. The 5% rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company.
2. The 5% rate applies if the recipient is a company which owns at least 25% of the shares of the dividend-paying company during the period of 6 months immediately preceding the date of payment.
3. The 15% rate applies to dividends paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax. The 5% rate applies in all other cases.
4. Effective from 1 January 2019.
5. The 5% rate applies if the beneficial owner is a company which holds directly at least 10% of the capital of the dividend-paying company or if the beneficial owner is a pension fund.
6. Exempt from tax in Zambia if subject to tax in the other contracting state.
7. The 8% rate applies to royalties paid in respect of any copyright of scientific work, patent, trade mark, design or model, plan, secret formula or process, or information concerning industrial, commercial, or scientific experience.
8. No limitation on Zambia's taxing right, hence the domestic withholding tax rate is applicable.

9. Effective from 1 January 2020.
10. The 0% rate applies if the beneficial owner is a pension fund or the central bank of the other contracting state. The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the dividend-paying company throughout a 365-day period that includes the day of payment of the dividends.
11. Termination date: 31 December 2020 (Zambia); 30 June 2021 (Mauritius).
12. Interest paid to non-resident companies is subject to a 20% final withholding tax. However, interest on government bonds and treasury bills is subject to a 15% withholding tax.

# ZIMBABWE

## MEMBER FIRM

| City | Name | Contact Information |
|---|---|---|
| Harare | Sydney Bvurere | +263 (242) 291 8460 |
| | | +263 77 737 3214 |
| | | sydney.bvurere@pkf.co.zw |

## BASIC FACTS

| | |
|---|---|
| Full name: | Republic of Zimbabwe |
| Capital: | Harare |
| Main languages: | Shona, Ndebele, English and others |
| Population: | 15.27 million (2022 estimate) |
| Monetary unit: | Real Time Gross Settlement Electronic Dollars (RTGS$) |
| Internet domain: | .zw |
| Int. dialling code: | +263 |

## KEY TAX POINTS

- Resident companies and private business corporations are taxed on non-exempt income from a source within or deemed to be within Zimbabwe. Income from a foreign source attracts tax only if it falls within the specific provisions relating to deemed source.
- Normal tax is payable by Zimbabwean companies on their taxable income at the rate of 24% (25% for 2019 and prior years). A 3% AIDS levy is imposed on the tax chargeable giving an effective tax rate of 24.72% (25.75% for 2019 and prior years).
- Capital Gains Tax (CGT) is levied on taxable gains from a source within Zimbabwe from the sale or deemed sale of immovable property and any marketable security (specified asset). Specified asset now includes trademarks, brands and any right to property (tangible or not tangible) for CGT with effect from 1 January 2017.
- VAT is imposed on all goods and services supplied by a registered operator at a standard rate of 14.5% (15% for 2019 and prior years) with a few basics being exempt or zero rated.
- Zimbabwean resident individuals and corporates are subject to tax in Zimbabwe on foreign interest and dividends. Foreign dividends are subject to tax at a flat rate of 20%. Expatriates working in Special Economic Zones are subject to tax at a 15% flat tax rate on their remuneration.
- Tax credits are granted in respect of foreign taxes paid on foreign sources income in accordance with the Income Tax Act and numerous Double Tax Agreements.
- Group taxation is not applicable. However, corporate rules exist which provide relief in respect of transactions between group companies and between founding shareholders and their company.
- The Revenue Authority Commissioner is empowered to make adjustments to non-arm’s length cross-border and local transactions and thin capitalisations between connected parties. Specific transfer pricing rules have taken effect from 1 January 2016. Locally contracted debt with unrelated parties is excluded from the thin capitalisation rule which stipulates a ratio of 3:1.
- Income from royalties, dividends, interest, and similar income are subject to withholding taxes at source. Non-residents are subject to withholding tax on dividends, royalties, fees (including non-executive directors’ fees) and remittances.
- Zimbabwean resident individuals are, save for certain exclusions, subject to tax on their income from a source within Zimbabwe. Non-resident individuals, subject to certain exclusions, are subject to tax on their Zimbabwe-sourced income only.

## A. TAXES PAYABLE

### COMPANY TAX

A company is resident in Zimbabwe if it is incorporated, formed or established in Zimbabwe or has its place of effective management (day to day management) in Zimbabwe. Zimbabwe resident companies and private business corporations (companies) are taxed on non-exempt income from a source within or deemed to be within Zimbabwe. Income from a foreign source attracts tax only if it falls within the specific provisions relating to deemed source.

Normal tax is payable by Zimbabwean companies on their taxable income at the rate of 24%. The rate was reduced from 25% with effect from 1 January 2020. A 3% AIDS levy is imposed on the tax chargeable giving an effective tax rate of 24.72%. The Income tax rate on exporting companies is reduced according to levels of exports: 20% for those exporting 30% to 40% of their products; 17.5% for those exporting 41% to 50%; and 15% for those exporting 51% and above. The reduction was effective from 1 January 2015. The tax is payable by both public and private companies as well as private business corporations.

The tax year usually runs from 1 January to 31 December, although different balance dates are available in certain circumstances. Tax is payable in four quarterly instalments (QPD's) on the 25th of March, 25th of June, 25th of September and 20th of December by which dates 10%, 25%, 30% and 35% of the tax liability for the year must be paid respectively. Small to medium size enterprises without organised records and with annual turnover below ZWL$ 480,000 or USD 6,000 may pay presumptive taxes instead of normal tax. Presumptive taxes are periodic taxes, absolute figures or percentage-based, which are levied on certain specified business operations, usually undertaken by small and medium size enterprises.

Mining companies are, in addition to their specific corporate rates of tax, subject to a royalty calculated on the gross sales relating to the transfer of mineral resources. The royalty is calculated using different percentages applicable to each type of mineral. The percentages range from 1% on base metals to 15% on precious stones (royalty on diamonds reduced to 10% with effect from 1 January 2020). The royalty is payable in foreign currency if the sales are in foreign currency.

## TRUSTS

Zimbabwe trusts pay tax at the same rate as companies (24% on each dollar of taxable income plus a 3% AIDS levy on the tax chargeable). This rate is apparently, the same as the one applicable to an individual's trade and investment income. There are no personal credits to a trust created in terms of the will of a deceased taxpayer. In cases where the income of a trust that is ordinarily resident in Zimbabwe includes foreign interest or dividends, such income is taxable (dividends at 20% flat rate). Relief is granted for foreign tax suffered.

## PARTNERSHIPS

Partnerships are not separate legal entities. This means they have no existence separate from the individual partners that comprise them. Taxable income for the partnership is computed jointly and then shared between the partners according to the agreed ratios and each partner is then subject to tax on his share of profits as trade income.

## CAPITAL GAINS TAX (CGT)

Rates of capital gains tax are as listed below.

| Date of acquisition | Rate | Currency |
|---|---|---|
| Before 22 February 2019 | 5% of gross capital amount | RTGS$ |
| | 5% of gross capital amount | USD |
| On or after 22 February 2019 | 20% of capital gain | RTGS$ |
| | 20% of capital gain | USD |

### Computation of capital gains tax where the specified asset was disposed in foreign currency

Allowable deductions in section 11(2)(a), (b), (d), (e), (f) and (g); highlighted below

- Expenditure incurred on the acquisition or construction of such specified asset;
- expenditure incurred on additions, alterations or improvements to the specified assets;
- **expenditure** directly incurred for the purposes of or in connection with the **sale** of a specified asset;
- bad debts in relation to the specified asset.

Where assets are disposed of in foreign currency, inflation adjustment deductible in determining the capital gain, at a rate of 2.5% for each year owned, on the purchase price or cost of acquiring, and the cost of alterations, improvements and additions.

Where the cost of improvements or purchase price were made in RTGS$, the expenses are to be converted to USD in accordance with a formula prescribed by the Minister of Finance through a Statutory Instrument.

### Rate of capital gains tax on listed securities

The rate of capital gains withholding tax on listed securities was revised from 1% to

- 1.5% for securities held for at least 6 months on the date of sale;
- 2.0% for securities held for less than 6 months on the date of sale.

### Exemptions from capital gains tax

The withholding tax charged on listed securities shall be final as "amounts received by or accruing to a person on the sale of any marketable security which was subjected to withholding tax in terms of section 39(c) of the Charging Act." is exempt from capital gains tax.

## BRANCH PROFITS TAX

Like resident companies, branches of non-resident companies are subject to the standard corporate income tax rate of 24% (+3% AIDS levy). There is no branch remittance tax in Zimbabwe.

## INTERMEDIATED MONEY TRANSFER TAX (IMTT)

This is a tax chargeable whenever a financial institution mediates the transfer of money otherwise than by cheque, between 2 or more persons. Prior to 13 October 2018, the tax was levied at a flat fee of 5c per transaction. However, from 13 October 2018 the tax is now levied at 2% of the amount transacted.

The table below shows the revised 2022 IMTT thresholds together with the 2021 comparisons:

| 2021 thresholds | 2022 thresholds |
|---|---|
| RTGS$ 40,000,000 above which a flat amount of RTGS$ 800,000 applies | RTGS$ 66,000,000 above which a flat amount of RTGS$ 500,000 applies |
| USD 100,000 above which a flat amount of USD 2,000 applies | USD 1,320,000 above which a flat amount of USD 10,150 applies |

This tax is not deductible when computing taxable income for the purpose of corporate income tax.

There is a list of exempt transactions, which was expanded in 2022 to include:

- Transfer of funds from the carbon tax sinking fund account; and
- The transfer of funds from the Agricultural Development Fund.

## VALUE ADDED TAX

VAT is imposed on all goods and services supplied by a registered operator at a standard rate of 14.5% (15% prior to 1 January 2020). Exports and some specified goods and services are zero-rated while a few goods and services are exempt.

Un-beneficiated chrome is subject to VAT at the rate of 20% upon export. With effect from 1 January 2014 un-beneficiated hides are subject to VAT at the standard rate. The rate of export tax on un-beneficiated platinum ranges between 0% and 5% depending on whether one invests in plant for processing, smelting and refining the ore respectively with effect from 1 January 2018.

VAT is charged upon export of dimensional stones at 0%, 2.5% and 5% for cut and polished, cut only and uncut respectively with effect from 1 January 2018.

With effect from 1 January 2019, VAT on sales paid in foreign currency is also payable in foreign currency.

**RTGS$ VAT: New RTGS$ Thresholds (effective 1 January 2022)**

| Description | Threshold (RTGS$) |
|---|---|
| Obligatory VAT Registration | 7,800,000 |
| Category C Threshold | 31,200,000 |
| Category D Threshold | 15,600,000 |

The USD obligatory registration threshold of USD 60,000 has not changed.

With effect from 1 January 2022:

- Definition of “tax invoice” or ‘fiscal tax invoice” amended to refer to invoices printed by a fiscalised electronic register or fiscal memory device used by a registered operator;
- Each tax invoice to contain the phrase “fiscal tax invoice” as opposed to “tax invoice” in a prominent place;
- Tax invoices generated before 31 December 2021 without the above requirement may be used to claim input VAT up to 31 March 2022. Thereafter, these will be disallowed or cannot be used to claim input VAT;
- VAT on export of un-beneficiated lithium was increased from 0% to 5% of the gross fair market value. Un-beneficiated lithium was defined as “in relation to its exportation from Zimbabwe, means lithium exported for use in automotive or other batteries manufactured outside Zimbabwe, or for the manufacture of lithium carbonate, or for any beneficiation whatsoever outside Zimbabwe”.

## FRINGE BENEFITS TAX

Employees are taxed on the value of fringe benefits as determined in the Income Tax Act. The fringe benefits are added to the taxable income of the individual and tax is levied at the tax rates applicable to natural persons.

## STAMP DUTY

Stamp Duty is levied on specified instruments and transfer of immovable property. The specified instruments include bonds, brokers’ notes, off-market share transfers, cheques and policies of insurance. Transfer Duty is imposed on the transfer of immovable property at the following rates:

| Details | Duty (USD) |
|---|---|
| For transfers of up to USD 5,000 - for every USD 100 or part thereof | 1 |
| For transfers between USD 5000 and USD 20,000 - for every USD 100 or part thereof | 2 |
| For transfers between USD 20,000 and USD 100,000 - for every USD 100 or part thereof | 3 |
| For transfers in excess of USD100 000 – for every USD 100 or part thereof | 4 |

## OTHER TAXES

These include, amongst others, Customs and Excise duties, carbon tax, and skills and standards development levies.

## B. DETERMINATION OF TAXABLE INCOME

- The taxable income of a company is determined by deducting exempt income and expenditure incurred for the purposes of trade or in the production of income and other allowable expenses and allowances from the company’s income. A credit of ZWL$ 1,500 per month is granted per each additional youthful employee (30 years and below) up to a maximum of ZWL$ 180,000 per year to encourage employment; the increased amounts are with effect from 1 January 2021 (certain other conditions apply). This credit is also applicable to individuals in business.
- Capital receipts are subject to CGT.
- Expenditure is allowed to the extent that it is of a revenue nature.

Z

## CAPITAL ALLOWANCES

### BUILDINGS, PLANT, MACHINERY AND EQUIPMENT

| Asset | Special Initial Allowance (%) | Wear & Tear Allowance (%) | Notes |
|---|---|---|---|
| Industrial Buildings | 25 | 5 | 1,6 |
| Farm improvements | 25 | 5 | 1, 4 |
| Commercial buildings | | 2,5 | |
| Railway lines | 25 | 5 | 1 |
| Staff housing | 25 | 5 | 1, 2 |
| Motor vehicles | 25 | 20 up to 33,33 | 1, 3, 5 |
| Articles, implements, machinery | | 10 | 5 |

Notes:

1. The SIA is granted in the year of purchase in relation to movables and in the year of construction in respect of immovable or year in which the asset is first used. In subsequent years accelerated W&T is allowed on original cost. Companies operating in Special Economic Zones will claim their SIA over 3 years, 50% in the first year and 25% in each of the subsequent years.
2. As from 1 January 2021 the amount qualifying for the allowances in respect of each unit of staff housing was set at ZWL$ 800,000 (only available to units the cost of which does not exceed ZWL$ 2,000,000).
3. Allowances on “passenger” motor vehicles restricted to a cost of ZWL$ 800,000 for vehicles purchased on or after 1 January 2021.
4. Includes permanent schools, nursing homes, hospitals and clinics (with effect from 1 January 2021 any part of the cost in excess of ZWL$ 800,000 of such permanent schools, nursing homes, hospitals and clinics will be disregarded).
5. W&T on all movables is generally on a reducing balance basis while that on immovable is on straight line basis (on cost).
6. Includes hotels with liquor and casino licenses.
7. SIA for business operating in Special Economic Zones is 50% with the remaining 50% being allowed as Wear Tear in two equal instalments in the following two years.

### STOCK / INVENTORY

All trading stock on hand at the end of the tax year must be added to income while all trading stock on hand at the beginning of the year ranks as a deduction. Trading stock is valued at the lesser of cost or net realisable value. Consumable stores and work-in-progress on hand constitute trading stock. The LIFO method of valuing trading stock is not permitted.

### RESEARCH AND DEVELOPMENT EXPENDITURE (R&D)

Qualifying expenditure incurred by the taxpayer during the year of assessment in carrying out experiments and research relating to his trade, other than capital expenditure on plant, machinery, land or premises or on the acquisition by the taxpayer of rights, whether for the purpose of his trade or otherwise is allowed in full. However, contributions to such expenditure by another taxpayer are allowed to that other taxpayer with some restrictions.

### EXPORT - MARKET DEVELOPMENT EXPENDITURE

Exporters can claim as a deduction the amount of any export-market development expenditure incurred during the year of assessment, together with an amount equal to 100% of such expenditure. The term “export market development expenditure” means expenditure, not being expenditure of a capital nature, that is proved to the satisfaction of the Commissioner to have been incurred wholly or exclusively for the purpose of seeking opportunities for the export of goods from Zimbabwe or of creating or increasing the demand for such exports and includes expenditure for any one or more of the following purposes:

(1) Research into, or the obtaining of information relating to, markets outside Zimbabwe;
(2) Research into the packaging or presentation of goods for sale outside Zimbabwe;
(3) Advertising goods outside Zimbabwe or otherwise securing publicity outside Zimbabwe for goods;
(4) Soliciting business outside Zimbabwe or participating in trade fair;
(5) Investigating or preparing information, designs, estimates or other material for the purpose of submitting tenders for the sale or supply of goods outside Zimbabwe;
(6) Bringing prospective buyers to Zimbabwe from outside the country; and,
(7) Providing samples of goods to persons outside Zimbabwe.

### INTELLECTUAL PROPERTY

The deduction of expenditure, in any single year, incurred for the right of use of an invention, patent, copyright, knowledge or other property of a similar nature or design or other property of a similar nature is not permitted to exceed an amount determined by dividing the total premium by the number of years representing the duration of the agreement. If the agreement is for a duration of more than ten years, or the duration is indefinite, then the duration is deemed to be ten years.

### INTEREST AND FINANCE CHARGES

Interest incurred in the production of income is a deductible expense. Interest incurred prior to the commencement of trade is deductible in the year in which trade commences. However, interest incurred during building operations on a loan used for building purposes is capitalised and ranks for capital allowances as part of the cost of the building. Interest expenditure is adjusted for thin capitalisation rules. Pre-incorporation expenditure is not deductible.

## TAX LOSSES

Subject to certain anti-avoidance provisions, tax losses are carried forward to the following year provided such losses may not be carried forward for a period of more than six years, except for losses from mining operations. Losses from trading operations cannot be offset with employment income.

## INTEREST RECEIVED

Interest received (or accrued) is included in gross income to the extent that such interest has not been subjected to withholding tax at source. Bank interest is subject to withholding tax at source.

## FOREIGN SOURCED INCOME

Zimbabwean resident individuals and corporates are subject to tax in Zimbabwe on foreign interest and dividends. Foreign dividends are subject to tax at a flat rate of 20%. However, this general principle may be overridden by the provisions of a double taxation agreement or certain unilateral relief provisions contained in the Zimbabwe tax legislation.

## INCENTIVES

The following table indicates applicable normal tax rates of 24% (25% prior to 1 January 2020) and indicates the existing tax holiday schemes in the form of reduced tax rates.

### Income tax rates

**Years ending 31 December 2021 and 2020**

| | Notes | 2021 | 2020 |
|---|---|---|---|
| Companies and Trusts | 1 | 24% | 24% |
| Mining companies and mining trusts | | 24% | 24% |
| Approved BOOT and BOT projects | 2 | 0% | 0% |
| Industrial Park Developer | 3 | 0% | 0% |
| Licensed investor | 3 | 0% | 0% |
| Special Mining Lease | | 15% | 15% |
| Pension Funds | | 15% | 15% |
| Satellite broadcasting services or electronic commerce platform | | 5% | 5% |
| Operator of a tourist facility | 3 | 0% | 0% |
| Manufacturing company exporting 30% or more | 1 | 20%, 17.5%, 15% | 20%, 17.5%, 15% |

Notes:

1. Subject to 3% Aids levy giving effective rates of 24.72%; 20.60%; 15.45% and 18.03%. The rates for exporting companies are determined by the following levels of exports:
   a. Export 30% to 40% of products - 20%
   b. Export 41% to 50% of products - 17.5%
   c. Export 51% and above of products - 15%
2. The 0% rate applies for the first five years and then a 15% rate applies in the next five years and 25% rate thereafter.
3. The 0% rate applies for the first five years and a 15% rate applies thereafter. Licensed investor includes businesses operating in a Special Economic Zone (SEZ) as well. The structures to approve SEZ projects are now in place and operating. A number of SEZs have already been approved.

## C. FOREIGN TAX RELIEF

Tax credits are granted in respect of foreign taxes paid on foreign sources income in accordance with unilateral provisions contained in the Income Tax Act and numerous Double Tax Agreements. Where income is sourced in Zimbabwe, no foreign tax credit will be allowed.

## D. CORPORATE GROUPS

Group taxation is not applicable. However, corporate rules exist which provide relief in respect of transactions between group companies and between founding shareholders and their company. The relief provisions deal with the following transactions:

- Asset-for-share transactions;
- Intra-group transactions;
- Unbundling transactions;
- Transactions relating to liquidation, winding-up or deregistration; and,
- Amalgamation transactions.

Briefly, the corporate rules provide for the following tax relief in respect of the above-mentioned transactions, provided certain requirements are met:

- CGT;
- Stamp Duty;
- Income tax, specifically with respect to capital allowances claimed, recoupment of capital allowances and the transfer of trading stock; and
- VAT.

## E. RELATED PARTY TRANSACTIONS

The Commissioner for the Zimbabwean Revenue Authority is empowered to make adjustments to non-arm's length cross-border transactions and thin capitalisations between connected parties. The transfer pricing rules extend this to local transactions as well. There are also limitations on certain deductions and allowances on transactions between connected parties.

## F. WITHHOLDING TAXES

Income from royalties, dividends, interest, and similar income are subject to withholding taxes at source. Non-residents are subject to withholding tax on dividends, royalties, fees and remittances. Zimbabwean resident individuals are subject to withholding tax at source on dividends and bank interest. Royalties paid by companies operating in SEZs are exempt from withholding tax.

Zimbabwean resident companies are not subject to dividend withholding tax on dividends paid by local companies but their bank interest is subject to withholding tax. The rate of withholding tax is 15% in all cases except for dividends from securities listed on the Zimbabwe Stock Exchange for which the rate is 10%.

## G. EXCHANGE CONTROL AND INDIGENISATION

Subject to certain limited exclusions, Zimbabwean residents are subject to exchange controls. Currently the exchange controls have continued to tighten up due to shortage of foreign currency to the extent that exportation of dividends and profits is not the priority. Imports are the priority. The exchange rate which had been pegged at 1:1 for the USD against the Real Time Gross Electronic Settlement (RTGS) and bond notes was relaxed in February 2019 when a local currency, Real Time Gross Electronic Dollars (RTGS$ or ZWL$) was introduced. The USD is no longer the functional currency with effect from 22 February 2019. With effect from 24 June 2019, the ZWL$ became the functional currency for Zimbabwe with local transactions being obliged to trade in this currency only. However, the restriction for local transactions to be in the ZWL$ currency only was relaxed in May 2020 when other currencies became legal again for local transactions.

A few selected sectors, e.g. mining, tourism and NGO sectors were allowed to continue trading in foreign currency. Tax on all transactions in foreign currency is likewise payable in foreign currency. Import duties on a few selected items (luxury goods) is payable in foreign currency. Non-residents are excluded from the ambit of exchange controls except when it comes to investing in securities listed on the Zimbabwe Stock Exchange.

The Zimbabwean Authorities have now relaxed the controls over ownership of companies in all sectors, including platinum and diamond mining industries. A new Investment Agency, Zimbabwe Investment Development Agency (ZIDA) was formed in early 2020. This has taken over the functions of the now defunct Zimbabwe Investment Authority (ZIA) and Special Economic Zones Authority. Investors can now negotiate their way through ZIDA.

## H. PERSONAL INCOME TAX

Zimbabwean resident individuals are, save for certain exclusions, subject to tax on their income from a source within Zimbabwe. Non-resident individuals, subject to certain exclusions, are subject to tax on their Zimbabwe-sourced income only.

Employers with acceptable accounting records are allowed to use the Final Deduction System for their payroll tax. This system requires that the employers deduct the payroll tax accurately such that the individual employees do not have to submit income tax returns for their employment income to the tax authorities at the end of the year unless they have other income. Two sets of tax rates were introduced with effect from 1 August 2019, one in ZWL$ and the other one in USD to cater for those employees earning in various currencies. The two sets of income tax rates applicable to natural persons for the tax years ending 31 December 2020,2021 and 2022 are as follows:

**Individual Income Tax Rates January to July 2020 (ZWL$) (7 months)**

| Annual taxable income (ZWL$) | | Rate | Cumulative Tax Chargeable (ZWL$) |
|---|---|---|---|
| Up to | 24,000 | 0% | 0 |
| From 24,001 to | 90,000 | 20% | 13,200 |
| From 90,001 to | 180,000 | 25% | 35,700 |
| From 180,001 to | 360,000 | 30% | 89,700 |
| From 360,001 to | 600,000 | 35% | 173,700 |
| Above 600,000 | | 40% | 173,700 +40% |

**Individual Income Tax Rates August to December 2020 (ZWL$) (5 months)**

| Annual taxable income (ZWL$) | | Rate | Cumulative Tax Chargeable (ZWL$) |
|---|---|---|---|
| Up to | 24,000 | 0% | 0 |
| From 24,001 to | 180,000 | 20% | 24,000 |
| From 1800,001 to | 360,000 | 25% | 69,000 |
| From 360,001 to | 720,000 | 30% | 177,000 |
| From 720,001 to | 1,200,000 | 35% | 429,000 |
| Above 1,200,000 | | 40% | 429,000 +40% |

**Individual Income Tax Rates January to December 2020 (USD)**

| Taxable income (USD) | | Rate | Cumulative Tax Chargeable (USD) |
|---|---|---|---|
| Up to | 840 | 0% | 0 |
| From 841 to | 3,600 | 20% | 552 |
| From 3,601 to | 12,000 | 25% | 2,652 |
| From 12,001 to | 24,000 | 30% | 6,252 |
| From 24,001 to | 36,000 | 35% | 10,452 |
| Above 36,000 | | 40% | 10,452 +50% |

**Individual Income Tax Rates 2021 (ZWL$)**

| Annual taxable income (RTGS$) | | Rate | Cumulative Tax Chargeable (RTGS$) |
|---|---|---|---|
| Up to | 120,000 | 0% | 0 |
| From 120,001 to | 360,000 | 20% | 48,000 |
| From 360,001 to | 720,000 | 25% | 138,000 |
| From 720,001 to | 1,440,000 | 30% | 354,000 |
| From 1,440,001 to | 3,000,000 | 35% | 900,000 |
| Above 3,000,000 | | 40% | 900,000 +40% |

**Individual Income Tax Rates 2021 (USD)**

| Taxable income (USD) | | Rate | Cumulative Tax Chargeable (USD) |
|---|---|---|---|
| Up to | 840 | 0% | 0 |
| From 841 to | 3,600 | 20% | 552 |
| From 3,601 to | 12,000 | 25% | 2,652 |
| From 12,001 to | 24,000 | 30% | 6,252 |
| From 24,001 to | 36,000 | 35% | 10,452 |
| Above 36,000 | | 40% | 10,452 +40% |

**Individual Income Tax Rates 2022 (RTGS$)**

| Annual taxable income (RTGS$) | | Rate | Cumulative Tax Chargeable (RTGS$) |
|---|---|---|---|
| Up to | 300,000 | 0% | 0 |
| From 300,001 to | 720,000 | 20% | 84,000 |
| From 720,001 to | 1,440,000 | 25% | 264,000 |
| From 1,440,001 to | 2,880,000 | 30% | 696,000 |
| From 2,880,001 to | 6,000,000 | 35% | 1,788,000 |
| Above 6,000,000 | | 40% | 1,788,000 +40% |

**Individual Income Tax Rates 2022 (USD)**

| Taxable income (USD) | | Rate | Cumulative Tax Chargeable (USD) |
|---|---|---|---|
| Up to | 1,200 | 0% | 0 |
| From 1,201 to | 3,600 | 20% | 480 |
| From 3,601 to | 12,000 | 25% | 2,580 |
| From 12,001 to | 24,000 | 30% | 6,180 |
| From 24,001 to | 36,000 | 35% | 10,380 |
| Above 36,000 | | 40% | 10,380 +40% |

Note: Husbands and wives are taxed separately. An AIDS levy of 3% on tax chargeable, after deduction of credits, is imposed. The maximum effective rate is therefore 41.20%. The above rates apply only to remuneration from employment and pensions. Any taxable income for an individual which is received by or accrues to him from any trade, investment or other activity (excluding employment or pension) is taxed at a flat rate of 24%. The 3% AIDS levy is also applicable to the tax on this income, giving an effective rate of 24.72%.

- The USD non-taxable threshold was reviewed upwards from USD 70 to USD 100 per month with effect from 1 January 2022.
- The non-taxable threshold for RTGS$ rates was increased from RTGS$10,000 to RTGS$25,000 per month with effect from 1 January 2022.

**Tax-free bonus**

With effect from 1 November 2021, the tax free bonus was increased from RTGS$ 25,000 to RTGS$ 100,000 while the USD portion was reviewed from USD 320 to USD 700.

**Exempt portion of a retrenchment package**

The exempt portion of a retrenchment package was reviewed to the greater of RTGS$ 400 000 or 1/3 of the retrenchment package, but capped to a third of RTGS$ 2 million. The measure takes effect from 1 January 2022.

**Expansion of definition of "advantage or benefit" to include 30% of airtime and data**

The definition of advantage or benefit was amended to include in employment income, 30% of cost to the employer of the provision of mobile airtime, data or internet broadband access for use outside of work premises. This applies only when the employer fails to prove that it was fully utilised for business.

**Tax free portion of interest earned by taxpayers above 55 years**

The tax-free portion of interest earned on a bank deposit or bankers' acceptances or other discounted instruments by elderly taxpayers remained at RTGS$ 240,000 or USD 3,000 depending on the currency of trade.

**Non-Executive Directors' fees**

For the avoidance of doubt, non-executive directors' fees are excluded from the definition of remuneration in terms of the 13th Schedule. The change permits fringe benefits granted to non-executive directors to be part of directors' fees subject to the final tax of 20%.

**Alignment of fees paid to District Councilors**

Allowances payable to councilors appointed in terms of the Rural District Act are exempted in line with those payable to councilors appointed in terms of the Urban Councils Act.

**Tax Credits**

With effect from 1 January 2022, both the RTGS$ and USD credits were reviewed as shown in the table below:

| Credit | Annual | Monthly | Annual | Monthly |
|---|---|---|---|---|
| | RTGS$ | RTGS$ | USD | USD |
| Elderly person's credit | 117,000 | 9,750 | 900 | 75 |
| Blind Person's credit | 117,000 | 9,750 | 900 | 75 |
| Physically disabled person's credit | 117,000 | 9,750 | 900 | 75 |

**Pension Contributions**

With effect from 1 January 2022, the maximum deductible amount for pension contributions was increased to RTGS$ 390,000 (RTGS$ 32,500 per month) or 7.5% of the basic salary whichever is the lesser. The USD value was pegged at USD 3,000 per annum or USD 250 per month

## I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

The Income Tax Act subjects a number of payments to withholding tax at source. These are as follows:

| | Dividends | | Interest[8] (%) | Royalties (%) | Fees (%) |
|---|---|---|---|---|---|
| | Individuals, companies (%) | Qualifying companies (%) | | | |
| **Non-treaty countries** | | | | | |
| Companies | 0/10/15[9] | 0/10/15 | 0 | 0/15 | |
| Individuals | 0/10/15 | -- | 0 | 0/15 | |
| **Treaty countries:** | | | | | |
| Botswana | 10 | 5[1] | 10 | 10 | 10 |
| Bulgaria | 20 | 10[1] | 0 | 10 | 10 |
| Canada | 20 | 10[2] | 0 | 10 | 10 |
| China[4] | 7.5 | 2.5[3] | 0 | 7.5 | 0 |
| France | 20 | 10[1] | 0 | 10 | 10 |
| Germany | 20 | 10[1] | 0 | 7.5 | 7.5 |
| Kuwait | 10 | 0/5[5] | 0 | 10 | 0 |
| Malaysia | 20 | 10[6] | 0 | 10 | 10 |
| Mauritius | 20 | 10[2] | 0 | 15 | 15 |
| Netherlands | 20 | 10[1] | 0 | 10 | 10 |
| Norway | 20 | 15[1] | 0 | 10 | 10 |
| Poland | 15 | 10[1] | 0 | 10 | 0 |
| South Africa[7] | 10 | 5[1] | 0 | 10 | 5 |
| Sweden | 20 | 15[1] | 0 | 10 | 10 |
| United Kingdom | 20 | 5[2] | 0 | 10 | 10 |

Notes:

1. The reduced rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
2. The reduced rate applies if the beneficial owner is a company which controls directly or indirectly at least 25% of the voting power of the paying company.
3. The reduced rate applies if the beneficial owner is a company which controls directly or indirectly at least 25% of the paying company.
4. Effective 1 January 2017.
5. The 5% rate applies if the beneficial owner is a company which controls directly or indirectly at least 10% of the capital of the paying company. The 0% rate applies if the dividends are paid to the Kuwaiti Government, Central Bank etc.
6. The reduced rate applies if the recipient is a company (other than a partnership) which holds directly at least 15% of the capital of the paying company.
7. Effective date: 1 February 2017 (withholding taxes); 1 January 2017 for other tax matters.
8. Interest payments to non-residents are exempt from withholding tax. The domestic 0% rate therefore prevails for all countries listed.
9. Dividends paid to non-resident companies are subject to a 15% withholding tax rate on the gross amount. A reduced 10% rate applies to dividends from securities listed on the Zimbabwe Stock Exchange. Dividends paid by an industrial park developer or a licensed investor (exporting all of its goods and services) to a non-resident are exempt from withholding tax.

right people
right size
right solutions



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